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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2015–N–2457]

Medical Devices; General and Plastic Surgery Devices; Classification of the Internal Tissue Marker

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the internal tissue marker into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the internal tissue marker's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective August 5, 2015. The classification was applicable on December 18, 2014.

FOR FURTHER INFORMATION CONTACT: David Talley, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G454, Silver Spring, MD 20993–0002, 301–796–4861, *david.talley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device. In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on April 22, 2013, classifying the Moerae Surgical Marking Pen into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II.

On May 3, 2013, VasoPrep Surgical (formerly Moerae Matrix, Inc.) submitted a request for classification of the VasoPrep (formerly Moerae) Surgical Marking Pen under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 18, 2014, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding § 878.4670.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for an internal tissue marker will need to comply with the special controls named in this final order. The device is assigned the generic name internal tissue marker, and it is identified as a prescription use device that is intended for use prior to or during general surgical procedures to demarcate selected sites on internal tissues.

FDA has identified the following risks to health associated specifically with

this type of device, as well as the mitigation measures required to mitigate these risks in Table 1.

TABLE 1—INTERNAL TISSUE MARKER RISKS AND MITIGATION MEASURES

Identified Risks and Mitigation Measures	
Identified risk	Mitigation measures
Adverse Tissue Reaction.	Biocompatibility Testing. Sterilization Testing. Shelf Life/Stability Testing. Performance Testing. Labeling.
Ineffective Marking	Performance Testing. Shelf Life/Stability Testing. Labeling.
Improper Use	Labeling.

FDA believes that the following special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness:

- The device must be demonstrated to be biocompatible. Material names and specific designation numbers must be provided.
- Performance testing must demonstrate that the device performs as intended to mark the tissue for which it is indicated.
- Performance data must demonstrate the sterility of the device.
- Performance data must support the shelf life of the device by demonstrating sterility, package integrity, device functionality, and material stability over the requested shelf life.
- Labeling must include:
  - A warning that the device must not be used on a non-sterile surface prior to use internally.
  - An expiration date/shelf life.
  - Single use only labeling must be labeled directly on the device.

Internal tissue marker is a prescription device restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device; see 21 CFR 801.109 (*Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the internal tissue marker they intend to market.

II. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

IV. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov*.

1. **DEN130004**: De Novo Request from VasoPrep Surgical (formerly Moerae Matrix, Inc.), dated May 3, 2013.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 878.4670 to subpart E to read as follows:

§ 878.4670 Internal tissue marker.

(a) *Identification.* An internal tissue marker is a prescription use device that is intended for use prior to or during general surgical procedures to demarcate selected sites on internal tissues.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The device must be demonstrated to be biocompatible. Material names and specific designation numbers must be provided.

(2) Performance testing must demonstrate that the device performs as intended to mark the tissue for which it is indicated.

(3) Performance data must demonstrate the sterility of the device.

(4) Performance data must support the shelf life of the device by demonstrating sterility, package integrity, device functionality, and material stability over the requested shelf life.

(5) Labeling must include:

(i) A warning that the device must not be used on a non-sterile surface prior to use internally.

(ii) An expiration date/shelf life.

(iii) Single use only labeling must be labeled directly on the device.

Dated: July 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–19177 Filed 8–4–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–5173–C–06]

RIN 2501–AD33

Affirmatively Furthering Fair Housing; Technical Correction

AGENCY: Office of the General Counsel, HUD.

ACTION: Final rule, technical correction.

SUMMARY: This document corrects a typographical error in HUD's final rule on Affirmatively Furthering Fair Housing, published on July 16, 2015.

DATES: *Effective:* August 17, 2015.

FOR FURTHER INFORMATION CONTACT: For further information about this technical correction, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10282, Washington, DC 20410–0500; telephone

number 202–708–1793 (this is not a toll-free number). Persons who are deaf or hard of hearing and persons with speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On July 16, 2015, at 42271, HUD published a final rule to provide HUD program participants with an approach to help them better incorporate into their planning processes the duty to affirmatively further the purposes and policies of the Fair Housing Act, so they can more effectively meet their long-standing fair housing obligations. Under this rule, recipients of HUD funds will prepare an Assessment of Fair Housing (AFH), developed in accordance with requirements provided in the rule, and will submit the AFH to HUD. In detailing submission requirements, the rule explains when different program participants must submit to HUD their first AFH. New regulatory § 5.160 contains submission deadlines for program participants to submit their first AFHs to HUD. Section 5.160(a)(1)(i)(C) in the final rule, which describes the deadline by when consolidated plan participants that are Insular Areas or States must submit their first AFH to HUD, inadvertently omitted the word ''year'' after ''program'' and omitted the word ''plan'' after the second occurrence of the word ''consolidated.'' Therefore, this document revises 24 CFR 5.160(a)(1)(i)(C) to include these two missing words.

Correction

Accordingly, FR Doc. 2015–17032, Affirmatively Furthering Fair Housing (FR–5173–F–04), published in the **Federal Register** on July 16, 2015 (80 FR 42271) is corrected as follows:

On page 42357, revise the first full paragraph in the third column, beginning on the third line of the column (24 CFR 5.160(a)(1)(i)(C)), to read as follows ''(C) For consolidated plan participants that are Insular Areas or States, the program year that begins on or after January 1, 2018 for which a new consolidated plan is due, as provided in 24 CFR 91.15(b)(2); and''

Dated: July 29, 2015.

Camille E. Acevedo,

Association General Counsel for Legislation and Regulations.

[FR Doc. 2015–19214 Filed 8–4–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

[Docket No. OSHA–2015–0003]

RIN 1218–AC97

Maine State Plan for State and Local Government Employers

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of initial approval determination.

SUMMARY: The Maine State and Local Government Only State Plan, a state occupational safety and health plan applicable only to public sector employment (employees of the state and its political subdivisions), is approved as a developmental plan under the Occupational Safety and Health Act of 1970 and OSHA regulations. Under the approved Plan, the Maine Department of Labor is designated as the state agency responsible for the development and enforcement of occupational safety and health standards applicable to state and local government employment throughout the state. The Occupational Safety and Health Administration (OSHA) retains full authority for coverage of private sector employees in the State of Maine, as well as for coverage of federal government employees.

DATES: *Effective:* August 5, 2015.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Contact Francis Meilinger, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N–3700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION:

A. Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the ''OSH Act''), 29 U.S.C. 667, provides that a state which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a federal standard has been promulgated may submit a State Plan to the Assistant Secretary of Labor for Occupational Safety and Health (''Assistant Secretary'') documenting the proposed program in detail. Regulations promulgated pursuant to the OSH Act at 29 CFR part 1956 provide that a state may submit a State Plan for the development and enforcement of occupational safety and health standards applicable only to employers of the state and its political subdivisions (''public employers'').

Under these regulations the Assistant Secretary will approve a State Plan for State and Local Government Only if the Plan provides for the development and enforcement of standards relating to hazards in employment covered by the Plan, which are or will be at least as effective in providing safe and healthful employment and places of employment as standards promulgated and enforced under Section 6 of the OSH Act, giving due consideration to differences between public and private sector employment. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR part 1956, subpart B.

A State and Local Government Only State Plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1956.10 and 1956.11, if it includes satisfactory assurances by the state that the state will take the necessary steps, and establishes an acceptable developmental schedule, to meet the criteria within a three year period (29 CFR 1956.2(b)). The Assistant Secretary may publish a notice of ''certification of completion of developmental steps'' when all of a state's developmental commitments have been met satisfactorily (29 CFR 1956.23; 1902.33 and 1902.34) and the Plan is structurally complete. After certification of a State Plan for State and Local Government Only, OSHA may initiate a period of at least one year of intensive performance monitoring, after which OSHA may make a determination under the procedures of 29 CFR 1902.38, 1902.39, 1902.40 and 1902.41 as to whether, on the basis of actual operations, the criteria set forth in 29 CFR 1956.10 and 1956.11 for ''at least as effective'' State Plan performance are being applied under the Plan.

B. History of the Present Proceeding

Since 1971, the Maine Department of Labor, Bureau of Labor Standards (Bureau), has adopted standards and performed inspections in the public

sector (state, county, and municipal employers) as outlined under the provisions of the state's existing enabling legislation: Maine Revised Statutes, Title 26: Labor and Industry. Maine began working on a State and Local Government Only State Plan in 2012 and submitted a draft Plan to OSHA in February of 2013. OSHA reviewed the draft Plan and its findings were detailed in various memoranda and other documents. OSHA determined that the Maine statutes, as structured, and the proposed State Plan needed changes in order to meet the State and Local Government Only State Plan approval criteria in 29 CFR 1956. Maine formally submitted a revised Plan applicable only to public employers for federal approval on May 2, 2013. Over the next several months, OSHA worked with Maine in identifying areas of the proposed Plan which needed to be addressed or required clarification. In response to federal review of the proposed State Plan, supplemental assurances, and revisions, corrections and additions to the Plan were submitted on September 4, 2013 and November 7, 2014. Further modifications were submitted by the state on December 19, 2014. Amendments to Title 26 of the Maine Revised Statutes were proposed and enacted by the Maine Legislature and signed into law by the Governor in 2014. The amended legislation provides the basis for establishing a comprehensive occupational safety and health program applicable to the public employers in the state. The revised Plan has been found to be conceptually approvable as a developmental State Plan.

The OSH Act provides for funding of up to 50% of the State Plan costs, but longstanding language in OSHA's appropriation legislation further provides that OSHA must fund '' . . . no less than 50% of the costs . . . required to be incurred'' by an approved State Plan. Such federal funds to support the State Plan must be available prior to State Plan approval. The Fiscal Year 2015 Omnibus Appropriations Act includes $400,000 in additional OSHA State Plan grant funds to allow for Department of Labor approval of a Maine State Plan.

On May 20, 2015, OSHA published a notice in the **Federal Register** (80 FR 28890) concerning the submission of the Maine State and Local Government Only State Plan, announcing that initial federal approval of the Plan was at issue, and offering interesting parties an opportunity to review the Plan and submit data, views, arguments or requests for a hearing concerning the Plan.

To assist and encourage public participation in the initial approval process, the documents constituting the Maine State and Local Government Only State Plan were and remain available at *http://regulations.gov* as Docket No. OSHA–2015–0003. A copy of the Maine State Plan was also maintained and is available for inspection in the OSHA Docket Office, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. This document, as well as news releases and other relevant information, is available at OSHA's Web page at: *http://www.osha.gov.*

C. Summary and Evaluation of Comments Received

No comments were received.

D. Review Findings

As required by 29 CFR 1956.2 in considering the grant of initial approval to a State and Local Government Only State Plan, OSHA must determine whether the State Plan meets or will meet the criteria in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR 1956.11. Findings and conclusions in each of the major State Plan areas addressed by 29 CFR 1956 are as follows:

(1) Designated Agency

Section 18(c)(1) of the OSH Act provides that a state occupational safety and health program must designate a state agency or agencies responsible for administering the Plan throughout the state (29 CFR 1956.10(b)(1)). The Plan must describe the authority and responsibilities of the designated agency and provide assurance that other responsibilities of the agency will not detract from its responsibilities under the Plan (29 CFR 1956.10(b)(2)). The Maine Department of Labor is designated by Title 26 of the Maine Revised Statutes as the sole agency responsible for administering and enforcing the State and Local Government Only State Plan in Maine. The Maine Department of Labor, Bureau of Labor Standards is designated as the sub-agency responsible for the State and Local Government Only State Plan. The Plan describes the authority of the Maine Department of Labor and its other responsibilities.

(2) Scope

Section 18(c)(6) of the OSH Act provides that the state, to the extent permitted by its law, shall under its Plan establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of the state and its political subdivisions. Only where a state is constitutionally precluded from regulating occupational safety and health conditions in certain political subdivisions may the state exclude such political subdivision employees from further coverage (29 CFR 1956.2(c)(1)). Further, the state may not exclude any occupational, industrial or hazard groupings from coverage under its Plan unless OSHA finds that the state has shown there is no necessity for such coverage (29 CFR 1956.2(c)(2)).

The scope of the Maine State Plan includes any employee of the state, including, but not limited to members of the Maine State Legislature, members of the various state commissions, persons employed by public universities and colleges, and employees of counties, cities, townships, school districts, and municipal corporations. Volunteers under the direction of a public employer or other public corporation or political subdivision will also be covered. No employees of any political subdivision are excluded from the Plan. However, the definition of public employee does not extend to students or incarcerated or committed individuals in public institutions. The Maine Department of Labor will adopt all federal OSHA occupational safety and health standards, and the Plan excludes no occupational, industrial or hazard grouping.

Consequently, OSHA finds that the Maine State Plan contains satisfactory assurances that no employees of the state and its political subdivisions are excluded from coverage, and the plan excludes no occupational, industrial or hazard grouping (Maine State Plan pp. 1–2).

(3) Standards

Section 18(c)(2) of the OSH Act requires State Plans to provide occupational safety and health standards which are at least as effective as federal OSHA standards. A State Plan for State and Local Government Only must therefore provide for the development or adoption of such standards and must contain assurances that the state will continue to develop or adopt such standards (29 CFR 1956.10(c); 1956.11(b)(2)(ii)). A state may establish the same standards as federal OSHA (29 CFR 1956.11(a)(1)), or alternative standards that are at least as effective as those of federal OSHA (29 CFR 2956.11(a)(2)). Where a state's standards are not identical to federal OSHA's, they must meet the following criteria: They must be promulgated

through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1956.11(b)(2)(iii)); they must, where dealing with toxic materials or harmful physical agents, assure employees protection throughout his or her working life (29 CFR 1956.11(b)(2)(i)); they must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1956.11(b)(2)(vii)); and, they must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1956.11(b)(2)(vii)).

In addition, the State Plan must provide for prompt and effective standards setting actions for protection of employees against new and unforeseen hazards, by such means as authority to promulgate emergency temporary standards (29 CFR 1956.11(b)(2)(v)).

Under the Plan's legislation, Title 26 of the Maine Revised Statutes, the Maine Department of Labor has full authority to adopt standards and regulations (through the Board of Occupational Safety and Health) and enforce and administer all laws and rules protecting the safety and health of employees of the state and its political subdivisions. The procedures for state adoption of federal occupational safety and health standards include giving public notice, opportunity for public comment, and opportunity for a public hearing, in accordance with the Maine Administrative Procedures Act (Title 5, chapter 375 of the Maine Revised Statutes). Maine has adopted state standards identical to federal occupational safety and health standards as promulgated through March 26, 2012 (General Industry) and November 8, 2010 (Construction). The State Plan includes a commitment to update all standards by November 2016. The Plan also provides that future OSHA standards and revisions will be adopted by the state within six months of federal promulgation in accordance with the requirements at 29 CFR 1953.5.

Under the Plan, the Maine Department of Labor (through the Board of Occupational Safety and Health) has the authority to adopt alternative or different occupational health and safety standards where no federal standards are applicable to the conditions or circumstances or where standards that are more stringent than the federal are deemed advisable. Such standards will be adopted in accordance with Title 26 of the Maine Revised Statutes and the Maine Administrative Procedures Act, which includes provisions allowing submissions from interested persons and the opportunity for interested persons to participate in any hearing for the development, modification or establishment of standards (Maine State Plan p. 4).

The Maine State Plan also provides for the adoption of federal emergency temporary standards within 30 days of federal promulgation (Maine State Plan p. 4).

Based on the preceding Plan provisions, assurances, and commitments, OSHA finds the Maine State Plan to have met the statutory and regulatory requirements for initial plan approval with respect to occupational safety and health standards.

(4) Variances

A State Plan must provide authority for the granting of variances from state standards upon application of a public employer or employers which corresponds to variances authorized under the OSH Act, and for consideration of the views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to application for variances (29 CFR 1956.11(b)(2)(iv)).

Title 26, Chapter 6, Section 571 of the Maine Revised Statutes includes provisions for the granting of permanent and temporary variances from state standards to public employers in terms substantially similar to the variance provisions contained in the federal OSH Act. The state provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. A variance may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance.

The state has provided assurances in its developmental schedule that by May 2016, it will adopt regulations equivalent to 29 CFR 1905, OSHA's variance regulations, or provide a citation to currently existing equivalent regulations (Maine State Plan pp. 5 and 13).

(5) Enforcement

Section 18(c)(2) of the OSH Act and 29 CFR 1956.10(d)(1) require a State Plan to include provisions for enforcement of state standards which are or will be at least as effective in providing safe and healthful employment and places of employment as the federal program, and to assure that the state's enforcement program for public employees will continue to be at least as effective as the federal program in the private sector.

a. Legal Authority. The state must require public employer and employee compliance with all applicable standards, rules and orders (29 CFR 1956.10(d)(2)) and must have the legal authority for standards enforcement (Section 18(c)(4) of the OSH Act), including compulsory process (29 CFR 1956.11(c)(2)(viii)). Title 26, Chapters 3 and 6 of the Maine Revised Statutes establishes the duty of public employers to provide a place of employment free of recognized hazards, to comply with the Maine Department of Labor's occupational safety and health standards, to inform employees of their protections and obligations and provide information on hazards in the workplace. Public employees must comply with all standards and regulations applicable to their own actions and conduct.

b. Inspections. A State Plan must provide for the inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1956.11(c)(2)(i)).

When no compliance action results from an inspection of a violation alleged by an employee complaint, the State must notify the complainant of its decision not to take compliance action by such means as written notification and opportunity for informal review (29 CFR 1956.11(c)(2)(iii)).

Title 26, Chapter 3, Sections 44 and 50 of the Maine Revised Statutes provides for inspections of covered workplaces, including inspections in response to employee complaints, by the Director of the Bureau of Labor Standards. If a determination is made that an employee complaint does not warrant an inspection, the complainant will be notified in writing of such determination. The complainant will be notified of the results of any inspection in writing and provided a copy of any citation that is issued. Employee complainants may request that their names not be revealed (Maine State Plan pp. 5–7).

c. Employee Notice and Participation in Inspection. In conducting inspections, the State Plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1956.11(c)(2)(iii)).

Title 26, Chapter 3, Section 44a of the Maine Revised Statutes provides the opportunity for employer and employee

representatives to accompany a Bureau of Labor Standards inspector for the purpose of aiding the inspection. Where there is no authorized employee representative, the inspectors are required to consult with a reasonable number of employees concerning matter of safety and health in the workplace (Maine State Plan p. 6).

In addition, the State Plan must provide that employees be informed of their protections and obligations under the OSH Act by such means as the posting of notices (29 CFR 1958.11(c)(2)(iv)); and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1956.11(c)(2)(vi)).

Through Title 26, Chapter 4, Sections 44 and 45 of the Maine Revised Statutes, the Plan provides for notification to employees of their protections and obligations under the Plan by such means as a state poster, required posting of notices of violation, etc. (Maine State Plan p.8).

Section 44 also authorizes the Director of Labor to issue rules requiring employers to maintain accurate records relating to occupational safety and health. Information on employee exposure to regulated agents, access to medical and exposure records, and provision and use of suitable protective equipment is provided through state standards which will be updated by November 2016 (Maine State Plan p. 3).

d. Nondiscrimination. A state is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the state's program, including provision for employer sanctions and employee confidentiality (29 CFR 1956.11(c)(2)(v)).

Title 26, Chapter 6, Section 570 of the Maine Revised Statutes outlines the provisions that an employer cannot discharge or in any manner discriminate against an employee filing a complaint, testifying, or otherwise acting to exercise rights granted by the Maine Revised Statutes.

The Plan provides that an employee who believes that he or she has been discharged or otherwise discriminated against in violation of this section may, within 30 days after the alleged violation occurs, file a complaint with the Director of the Bureau, alleging discrimination. If, upon investigation, the Director determines that the provisions of this chapter have been violated, the Director shall bring an action in Superior Court for all appropriate relief, including rehiring or reinstatement of the employee to his or her former position with back pay. Within 90 days of the receipt of a complaint filed under this section, the Director shall notify the complainant of his or her determination (Maine State Plan p. 7).

The state has provided assurances in its developmental schedule that by May 2016, it will adopt regulations equivalent to 29 CFR 1977, OSHA's whistleblower regulations, or provide a citation to currently existing equivalent regulations (Maine State Plan p. 13).

e. Restraint of Imminent Danger. A State Plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1956.11(c)(2)(vii)).

Title 26, Chapter 3, Section 49 of the Maine Revised Statutes provides that the Director may petition the Superior Court to restrain any conditions or practices in any workplace subject to Section 45 in which a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the danger could be eliminated through the enforcement process (Maine State Plan p. 6).

f. Right of Entry; Advance Notice. A state program is required to have the right of entry to inspect workplaces and compulsory process to enforce such right equivalent to the federal program (Section 18(c)(3) of the OSH Act and 29 CFR 1956.10(e)). Likewise, a state is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the federal program (29 CFR 1956.10(f)).

Title 26, Chapter 6, Section 566 of the Maine Revised Statutes authorizes the Director of the Bureau, or his or her representatives, to perform any necessary inspections or investigations. The Bureau designates the Division of Workplace Safety and Health to carry out these provisions. Title 26, Chapter 3, Section 44 provides that the Director of the Bureau has the right to inspect and investigate during regular working hours. The inspectors have the right of entry without delay and at reasonable times. If the public employer refuses entry or hinders the inspection process in any way, the inspector has the right to terminate the inspection and initiate the compulsory legal process and/or obtain a warrant for entry. The inspector has the right to interview all parties and review records as they relate directly to the inspection.

Title 26, Chapter 3, Section 46 of the Maine Revised Statutes prohibits advance notice of inspections. Advance notice of any inspection, without permission of the Director of the Bureau, is subject to a penalty of not less than $500 or more than $1,000 or imprisonment for not more than 6 months, or both (Maine State Plan p. 6),

g. Citations, Sanctions, and Abatement. A State Plan is expected to have authority and procedures for promptly notifying employers and employees of violations, including proposed abatement requirements, identified during inspection; for the proposal of effective first-instance sanctions against employers found in violation of standards; and for prompt employer notification of any such sanctions. In lieu of monetary penalties as a sanction, a complex of enforcement tools and rights, including administrative orders and employees' right to contest, may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment (29 CFR 1956.11(c)(2)(ix) and (x)).

Title 26, Chapter 3, Section 45 of the Maine Revised Statutes establishes the authority and general procedures for the Director of the Bureau to promptly notify public employers and employees of violations and abatement requirements, and to compel compliance. If a Bureau inspector believes that a violation of a safety and health standard exists, he or she will issue a written citation report with reasonable promptness. Section 45 provides that when an inspection of an establishment has been made, and the Director of the Bureau has issued a citation, the employer shall post such citation or a copy thereof at or near the location where the violation occurred. Each citation shall be in writing; describe with particularity the nature of the violation and include a reference to the provision of the statute, standard, rule, regulation, or order alleged to have been violated; and fix a reasonable time for the abatement of the violation (Maine State Plan p. 7).

Title 26, Chapter 3, Section 46 of the Maine Revised Statutes contains authority for a system of monetary penalties. Monetary penalties are issued for serious citations. The Director of the Bureau has discretionary authority for civil penalties of up to $1,000 per day the violation continues for repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to $1,000 per violation, and failure-to-correct violations may be assessed a penalty of up to $1,000 per day. In addition, criminal penalties can be issued to public employers who willfully violate any standard, rule or order. An alternative enforcement mechanism that includes administrative orders may be used in limited circumstances (Maine State Plan p. 8).

The state has given an assurance that it will revise its Field Operations Manual regarding inspections so that it, in conjunction with the provisions of the Maine Revised Statutes, is at least as effective as 29 CFR 1903 by January 2016 (Maine State Plan p. 13).

h. Contested Cases. A State Plan must have authority and procedures for employer contests of violations alleged by the state, penalties/sanctions, and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 2956.11(c)(2)(xi)).

Title 26, Chapter 6, Section 568 of the Maine Revised Statutes and Code of Maine Rules 12–179, Chapter 1 establish the authority and general procedures for employer contests of violations alleged by the state, penalties/sanctions and abatement requirements. State and local government employers or their representatives who receive a citation, a proposed assessment of penalty, or a notification of failure to correct a violation may within 15 working days from receipt of the notice request in writing a hearing before the Board of Occupational Safety and Health on the citation, notice of penalty or abatement period. Any public employee or representative thereof may within 15 working days of the issuance of a citation file a request in writing for a hearing before the Board on whether the period of time fixed in the citation for abatement is unreasonable. Informal reviews can be held at the division management level prior to a formal contest (Maine State Plan p. 8).

The Director of the Bureau will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested. All interested parties are allowed to participate in the hearing and introduce evidence. The Board shall affirm, modify, or vacate the citation or proposed penalty or direct other appropriate relief. Any party adversely affected by a final order or determination by the Board has the right to appeal and obtain judicial review by the Superior Court (Maine State Plan p. 8).

Enforcement Conclusion. Accordingly, OSHA finds that the enforcement provisions of the Maine State Plan as described above meet or will meet the statutory and regulatory requirements for initial State Plan approval.

(6) Staffing and Resources

Section 18(c)(4) of the OSH Act requires State Plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1956.10(g), one factor which OSHA must consider in reviewing a plan for initial approval is whether the state has or will have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the Plan.

The Maine State Plan provides assurances of a fully trained, adequate staff, including two safety officers and one health officer for enforcement inspections, and three safety consultants and one health consultant to provide consultation, training and education services in the public sector. The Plan provides assurances that within six months of plan approval the state will have a fully trained, adequate, and separate staff of compliance officers for enforcement inspections, and consultants to perform consultation services in the public sector. The compliance staffing requirements (or benchmarks) for State Plans covering both the private and public sectors are established based on the ''fully effective'' test established in *AFL–CIO* v. *Marshall,* 570 F.2d 1030 (D.C. Cir. 1978). This staffing test, and the complicated formula used to derive benchmarks for complete private/public sector Plans, are not intended, nor are they appropriate, for application to the staffing needs of State and Local Government Only Plans. However, the state has given satisfactory assurance in its Plan that it will meet the requirements of 29 CFR 1956.10 for an adequately trained and qualified staff sufficient for the enforcement of standards (Maine State Plan pp.11–12).

Section 18(c)(5) of the OSH Act requires that the State Plan devote adequate funds for the administration and enforcement of its standards (29 CFR 1956.10(h)). Maine has funded its state government safety and health program since 1972 solely utilizing state funds. The State Plan will be funded at $800,000 ($400,000 federal 50% share and $400,000 state matching share) during federal Fiscal Year 2015.

Accordingly, OSHA finds that the Maine State Plan has provided for sufficient, qualified personnel and adequate funding for the various activities to be carried out under the Plan.

(7) Records and Reports

State Plans must assure that employers in the state submit reports to the Assistant Secretary in the same manner as if the Plan were not in effect (Section 18(c)(7) of the OSH Act). Under a State and Local Government Only State Plan, public employers must maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private sector employers under the OSH Act and 29 CFR 1956.10(i). The Plan must also provide assurances that the designated agency will make such reports to the Assistant Secretary in such form and containing such information as he or she may from time to time require (Section 18(c)(8) of the OSH Act and 29 CFR 1956.10(j)).

Maine has provided assurances in its State Plan that all jurisdictions covered by the State Plan will maintain valid records and make timely reports on occupational injuries and illnesses, as required for private sector employers under the OSH Act (Maine State Plan pp. 9–11). The records of occupational injuries and illnesses must be completed and maintained in accordance with the applicable provisions in Code of Maine Rules 12–179, Chapter 6 and Title 26, Chapter 3, Section 44 of the Maine Revised Statutes. Title 26, Chapter 1, Section 2 of the Maine Revised Statutes provides the reporting requirements. The state will provide a comparison of Code of Maine Rules 12–179, Chapter 6 to the recordkeeping regulations contained in 29 CFR 1904 by October 2015, and will amend Title 26, Chapter 1, Section 2 of the Maine Revised Statutes in 2015, to ensure equivalency with 29 CFR 1904 in accord with its developmental schedule (Maine State Plan p. 13).

Maine has also provided assurances in its State Plan that it will continue to participate in the Bureau of Labor Statistics's Annual Survey of Injuries and Illnesses in the state to provide detailed injury, illness, and fatality rates for the public sector. Maine will also provide reports to OSHA in the desired form and will join the OSHA Information System within 90 days of plan approval, including the implementation of all hardware, software, and adaptations as necessary (Maine State Plan p. 11).

OSHA finds that the Maine State Plan has met the requirements of Section 18(c)(7) and (8) of the OSH Act on the employer and state reports to the Assistant Secretary.

(8) Voluntary Compliance Program

A State Plan must undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1956.11(c)(2)(xii)).

The Maine State Plan provides that the Bureau will continue to provide and conduct educational programs for public employees specifically designed to meet the regulatory requirements and needs of the public employer. The Plan also provides that consultations, including site visits, compliance assistance and training classes, are individualized for each work site and tailored to the public employer's concerns. In addition, public agencies are encouraged to develop and maintain their own safety and health programs as an adjunct to but not a substitute for the Bureau enforcement program (Maine State Plan p. 9).

The Bureau currently has a public sector on-site consultation program. Maine will provide an outline of procedures for this program to ensure equivalency with the regulations regarding consultation in 29 CFR 1908, or a timeline for their development by November 2016 (Maine State Plan p. 13).

OSHA finds that the Maine State Plan provides for the establishment and administration of an effective voluntary compliance program.

E. Decision

OSHA, after carefully reviewing the Maine State Plan for the development and enforcement of state standards applicable to state and local government employers and the record developed during the above described proceedings, has determined that the requirements and criteria for initial approval of a developmental State Plan have been met. The Plan is hereby approved as a developmental State Plan for State and Local Government Only under Section 18 of the OSH Act.

In light of the pending reorganization of the State Plan regulations through the streamlining of 29 CFR part 1952 and 29 CFR part 1956, OSHA is deferring any change to those regulatory provisions relating to the Maine State Plan until the streamlining changes take effect. The change to the regulatory text will be accomplished through a separate **Federal Register** Notice.

The initial approval of a State Plan for State and Local Government Only in Maine is not a significant regulatory action as defined in Executive Order 12866.

F. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the initial approval of the Maine State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the Plan will have no effect on private sector employment, but is limited to the state and its political subdivisions. Moreover, Title 26, Labor and Industry, of the Maine Revised Statutes was enacted in 1971. This legislation established the Board, whose purpose is to formulate rules that shall, at a minimum, conform with federal standards of occupational safety and health, so the state program could eventually be approved as a State and Local Government Only State Plan. Since 1971 the Maine program for public employers has been in operation under the Maine Department of Labor with state funding and all state and local government employers in the state have been subject to its terms. Compliance with state OSHA standards is required by state law; federal approval of a State Plan imposes regulatory requirements only on the agency responsible for administering the State Plan. Accordingly, no new obligations would be placed on public sector employers as a result of federal approval of the Plan.

G. Federalism

Executive Order 13132, ''Federalism,'' emphasizes consultation between federal agencies and the states and establishes specific review procedures the federal government must follow as it carries out policies that affect state or local governments. OSHA has consulted extensively with Maine throughout the development, submission and consideration of its proposed State Plan. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to initial approval decisions under the OSH Act, which have no effect outside the particular state receiving the approval, OSHA has reviewed today's Maine initial approval decision, and believes it is consistent with the principles and criteria set forth in the Executive Order.

H. Effective Date

OSHA's decision granting initial federal approval to the Maine State and Local Government Only State Plan is effective August 5, 2015. Although the state has had a program in effect for many years, modification of the program will be required over the next three years by today's decision. Federal 50% matching funds have been explicitly provided in OSHA's FY 2015 final appropriation. Notice of proposed initial approval of the Plan was published in the **Federal Register** with request for comment. No comments were received, and OSHA believes that no party is adversely affected by initial approval of the Plan. OSHA therefore finds, pursuant to Section 553(d) of the Administrative Procedures Act, that good cause exists for making federal approval of the Maine State and Local Government Only State Plan effective upon publication in today's **Federal Register**.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR parts 1902 and 1956.

Signed in Washington, DC, on July 28, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–18942 Filed 8–4–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0343]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Little River to Savannah River

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard is issuing a temporary deviation from the operating schedule that governs the Lady's Island Bridge, across the Beaufort River, Mile 536.0 at Beaufort, SC. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed to reduce vehicular traffic concerns in surrounding communities. This deviation will allow Lady's Island Bridge to close for extended hours during peak morning and afternoon commute hours. The bridge owner, South Carolina Department of Transportation, requested this action to assist in reducing traffic caused by bridge openings.

DATES: This deviation is effective from 8 a.m. on August 5, 2015 until 6 p.m. on November 3, 2015.

Comments and related material must be received by the Coast Guard on or

before September 4, 2015. Requests for public meetings must be received by the Coast Guard on or before September 4, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0343 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Rod Elkins at telephone 305–415–6989, email *Rodney.j.elkins@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2015–0343), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, type the docket number [USCG–2015–0343] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0343) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

As of now, we do not plan to hold a public meeting. You may submit a request for one using one of the three methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

B. Basis and Purpose

The Ladys Island in Beaufort, South Carolina has a vertical clearance of 30 feet at mean high water in the closed position. The normal operating schedule is published in 33 CFR 117.911(f). As currently implemented, the draw shall operate as follows:

(1) On Monday through Friday, except Federal holidays:

(i) From 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., the draw need not open; and,

(ii) Between 9 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

(2) At all other times the draw shall open on signal.

This schedule has been in effect since Dec. 16, 1985.

For the following reasons the Coast Guard is testing a new schedule for the Lady's Island Bridge:

The City of Beaufort, South Carolina and South Carolina Department of Transportation have requested that the U.S. Coast Guard change the regulation of this bridge as it has negatively impacted the City of Beaufort and surrounding communities. According to both the City of Beaufort and the South Carolina Department of Transportation, vehicle traffic in downtown Beaufort has increased substantially over the last few years and city officials are anticipating additional growth in this area which will produce additional vehicle traffic. As the Lady's Island Bridge is located just west of the city, each time it opens vehicle traffic is at a standstill and at times takes longer than a ½ hour to clear; thereby, making some vehicles wait for two bridge openings. This temporary deviation is intended to test a new bridge operation schedule to reduce traffic caused by bridge openings. The bridge owner, South Carolina Department of Transportation, has reviewed the City of Beaufort's request to change the operating schedule and has asked the Coast Guard to pursue recommended changes. In the event the test proves successful, the Coast Guard will issue a further rule making this change permanent.

This deviation will allow the Lady's Island Bridge in Beaufort, South Carolina to remain closed to navigation from 6:30 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. Between 9 a.m. and 3 p.m. the bridge will open on the top of the hour. At all other times the bridge will open on demand.

Any vessel that can safely transit under the Lady's Island Bridge while closed may continue to navigate under the bridge during this deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular

operating schedule immediately at the end of this temporary deviation's effective period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 24, 2015.

Barry Dragon,

Bridge Administrator, U.S. Coast Guard, Seventh Coast Guard District.

[FR Doc. 2015–19112 Filed 8–4–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0910; FRL–9931–80–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Infrastructure Requirements for the 2008 Ozone and 2010 Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP) pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure implementation, maintenance, and enforcement of the NAAQS. These elements are referred to as infrastructure requirements. PADEP made submittals addressing the infrastructure requirements for the 2008 ozone NAAQS and the 2010 sulfur dioxide (SO_2) primary NAAQS.

DATES: This final rule is effective on September 4, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0910. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P. O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On March 27, 2008 (73 FR 16436), EPA promulgated a revised ozone NAAQS based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. On June 22, 2010 (75 FR 35520), EPA promulgated a 1-hour primary SO_2 NAAQS at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.

On July 15, 2014, the Commonwealth of Pennsylvania, through the PADEP, submitted SIP revisions that address the infrastructure elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2008 ozone NAAQS and the 2010 SO_2 NAAQS. On February 6, 2015 (80 FR 6672), EPA published a notice of proposed rulemaking (NPR) for Pennsylvania proposing approval of portions of both SIP revisions as well as portions of SIP submittals for other NAAQS.[1] In the NPR, EPA proposed approval of Pennsylvania's submissions addressing the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Pennsylvania's July 15, 2014 infrastructure SIP submittals for the 2008 ozone NAAQS and the 2010 SO_2 NAAQS did not contain any provisions addressing section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) and will be addressed in a separate process. In addition, Pennsylvania's July 15, 2014 infrastructure SIP submittals for the 2008 ozone NAAQS and the 2010 SO_2 NAAQS did not contain any provisions addressing CAA section 110(a)(2)(D)(i)(I), and therefore EPA's February 6, 2015 NPR did not propose any action on the SIP submittals for section 110(a)(2)(D)(i)(I) for either SIP submittal. Thus, this rulemaking action likewise does not include action on CAA section 110(a)(2)(D)(i)(I) for either the 2008 ozone NAAQS or the 2010 SO_2 NAAQS because PADEP's July 15, 2014 infrastructure SIP submittals did not include provisions for this element. Finally, at this time, EPA is not taking action on section 110(a)(2)(D)(i)(II) (which addresses visibility protection) for the 2008 ozone or 2010 SO_2 NAAQS as explained in the NPR. Although Pennsylvania's July 15, 2014 infrastructure SIP submittals for the 2008 ozone NAAQS and the 2010 SO_2 NAAQS referred to Pennsylvania's regional haze SIP to address section 110(a)(2)(D)(i)(II) for visibility protection, EPA intends to take later, separate action on Pennsylvania's SIP submittals for these elements as explained in the NPR and the Technical Support Document (TSD) which accompanied the NPR.

The rationale supporting EPA's proposed rulemaking action approving portions of the July 15, 2014 infrastructure SIP submittals for the 2008 ozone and 2010 SO_2 NAAQS, including the scope of infrastructure SIPs in general, is explained in the NPR and the TSD accompanying the NPR and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–

[1] On July 15, 2014, PADEP also submitted SIP revisions addressing the infrastructure requirements for the 2010 nitrogen dioxide (NO_2) NAAQS and the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. In the February 6, 2015 NPR, EPA also proposed approval of portions of these infrastructure SIPs. Because EPA did not receive adverse comments applicable to Pennsylvania's infrastructure SIPs for the 2010 NO_2 NAAQS or the 2012 $PM_{2.5}$ NAAQS or applicable to EPA's proposed approval of those specific SIPs, EPA took final action to approve portions of the infrastructure SIPs for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS on May 8, 2015. 80 FR 26461. Thus, this final action only addresses the July 15, 2014 infrastructure SIPs PADEP submitted addressing the 2008 ozone NAAQS and the 2010 SO_2 NAAQS.

2014–0910.[2] EPA received public comments on the NPR. Summaries of the comments as well as EPA's responses are in section II of this rulemaking notice. EPA's responses provide further explanation and rationale where appropriate to support the final action approving portions of the July 15, 2014 infrastructure SIPs.

II. Public Comments and EPA's Responses

EPA received substantive comments from two commenters, the State of New Jersey Department of Environmental Protection (NJDEP) and the Sierra Club, on the February 6, 2015 proposed rulemaking action on Pennsylvania's 2008 ozone and 2010 SO_2 infrastructure SIP revisions. The Sierra Club's comments on the NPR include general comments on infrastructure SIP requirements for emission limitations and specific comments on emission limitations to address the 2010 SO_2 NAAQS and the 2008 ozone NAAQS. A full set of all comments is provided in the docket for today's final rulemaking action.

A. NJDEP

Comment: NJDEP asserts that Pennsylvania's infrastructure SIP is deficient because it does not include any information relating to Pennsylvania's ''good neighbor'' obligation to address CAA section 110(a)(2)(D).[3] NJDEP asserts the ability of downwind states including New Jersey to attain the 2008 ozone NAAQS is substantially impacted by interstate transport of pollution from Pennsylvania. NJDEP asserts recent EPA modeling for the 2008 ozone NAAQS demonstrates Pennsylvania significantly contributes to ozone nonattainment areas in New Jersey and other states. New Jersey further asserts that EPA must ''make a finding that Pennsylvania has failed to submit a SIP that complies with Section 110(a)(2)(D) of the Clean Air Act'' because Pennsylvania did not make a submission to address 110(a)(2)(D).

Response: In this rulemaking EPA is not taking any final action with respect to the provisions in section 110(a)(2)(D)(i)(I)—the portion of the good neighbor provision which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. In its July 15, 2014 infrastructure SIP revisions for several NAAQS, the Commonwealth of Pennsylvania did not include any provisions in its SIP revision submittals to address the requirements of section 110(a)(2)(D)(i)(I). In the NPR, EPA did not propose to take any action with respect to Pennsylvania's obligations pursuant to section 110(a)(2)(D)(i)(I) for the July 15, 2014 infrastructure SIP submittals and is not, in this rulemaking action, taking any final action on the 110(a)(2)(D)(i)(I) obligations.

Because Pennsylvania did not make a submission in its July 15, 2014 SIP submittals to address the requirements of section 110(a)(2)(D)(i)(I), EPA is not required to have proposed or to take final SIP approval or disapproval action on this element under section 110(k) of the CAA. In this case, there has been no substantive submission for EPA to evaluate under section 110(k). EPA interprets its authority under section 110(k)(3) of the CAA as affording EPA the discretion to approve, or conditionally approve, individual elements of Pennsylvania's infrastructure SIP submissions, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA. EPA views discrete infrastructure SIP requirements in section 110(a)(2), such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission.

EPA acknowledges NJDEP's concern for the interstate transport of air pollutants and agrees in general that sections 110(a)(1) and (a)(2) of the CAA require states to submit, within three years of promulgation of a new or revised NAAQS, a plan which addresses cross-state air pollution under section 110(a)(2)(D)(i)(I). However, in this rulemaking, EPA is only approving portions of Pennsylvania's infrastructure SIP submissions for the 2008 ozone and 2010 SO_2 NAAQS which did not include provisions for 110(a)(2)(D)(i)(I) for interstate transport. Findings of failure to submit a SIP submission for a NAAQS addressing a specific element, such as CAA section 110(a)(2)(D)(i)(I), would need to occur in separate rulemakings. As that issue was not addressed in the February 6, 2015 NPR and is therefore not pertinent to this rulemaking, EPA provides no further response. Pennsylvania's obligations regarding interstate transport of ozone pollution for the 2008 ozone NAAQS will be addressed in another rulemaking.

B. Sierra Club General Comments on Emission Limitations

1. The Plain Language of the CAA

Comment 1: Sierra Club (hereafter referred to as Commenter) contends that the plain language of section 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations such as 40 CFR 51.112(a), and EPA interpretations in rulemakings require the inclusion of enforceable emission limits in an infrastructure SIP to aid in attaining and maintaining the NAAQS and contends an infrastructure SIP must be disapproved where emission limits are inadequate to prevent exceedances of the NAAQS. The Commenter states EPA may not approve an infrastructure SIP that fails to ensure attainment and maintenance of the NAAQS.

The Commenter states that the main objective of the infrastructure SIP process ''is to ensure that all areas of the country meet the NAAQS'' and states that nonattainment areas are addressed through ''nonattainment SIPs.'' The Commenter asserts the NAAQS ''are the foundation upon which air emission standards for the entire country are set'' including specific emission limitations for most large stationary sources, such as coal-fired power plants. The Commenter discusses the CAA's framework whereby states have primary responsibility to assure air quality within the state pursuant to CAA section 107(a) which the states carry out through SIPs such as infrastructure SIPs required by section 110(a)(2). The Commenter also states that on its face the CAA requires infrastructure SIPs ''to be adequate to prevent exceedances of the NAAQS.'' In support, the Commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA which the Commenter claims includes attainment and maintenance of the NAAQS. The Commenter notes the CAA definition of emission limit and reads these CAA provisions together to require ''enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 1: EPA disagrees that section 110 is clear ''on its face'' and must be interpreted in the manner

[2] EPA's final rulemaking action on Pennsylvania's infrastructure SIP revisions for the 2010 NO_2 NAAQS and the 2012 $PM_{2.5}$ NAAQS can also be found in this docket with Docket ID Number EPA–R03–OAR–2014–0910.

[3] EPA believes NJDEP refers specifically to CAA section 110(a)(2)(D)(i)(I) which addresses interstate transport of pollution and not to section 110(a)(2)(D)(i)(II) which addresses visibility protection and prevention of significant deterioration.

suggested by the Commenter. As we have previously explained in response to the Commenter's similar comments on EPA's action approving other states' infrastructure SIPs, section 110 is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure.[4]

EPA interprets infrastructure SIPs as more general planning SIPs, consistent with the CAA as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with a new NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].''

In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of a state were violating the NAAQS (*i.e.,* were nonattainment) or were meeting the NAAQS (*i.e.,* were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 of the CAA did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. More detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

Thus, EPA believes that section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of that structure and the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for ''implementation, maintenance and enforcement'' to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. EPA has interpreted the requirement for emission limitations in section 110 to mean that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2008 ozone and 2010 SO_2 NAAQS, ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' Infrastructure SIP Guidance at p. 2.[5]

The Commenter makes general allegations that Pennsylvania does not have sufficient protective measures to prevent ozone violations/exceedances and SO_2 NAAQS exceedances. EPA addressed the adequacy of Pennsylvania's infrastructure SIP for 110(a)(2)(A) purposes to meet applicable requirements of the CAA in the TSD accompanying the February 6, 2015 NPR and explained why the SIP includes enforceable emission limitations and other control measures necessary for maintenance of the 2008 ozone and 2010 SO_2 NAAQS throughout the Commonwealth.[6]

2. The Legislative History of the CAA

Comment 2: The Commenter cites two excerpts from the legislative history of the 1970 CAA claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of the state. The Commenter also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 2: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. *See also* 79 FR at 17046 (responding to comments on Virginia's ozone infrastructure SIP). In any event, the two excerpts of legislative history the Commenter cites merely provide that states should include enforceable emission limits in their SIPs, and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP. As provided in

[4] *See* 80 FR 11557 (March 4, 2015) (approval of Virginia SO_2 infrastructure SIP); 79 FR 62022 (October 16, 2014) (approval of West Virginia SO_2 infrastructure SIP); 79 FR 19001 (April 7, 2014) (approval of West Virginia ozone infrastructure SIP); and 79 FR 17043 (March 27, 2014) (approval of Virginia ozone infrastructure SIP).

[5] Thus, EPA disagrees with the Commenter's general assertion that the main objective of infrastructure SIPs is to ensure all areas of the country meet the NAAQS, as we believe the infrastructure SIP process is the opportunity to review the structural requirements of a state's air program. While the NAAQS can be a foundation upon which emission limitations are set, as explained in responses to subsequent comments, these emission limitations are generally set in the attainment planning process envisioned by part D of title I of the CAA, including, but not limited to, CAA sections 172, 181–182, and 191–192.

[6] The TSD for this action is available on line at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2014–0910.

response to another comment in this rulemaking, the TSD for the proposed rule explains why the Pennsylvania SIP includes enforceable emissions limitations for ozone precursors and for SO_2 for the relevant areas.

3. Case Law

Comment 3: The Commenter also discusses several cases applying the CAA which the Commenter claims support its contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent exceedances of the NAAQS. The Commenter first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which, if enforced, should result in ambient air which meet the national standards.'' The Commenter also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS, and to *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The Commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The Commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''); *Conn. Fund for Env't, Inc.* v. *EPA,* 696 F.2d 169, 172 (D.C. Cir. 1982) (CAA requires SIPs to contain ''measures necessary to ensure attainment and maintenance of NAAQS''). Finally, the Commenter cites *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 3: None of the cases the Commenter cites support its contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* none of the cases the Commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, the courts reference section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background sections of decisions in the context of a challenge to an EPA action on revisions to a SIP that was required and approved or disapproved as meeting other provisions of the CAA or in the context of an enforcement action.

In *Train,* 421 U.S. 60, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits providing such are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation,'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the Commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The Commenter does not raise any concerns about whether the measures relied on by the Commonwealth in the infrastructure SIPs are ''emissions limitations'' and the decision in this case has no bearing here.[7] In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the Court was not reviewing an infrastructure SIP, but rather EPA's disapproval of a SIP and promulgation of a federal implementation plan (FIP) after a long history of the state failing to submit an adequate SIP in response to EPA's finding under section 110(k)(5) that the previously approved SIP was substantially inadequate to attain or maintain the NAAQS. The Court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations, but this language was not part of the Court's holding in the case, which focused instead on whether EPA's finding of SIP inadequacy, disapproval of the state's required responsive attainment demonstration under section 110(k)(5), and adoption of a remedial FIP under section 110(c) were lawful. The Commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the Court

[7] While the Commenter does contend that the Commonwealth shouldn't be allowed to rely on emission reductions that were developed for the prior standards (which we address herein), it does not claim that any of the measures are not ''emissions limitations'' within the definition of the CAA.

made no mention of the changed language. Furthermore, the Commenter also quotes the Court's statement that ''SIPs must include certain measures Congress specified,'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the other cases the Commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

EPA does not believe any of these court decisions addressed required measures for infrastructure SIPs and believes nothing in the opinions addressed whether infrastructure SIPs need to contain measures to ensure attainment and maintenance of the NAAQS.

4. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 4: The Commenter cites to 40 CFR 51.112(a), providing that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The Commenter asserts that this regulation requires infrastructure SIPs to include emissions limits necessary to ensure attainment and maintenance of the NAAQS. The Commenter states that the provisions of 40 CFR 51.112 are not limited to nonattainment SIPs and instead applies to infrastructure SIPs which are required to attain and maintain the NAAQS in areas not designated nonattainment. The Commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act . . .'' 51 FR 40656, 40656 (November 7, 1986). The Commenter asserts 40 CFR 51.112(a) identifies the plans to which it applies as those that implement the NAAQS.

Response 4: The Commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to ensure attainment and maintenance of the NAAQS is not supported. As an initial matter, EPA notes this regulatory provision was initially promulgated and later restructured and consolidated prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as sections 175A, 181–182, and 191–192. The Commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. 51 FR 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''Part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_x and PM (portion)''), 51.14 (''Control strategy: CO, HC, O_x and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). *Id.* at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

5. EPA Interpretations in Other Rulemakings

Comment 5: The Commenter also references a prior EPA rulemaking action where EPA disapproved a SIP and claims that action shows EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject the SIP. The Commenter points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing control strategy plans addressing the SO_2 NAAQS. The Commenter claims EPA cited section 110(a)(2)(A) for disapproving a revision to the state plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and claims EPA cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. The Commenter claims the revisions to Missouri's control strategy SIP for SO_2 were rejected by EPA because the revised control strategy limits were also in Missouri's infrastructure SIP and thus the weakened limits would have impacted the infrastructure SIP's ability to aid in attaining and maintaining the NAAQS.

Response 5: EPA does not agree that the prior Missouri rulemaking action referenced by the Commenter establishes how EPA reviews infrastructure SIPs. It is clear from the final Missouri rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. Nothing in that action addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS.

C. Sierra Club Comments on Pennsylvania SIP SO_2 Emission Limits

The Commenter contends that the Pennsylvania 2008 ozone and 2010 SO_2 infrastructure SIP revisions did not revise the existing ozone precursor emission limits and SO_2 emission limits in response to the 2008 ozone and 2010 SO_2 NAAQS and fail to comport with assorted CAA requirements for SIPs to establish enforceable emission limits that are adequate to prohibit NAAQS exceedances in areas not designated nonattainment. EPA will address SO_2 comments and ozone comments respectively.

Comment 6: Citing section 110(a)(2)(A) of the CAA, the Commenter contends that EPA may not approve Pennsylvania's proposed 2010 SO_2 infrastructure SIP because it does not include enforceable 1-hour SO_2 emission limits for sources currently

allowed to cause ''NAAQS exceedances.'' The Commenter asserts the proposed infrastructure SIP fails to include enforceable 1-hour SO_2 emissions limits or other required measures to ensure attainment and maintenance of the SO_2 NAAQS in areas not designated nonattainment as the Commenter claims is required by section 110(a)(2)(A). The Commenter asserts an infrastructure SIP must ensure, through state-wide regulations or source specific requirements, proper mass limitations and emissions rates with short term averaging on specific large sources of pollutants such as power plants. The Commenter asserts that emission limits are especially important for meeting the 1-hour SO_2 NAAQS because SO_2 impacts are strongly source-oriented. The Commenter states coal-fired electric generating units (EGUs) are large contributors to SO_2 emissions but contends Pennsylvania did not demonstrate that emissions allowed by the proposed infrastructure SIP from such large sources of SO_2 will ensure compliance with the 2010 1-hour SO_2 NAAQS. The Commenter claims the proposed infrastructure SIP would allow major sources to continue operating with present emission limits.[8] The Commenter then refers to air dispersion modeling it conducted for five coal-fired EGUs in Pennsylvania, including Brunner Island Steam Electric Station, Montour Steam Electric Station, Cheswick Power Station, New Castle Power Plant, and Shawville Coal Plant. The Commenter asserts the results of the air dispersion modeling it conducted employing EPA's AERMOD program for modeling used the plants' allowable emissions and showed the plants could cause exceedances of the 2010 SO_2 NAAQS with allowable emissions.[9] Based on the modeling, the Commenter asserts the Pennsylvania SO_2 infrastructure SIP submittal authorizes the EGUs to cause exceedances of the NAAQS with allowable emission rates and therefore the infrastructure SIP fails to include adequate enforceable emission limitations or other required measures for sources of SO_2 sufficient to ensure attainment and maintenance of the 2010 SO_2 NAAQS.[10] The Commenter therefore asserts EPA must disapprove Pennsylvania's proposed 2010 SO_2 infrastructure SIP revision. In addition, the Commenter asserts ''EPA may only approve an I–SIP that incorporates enforceable emission limitations on major sources of SO_2 pollution in the state, including coal-fired power plants, with one-hour averaging times that are no less stringent than the modeling based limits . . . necessary to protect the one-hour SO_2 NAAQS and attain and maintain the standard in Pennsylvania. These emission limits must apply at all times . . . to ensure that Pennsylvania is able to attain and maintain the 2010 SO_2 NAAQS.'' The Commenter claimed additional modeling for two EGUs, Brunner Island and Montour, done with actual historical hourly SO_2 emissions show these facilities have actually been causing ''exceedances of the NAAQS'' while operating pursuant to existing emission limits which the Commenter claims Pennsylvania included as part of the SO_2 infrastructure SIP submission. The Commenter also asserts that any coal-fired units slated for retirement should be incorporated into the infrastructure SIP with an enforceable emission limit or control measure.

Response 6: EPA disagrees with the Commenter that EPA must disapprove Pennsylvania's SO_2 infrastructure SIP for the reasons provided by the Commenter including the Commenter's modeling results and insufficient SO_2 emission limits. EPA is not in this action making a determination regarding the Commonwealth's current air quality status or regarding whether its control strategy is sufficient to attain and maintain the NAAQS. Therefore, EPA is not making any judgment on whether the Commenter's submitted modeling demonstrates the NAAQS exceedances that the Commenter claims. EPA believes that section 110(a)(2)(A) of the CAA is reasonably interpreted to require states to submit infrastructure SIPs that reflect the first step in their planning for attainment and maintenance of a new or revised NAAQS. These SIP revisions should contain a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS and show that the SIP has enforceable control measures. In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state. As mentioned above, EPA has interpreted this to mean, with regard to the requirement for emission limitations that states may rely on measures already in place to address the pollutant at issue or any new control measures that *the state* may choose to submit.

As stated in response to a previous more general comment, section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for ''implementation, maintenance and enforcement'' to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the Commonwealth demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. As discussed above, EPA has interpreted the requirement for emission limitations in section 110 to mean that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2010 SO_2 NAAQS and the 2008 Ozone NAAQS, ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' Infrastructure SIP Guidance at p. 2.

On April 12, 2012, EPA explained its expectations regarding implementation of the 2010 SO_2 NAAQS via letters to each of the states. EPA communicated in the April 2012 letters that all states were expected to submit SIPs meeting the ''infrastructure'' SIP requirements under section 110(a)(2) of the CAA by June 2013. At the time, EPA was undertaking a stakeholder outreach process to continue to develop possible approaches for determining attainment status under the SO_2 NAAQS and

[8] The Commenter provides a chart in its comments claiming 80 percent of SO_2 emissions in Pennsylvania are from coal-electric generating units based on 2011 data.

[9] The Commenter asserts its modeling followed protocols pursuant to 40 CFR part 51, Appendix W and EPA's modeling guidance issued March 2011 and December 2013.

[10] The Commenter again references 40 CFR 51.112 in support of its position that the infrastructure SIP must include emission limits for attainment and maintenance of the 2010 SO_2 NAAQS.

implementing this NAAQS. EPA was abundantly clear in the April 2012 letters that EPA did not expect states to submit substantive attainment demonstrations or modeling demonstrations showing attainment for areas not designated nonattainment in infrastructure SIPs due in June 2013. Although EPA had previously suggested in its 2010 SO_2 NAAQS preamble and in prior draft implementation guidance in 2011 that states should, in the unique SO_2 context, use the section 110(a) SIP process as the vehicle for demonstrating attainment of the NAAQS, this approach was never adopted as a binding requirement and was subsequently discarded in the April 2012 letters to states. The April 2012 letters recommended states focus infrastructure SIPs due in June 2013, such as Pennsylvania's SO_2 infrastructure SIP, on traditional ''infrastructure elements'' in section 110(a)(1) and (2) rather than on modeling demonstrations for future attainment for areas not designated as nonattainment.[11]

Therefore, EPA asserts that evaluations of modeling demonstrations such as those submitted by the Commenter are more appropriately to be considered in actions that make determinations regarding states' current air quality status or regarding future air quality status. EPA also asserts that SIP revisions for SO_2 nonattainment areas including measures and modeling demonstrating attainment are due by the dates statutorily prescribed under subpart 5 under part D. Those submissions are due no later than 18 months after an area is designed nonattainment for SO_2, under CAA section 191(a). Thus, the CAA directs states to submit these SIP requirements that are specific for nonattainment areas on a separate schedule from the ''structural requirements'' of 110(a)(2) which are due within three years of adoption or revision of a NAAQS and which apply statewide. The infrastructure SIP submission requirement does not move up the date for any required submission of a part D plan for areas designated nonattainment for the new NAAQS. Thus, elements relating to demonstrating attainment for areas not attaining the NAAQS are not necessary for infrastructure SIP submissions, and the CAA does not provide explicit requirements for demonstrating attainment for areas that have not yet been designated regarding attainment with a particular NAAQS.

As stated previously, EPA believes that the proper inquiry at this juncture is whether Pennsylvania has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the infrastructure submittal. Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure elements. A state, like Pennsylvania, may reference pre-existing SIP emission limits or other rules contained in part D plans for previous NAAQS in an infrastructure SIP submission. Pennsylvania's existing rules and emission reduction measures in the SIP that control emissions of SO_2 were discussed in the TSD. These provisions have the ability to reduce SO_2 overall. Although the Pennsylvania SIP relies on measures and programs used to implement previous SO_2 NAAQS, these provisions are not limited to reducing SO_2 levels to meet one specific NAAQS and will continue to provide benefits for the 2010 SO_2 NAAQS.

Additionally, as discussed in EPA's TSD supporting the NPR, Pennsylvania has the ability to revise its SIP when necessary (*e.g.* in the event the Administrator finds the plan to be substantially inadequate to attain the NAAQS or otherwise meet all applicable CAA requirements) as required under element H of section 110(a)(2). *See* Section 4(1) of the APCA, 35 P.S. § 4004(1), which empowers PADEP to implement the provisions of the CAA. Section 5 of the APCA, 35 P.S. § 4005, authorizes the Environmental Quality Board (EQB) to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution throughout the Commonwealth.

EPA believes the requirements for emission reduction measures for an area designated nonattainment for the 2010 primary SO_2 NAAQS are in sections 172 and 191–192 of the CAA, and therefore, the appropriate avenue for implementing requirements for necessary emission limitations for demonstrating attainment with the 2010 SO_2 NAAQS is through the attainment planning process contemplated by those sections of the CAA. On August 5, 2013, EPA designated as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicated violations of the 1-hour SO_2 standard. 78 FR 47191. At that time, four areas in Pennsylvania had monitoring data from 2009–2011 indicating violations of the 1-hour SO_2 standard, and these areas were designated nonattainment in Pennsylvania. *See* 40 CFR 81.339. Also on March 2, 2015 the United States District Court for the Northern District of California entered a Consent Decree among the EPA, Sierra Club and Natural Resources Defense Council to resolve litigation concerning the deadline for completing designations for the 2010 SO_2 NAAQS. Pursuant to the terms of the Consent Decree, EPA will complete additional designations for all remaining areas of the country including remaining areas in Pennsylvania.[12]

For the four areas designated nonattainment in Pennsylvania in August 2013, attainment SIPs were due by April 4, 2015 and must contain demonstrations that the areas will attain the 2010 SO_2 NAAQS as expeditiously as practicable, but no later than October 4, 2018 pursuant to sections 172, 191 and 192, including a plan for enforceable measures to reach attainment of the NAAQS. Similar attainment planning SIPs for any additional areas which EPA subsequently designates nonattainment with the 2010 SO_2 NAAQS will be due for such areas within the timeframes specified in CAA section 191. EPA

[11] In EPA's final SO_2 NAAQS preamble (75 FR 35520 (June 22, 2010)) and subsequent draft guidance in March and September 2011, EPA had expressed its expectation that many areas would be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support their designations recommendations due in June 2011. In order to address concerns about potential violations in these unclassifiable areas, EPA initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling by June 2013 (under section 110(a)) that show how their unclassifiable areas would attain and maintain the NAAQS in the future. *Implementation of the 2010 Primary 1-Hour SO_2 NAAQS, Draft White Paper for Discussion,* May 2012 (2012 Draft White Paper) (for discussion purposes with Stakeholders at meetings in May and June 2012), available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.* However, EPA clearly stated in this 2012 Draft White Paper its clarified implementation position that it was no longer recommending such attainment demonstrations for unclassifiable areas for June 2013 infrastructure SIPs. *Id.* EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110 and 191 of the CAA. Section 191 of the CAA requires states to submit SIPs in accordance with section 172 for areas designated nonattainment with the SO_2 NAAQS. After seeking such comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 191 and 172. *See Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,* Stephen D. Page, Director, EPA's Office of Air Quality Planning and Standards, to Regional Air Division Directors Regions 1–10, April 23, 2014. In September 2013, EPA had previously issued specific guidance relevant to infrastructure SIP submissions due for the NAAQS, including the 2010 SO_2 NAAQS. *See* Infrastructure SIP Guidance.

[12] The Consent Decree, entered March 2, 2015 by the United States District Court for the Northern District of California in *Sierra Club and NRDC* v. *EPA,* Case 3:13-cv-03953–SI (N.D. Cal.) is available at *http://www.epa.gov/airquality/sulfurdioxide/designations/pdfs/201503FinalCourtOrder.pdf.*

believes it is not appropriate to interpret the overall section 110(a)(2) infrastructure SIP obligation to require bypassing the attainment planning process by imposing separate requirements outside the attainment planning process. Such actions would be disruptive and premature absent exceptional circumstances and would interfere with a state's planning process. *See In the Matter of EME Homer City Generation LP and First Energy Generation Corp.,* Order on Petitions Numbers III–2012–06, III–2012–07, and III 2013–01 (July 30, 2014) (hereafter, *Homer City/Mansfield Order*) at 10–19 (finding Pennsylvania SIP did not require imposition of 1-hour SO_2 emission limits on sources independent of the part D attainment planning process contemplated by the CAA). EPA believes that the history of the CAA and intent of Congress for the CAA as described above demonstrate clearly that it is within the section 172 and general part D attainment planning process that Pennsylvania must include 1-hour SO_2 emission limits on sources, where needed, for the four areas designated nonattainment to reach attainment with the 2010 1-hour SO_2 NAAQS and for any additional areas EPA may subsequently designate nonattainment.

The Commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to provide for timely attainment and maintenance of the standard is also not supported. As explained previously in response to the background comments, EPA notes this regulatory provision applies to planning SIPs, such as those demonstrating how an area will attain a specific NAAQS and not to infrastructure SIPs which are intended to support that the states have in place structural requirements necessary to implement the NAAQS.

As noted in EPA's preamble for the 2010 SO_2 NAAQS, determining compliance with the SO_2 NAAQS will likely be a source-driven analysis and EPA has explored options to ensure that the SO_2 designations process realistically accounts for anticipated SO_2 reductions at sources that we expect will be achieved by current and pending national and regional rules. *See* 75 FR 35520. As mentioned previously, EPA will act in accordance with the entered Consent Decree's schedule for conducting additional designations for the 2010 SO_2 NAAQS and any areas designated nonattainment must meet the applicable part D requirements for these areas. However, because the purpose of an infrastructure SIP submission is for more general planning purposes, EPA does not believe Pennsylvania was obligated during this infrastructure SIP planning process to account for controlled SO_2 levels at individual sources. *See Homer City/ Mansfield Order* at 10–19.

Regarding the air dispersion modeling conducted by the Commenter pursuant to AERMOD for the coal-fired plants including the Brunner Island, Montour, Cheswick, New Castle and Shawville facilities, EPA does not find the modeling information relevant at this time for review of an infrastructure SIP. While EPA has extensively discussed the use of modeling for attainment demonstration purposes and for designations, EPA has affirmatively stated such modeling was not needed to demonstrate attainment for the SO_2 infrastructure SIPs under the 2010 SO_2 NAAQS. *See* April 12, 2012 letters to states regarding SO_2 implementation and *Implementation of the 2010 Primary 1-Hour* SO_2 *NAAQS, Draft White Paper for Discussion,* May 2012, available at *http://www.epa.gov/airquality/ sulfurdioxide/implement.html.*[13]

EPA has proposed a Data Requirements Rule which, if promulgated, will be relevant to the SO_2 designations process. *See, e.g.,* 79 FR 27446 (May 13, 2014) (proposing process by which state air agencies would characterize air quality around SO_2 sources through ambient monitoring and/or air quality modeling techniques and submit such data to the EPA). The proposed rule includes a lengthy discussion of how EPA anticipates addressing modeling that informs determinations of states' air quality status under the 2010 SO_2 NAAQS. As stated above, EPA believes it is not appropriate to bypass the attainment planning process by imposing separate attainment planning process requirements outside part D and into the infrastructure SIP process.

Finally, EPA also disagrees with the Commenter that the Pennsylvania infrastructure SIP must, to be approved, incorporate the planned retirement dates of coal-fired EGUs to ensure attainment and maintenance of the SO_2 NAAQS. Because EPA does not believe Pennsylvania's infrastructure SIP requires at this time 1-hour SO_2 emission limits on these sources or other large stationary sources to ensure attainment or maintenance or ''prevent exceedances'' of the 2010 SO_2 NAAQS, EPA likewise does not believe incorporating planned retirement dates for SO_2 emitters is necessary for our approval of an infrastructure SIP which we have explained meets the structural requirements of section 110(a)(2). Pennsylvania can address any SO_2 emission reductions that may be needed to attain the 2010 SO_2 NAAQS, including reductions through source retirements, in the separate attainment planning process of part D of title I of the CAA for areas designated nonattainment.

In conclusion, EPA disagrees with the Commenter's statements that EPA must disapprove Pennsylvania's infrastructure SIP submission because it does not establish specific enforceable SO_2 emission limits, either on coal-fired EGUs or other large SO_2 sources, in order to demonstrate attainment and maintenance with the NAAQS at this time.[14]

Comment 7: The Commenter asserts that modeling is the appropriate tool for evaluating adequacy of infrastructure SIPs and ensuring attainment and maintenance of the 2010 SO_2 NAAQS. The Commenter refers to EPA's historic use of air dispersion modeling for attainment designations as well as ''SIP revisions.'' The Commenter cites to prior EPA statements that the Agency has used modeling for designations and attainment demonstrations, including statements in the 2010 SO_2 NAAQS preamble, EPA's 2012 Draft White Paper for Discussion on Implementing the 2010 SO_2 NAAQS, and a 1994 SO_2 Guideline Document, as modeling could better address the source-specific impacts of SO_2 emissions and historic challenges from monitoring SO_2 emissions.[15]

The Commenter also cited to several cases upholding EPA's use of modeling in NAAQS implementation actions, including the *Montana Sulphur* case, *Sierra Club* v. *Costle,* 657 F.2d 298 (D.C. Cir. 1981), *Republic Steel Corp.* v. *Costle,* 621 F.2d 797 (6th Cir. 1980), and *Catawba County* v. *EPA,* 571 F.3d 20

[13] EPA has provided draft guidance for states regarding modeling analyses to support the designations process for the 2010 SO_2 NAAQS. *SO_2 NAAQS Designations Modeling Technical Assistance Document (draft),* EPA Office of Air and Radiation and Office of Air Quality Planning and Standards, December 2013, available at *http:// www.epa.gov/airquality/sulfurdioxide/ implement.html.*

[14] Finally, EPA does not disagree with the Commenter's claim that coal fired EGUs are a large source of SO_2 emissions in Pennsylvania based on the 2011 NEI. However, EPA does not agree that this information is relevant to our approval of the infrastructure SIP which EPA has explained meets requirements in CAA section 110(a)(2).

[15] The Commenter also cites to a 1983 EPA Memorandum on section 107 designations policy regarding use of modeling for designations and to the 2012 *Mont. Sulphur & Chem. Co.* case which upheld EPA's finding that the previously approved SIP for an area in Montana was substantially inadequate to attain the NAAQS due to modeled violations of the NAAQS.

(D.C. Cir. 2009).[16] The Commenter discusses statements made by EPA staff regarding the use of modeling and monitoring in setting emission limitations or determining ambient concentrations as a result of a source's emissions, discussing performance of AERMOD as a model, if AERMOD is capable of predicting whether the NAAQS is attained, and whether individual sources contribute to SO_2 NAAQS violations. The Commenter cites to EPA's history of employing air dispersion modeling for increment compliance verifications in the permitting process for the Prevention of Significant Deterioration (PSD) program required in part C of Title I of the CAA. The Commenter claims several coal-fired EGUs including Brunner Island, Montour, Cheswick, New Castle, and Shawville are examples of sources located in elevated terrain where the AERMOD model functions appropriately in evaluating ambient impacts.

The Commenter asserts EPA's use of air dispersion modeling was upheld in *GenOn REMA, LLC* v. *EPA,* 722 F.3d 513 (3rd Cir. 2013) where an EGU challenged EPA's use of CAA section 126 to impose SO_2 emission limits on a source due to cross-state impacts. The Commenter claims the Third Circuit in *GenOn REMA* upheld EPA's actions after examining the record which included EPA's air dispersion modeling of the one source as well as other data.

The Commenter cites to *Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29,43 (1983) and *NRDC* v. *EPA,* 571 F.3d 1245, 1254 (D.C. Cir. 2009) for the general proposition that it would be arbitrary and capricious for an agency to ignore an aspect of an issue placed before it and that an agency must consider information presented during notice-and-comment rulemaking.[17]

Finally, the Commenter claims that Pennsylvania's proposed SO_2 infrastructure SIP lacks emission limitations informed by air dispersion modeling and therefore fails to ensure Pennsylvania will attain and maintain the 2010 SO_2 NAAQS. The Commenter claims EPA must disapprove the SO_2 infrastructure SIP as it does not ''prevent exceedances'' or ensure attainment and maintenance of the SO_2 NAAQS.

Response 7: EPA agrees with the Commenter that air dispersion modeling, such as AERMOD, can be an important tool in the CAA section 107 designations process for SO_2 and in developing SIPs for nonattainment areas as required by sections 172 and 191–192, including supporting required attainment demonstrations. EPA agrees that prior EPA statements, EPA guidance, and case law support the use of air dispersion modeling in the SO_2 designations process and attainment demonstration process, as well as in analyses of the interstate impact of transported emissions and whether existing approved SIPs remain adequate to show attainment and maintenance of the SO_2 NAAQS. However, as provided in the previous responses, EPA disagrees with the Commenter that EPA must disapprove the Pennsylvania SO_2 infrastructure SIP for its alleged failure to include source-specific SO_2 emission limits that show no exceedances of the NAAQS when modeled or ensure attainment and maintenance of the NAAQS.

In acting to approve or disapprove an infrastructure SIP, EPA is not required to make findings regarding current air quality status of areas within the state, regarding such area's projected future air quality status, or regarding whether existing emissions limits in such area are sufficient to meet a NAAQS in the area. All of the actions the Commenter cites, instead, do make findings regarding at least one of those issues. The attainment planning process detailed in part D of the CAA, including sections 172 and 191–192 attainment SIPs, is the appropriate place for the state to evaluate measures needed to bring in-state nonattainment areas into attainment with a NAAQS and to impose additional emission limitations such as SO_2 emission limits on specific sources.

EPA had initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling in the final 2010 SO_2 NAAQS preamble (75 FR 35520) and in subsequent draft guidance issued in September 2011 for the section 110(a) SIPs due in June 2013 in order to show how areas then-expected to be designated as unclassifiable would attain and maintain the NAAQS. These initial statements in the preamble and 2011 draft guidance, presented only in the context of the new 1-hour SO_2 NAAQS and not suggested as a matter of general infrastructure SIP policy, were based on EPA's expectation at the time, that by June 2012, most areas would initially be designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support designations recommendations in 2011. However, after conducting extensive stakeholder outreach and receiving comments from the states regarding these initial statements and the timeline for implementing the NAAQS, EPA subsequently stated in the April 12, 2012 letters and in the 2012 Draft White Paper that EPA was clarifying its 2010 SO_2 NAAQS implementation position and was no longer recommending such attainment demonstrations supported by air dispersion modeling for unclassifiable areas (which had not yet been designated) for the June 2013 infrastructure SIPs. Instead, EPA explained that it expected states to submit infrastructure SIPs that followed the general policy EPA had applied under other NAAQS. EPA then reaffirmed this position in the February 6, 2013 memorandum, ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard.'' [18] As previously mentioned, EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110, 172 and 191–192 of the CAA. After receiving such further comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 172 and 191–192. *See* April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.* In addition, modeling may be an appropriate consideration for states and EPA in further designations for the SO_2 NAAQS in accordance with the Sierra Club and NRDC Consent Decree and proposed data requirements rule mentioned previously.[19] While the EPA guidance for attainment SIPs and for designations for CAA section 107 and proposed process for characterizing SO_2 emissions from larger sources discuss the use of air dispersion modeling, EPA's 2013 Infrastructure SIP Guidance did not suggest that states use

[16] *Montana Sulphur & Chemical Co.* v. *EPA,* 666 F.3d 1174 (9th Cir. 2012).

[17] The Commenter also claims it raised similar arguments to Pennsylvania during the Pennsylvania proposal process for the infrastructure SIPs.

[18] The February 6, 2013 ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard,'' one of the April 12, 2012 state letters, and the May 2012 *Draft White Paper* are available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.*

[19] The Consent Decree in *Sierra Club and NRDC* v. *EPA,* Case 3:13–cv–03953–SI (N.D. Cal.) is available at *http://www.epa.gov/airquality/sulfurdioxide/designations/pdfs/201503FinalCourtOrder.pdf. See* 79 FR 27446 (EPA's proposed data requirements rule). *See also Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard,* Stephen D. Page, Director, EPA's Office of Air Quality Planning Standards, March 20, 2015, available at *http://www.epa.gov/airquality/sulfurdioxide/pdfs/20150320SO2designations.pdf.*>

air dispersion modeling for purposes of the section 110(a)(2) infrastructure SIP. Therefore, as discussed previously, EPA believes the Pennsylvania SO_2 infrastructure SIP submittal contains the structural requirements to address elements in section 110(a)(2) as discussed in detail in the TSD accompanying the proposed approval. EPA believes infrastructure SIPs are general planning SIPs to ensure that a state has adequate resources and authority to implement a NAAQS. Infrastructure SIP submissions are not intended to act or fulfill the obligations of a detailed attainment and/or maintenance plan for each individual area of the state that is not attaining the NAAQS. While infrastructure SIPs must address modeling authorities in general for section 110(a)(2)(K), EPA believes 110(a)(2)(K) requires infrastructure SIPs to provide the state's authority for air quality modeling and for submission of modeling data to EPA, not specific air dispersion modeling for large stationary sources of pollutants. In the TSD for this rulemaking action, EPA provided a detailed explanation of Pennsylvania's ability and authority to conduct air quality modeling when required and its authority to submit modeling data to the EPA.

EPA finds the Commenter's discussion of case law, guidance, and EPA staff statements regarding advantages of AERMOD as an air dispersion model for purposes of demonstrating attainment of the NAAQS to be irrelevant to the analysis of Pennsylvania's infrastructure SIP, which as we have explained is separate from the SIP required to demonstrate attainment of the NAAQS pursuant to sections 172 or 192. In addition, the Commenter's comments relating to EPA's use of AERMOD or modeling in general in designations pursuant to section 107, including its citation to *Catawba County,* are likewise irrelevant as EPA's present approval of Pennsylvania's infrastructure SIP is unrelated to the section 107 designations process. Nor is EPA's action on this infrastructure SIP related to any new source review (NSR) or PSD permit program issue. As outlined in the August 23, 2010 clarification memo, ''Applicability of Appendix W Modeling Guidance for the 1-hour SO_2 National Ambient Air Quality Standard'' (U.S. EPA, 2010a), AERMOD is the preferred model for single source modeling to address the 1-hour SO_2 NAAQS as part of the NSR/PSD permit programs. Therefore, as attainment SIPs, designations, and NSR/PSD actions are outside the scope of a required infrastructure SIP for the 2010 SO_2 NAAQS for section 110(a), EPA provides no further response to the Commenter's discussion of air dispersion modeling for these applications. If the Commenter resubmits its air dispersion modeling for the Pennsylvania EGUs, or updated modeling information in the appropriate context, EPA will address the resubmitted modeling or updated modeling at that time.

The Commenter correctly noted that the Third Circuit upheld EPA's section 126 finding imposing SO_2 emissions limitations on an EGU pursuant to CAA section 126. *GenOn REMA, LLC* v. *EPA,* 722 F.3d 513. Pursuant to section 126, any state or political subdivision may petition EPA for a finding that any major source or group of stationary sources emits, or would emit, any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) which relates to significant contributions to nonattainment or interference with maintenance of a NAAQS in another state. The Third Circuit upheld EPA's authority under section 126 and found EPA's actions neither arbitrary nor capricious after reviewing EPA's supporting docket which included air dispersion modeling as well as ambient air monitoring data showing exceedances of the NAAQS. The Commenter appears to have cited to this matter to demonstrate EPA's use of modeling for certain aspects of the CAA. We do not disagree that such modeling is appropriate for other actions, such as those under section 126. But, for the reasons explained above, such modeling is not required for determining whether Pennsylvania's infrastructure SIP has the required structural requirements pursuant to section 110(a)(2). As noted above, EPA is not acting on an interstate transport SIP in this action because Pennsylvania has not made such a submission. The decision in *GenOn Rema* does not otherwise speak to the role of air dispersion modeling as to any other planning requirements in the CAA.

In its comments, the Commenter relies on *Motor Vehicle Mfrs. Ass'n* and *NRDC* v. *EPA* to support its comments that EPA *must* consider the Commenter's modeling data on several Pennsylvania EGUs including Brunner Island, Montour, Cheswick, New Castle, and Shawville based on administrative law principles regarding consideration of comments provided during a rulemaking process. For the reasons previously explained, the purpose for which the Commenter submitted the modeling—namely, to assert that current air quality in the areas in which those sources are located does not meet the NAAQS—is not relevant to EPA's action on this infrastructure SIP, and consequently EPA is not required to consider the modeling in evaluating the approvability of the infrastructure SIP.[20] EPA does not believe infrastructure SIPs must contain emission limitations informed by air dispersion modeling in order to meet the requirements of section 110(a)(2)(A). Thus, EPA has evaluated the persuasiveness of the Commenter's submitted modeling in finding that it is not relevant to the approvability of Pennsylvania's proposed infrastructure SIP for the 2010 SO_2 NAAQS, but EPA has made no judgment regarding whether the Commenter's submitted modeling is sufficient to show violations of the NAAQS.

While EPA does not believe that infrastructure SIP submissions are *required* to contain emission limits assuring in-state attainment of the NAAQS, as suggested by the Commenter, EPA does recognize that in the past, states have, in their discretion, used infrastructure SIP submittals as a 'vehicle' for incorporating regulatory revisions or source-specific emission limits into the state's plan. *See* 78 FR 73442 (December 6, 2013) (approving regulations Maryland submitted for incorporation into the SIP along with the 2008 ozone infrastructure SIP to address ethics requirements for State Boards in sections 128 and 110(a)(2)(E)(ii)). While these SIP revisions are intended to help the state meet the requirements of section 110(a)(2), these ''ride-along'' SIP revisions are not intended to signify that all infrastructure SIP submittals must, in order to be approved by EPA, have similar regulatory revisions or source-specific emission limits. Rather, the regulatory provisions and source-specific emission limits the state relies on when showing compliance with section 110(a)(2) have, in many cases, likely already been incorporated into the state's SIP prior to each new infrastructure SIP submission; in some cases this was done for entirely separate CAA requirements, such as attainment

[20] EPA notes that PADEP provided similar responses to the Commenter's claims regarding evaluation of modeling data for an infrastructure SIP as specifically recounted by the Commenter in its March 9, 2015 comments to EPA on this rulemaking action. EPA agrees with PADEP's responses that emissions limitations for attainment of the NAAQS are appropriate for consideration in the part D planning process and not for the infrastructure SIP process. Thus, EPA provides no further response on this issue as PADEP responded to the Commenter in Pennsylvania's rulemaking and EPA's responses are provided in this action.

plans required under section 172, or for previous NAAQS.

Comment 8: The Commenter asserts that EPA may not approve the Pennsylvania proposed SO_2 infrastructure SIP because it fails to include enforceable emission limitations with a 1-hour averaging time that applies at all times. The Commenter cites to CAA section 302(k) which requires emission limits to apply on a continuous basis. The Commenter claims EPA has stated that 1-hour averaging times are necessary for the 2010 SO_2 NAAQS citing to EPA's April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,* a February 3, 2011, EPA Region 7 letter to the Kansas Department of Health and Environment regarding the need for 1-hour SO_2 emission limits in a PSD permit, an EPA Environmental Hearing Board (EHB) decision rejecting use of a 3-hour averaging time for a SO_2 limit in a PSD permit, and EPA's disapproval of a Missouri SIP which relied on annual averaging for SO_2 emission rates.[21]

Thus, the Commenter contends EPA must disapprove Pennsylvania's infrastructure SIP which the Commenter claims fails to require emission limits with adequate averaging times.

Response 8: EPA disagrees that EPA must disapprove the proposed Pennsylvania infrastructure SIP because the SIP does not contain enforceable SO_2 emission limitations with 1-hour averaging periods that apply at all times, as this issue is not appropriate for resolution at this stage. The comment does not assert that the SO_2 emission limits in Pennsylvania's SIP are not enforceable or that they do not apply at all times, instead the comment focuses on the lack of 1-hour averaging times. We do not believe, as suggested by the Commenter, that the emission limits are not ''continuous'' within the meaning of section 302(k). As EPA has noted previously, the purpose of the section 110(a)(2) SIP is to ensure that the State has the necessary structural components to implement programs for attainment and maintenance of the NAAQS.[22] While EPA does agree that the averaging time is a critical consideration for purposes of substantive SIP revisions, such as attainment demonstrations, the averaging time of existing rules in the SIP is not relevant for determining that the State has met the applicable requirements of section 110(a)(2) with respect to the infrastructure elements addressed in the present SIP action.[23] Therefore, because EPA finds Pennsylvania's SO_2 infrastructure SIP approvable without the additional SO_2 emission limitations showing in-state attainment of the NAAQS, EPA finds the issues of appropriate averaging periods for such future limitations not relevant at this time. The Commenter has cited to prior EPA discussion on emission limitations required in PSD permits (from an EAB decision and EPA's letter to Kansas' permitting authority) pursuant to part C of the CAA, which is neither relevant nor applicable to the present SIP action. In addition, as previously discussed, the EPA disapproval of the 2006 Missouri SIP was a disapproval relating to a control strategy SIP required pursuant to part D attainment planning and is likewise not relevant to the analysis of infrastructure SIP requirements.

Comment 9: The Commenter states that enforceable emission limits in SIPs or permits are necessary to avoid nonattainment designations in areas where modeling or monitoring shows SO_2 levels exceed the 1-hour SO_2 NAAQS and cites to a February 6, 2013 EPA document, *Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard,* which the Commenter contends discusses how states could avoid future nonattainment designations. The Commenter asserts EPA must ensure enforceable emission limits in the Pennsylvania infrastructure SIP will not allow ''exceedances'' of the SO_2 NAAQS. The Commenter claims the modeling it conducted for Brunner Island, Montour, Cheswick, New Castle, and Shawville indicates at least 28 additional counties in Pennsylvania must be designated nonattainment with the 2010 SO_2 NAAQS without such enforceable SO_2 limits. In summary, the Commenter asserts EPA must disapprove the Pennsylvania infrastructure SIP and ensure emission limits will not allow large sources of SO_2 to cause exceedances of the 2010 SO_2 NAAQS.

Response 9: EPA appreciates the Commenter's concern with avoiding nonattainment designations in Pennsylvania for the 2010 SO_2 NAAQS. However, Congress designed the CAA such that states have the primary responsibility for achieving and maintaining the NAAQS within their geographic area by submitting SIPs which will specify the details of how the state will meet the NAAQS. Pursuant to section 107(d), the states make initial recommendations of designations for areas within each state and EPA then promulgates the designations after considering the state's submission and other information. EPA promulgated initial designations for the 2010 SO_2 NAAQS in August 2013 for areas in which monitoring at that time showed violations of the NAAQS, but has not yet issued designations for other areas and will complete the required designations pursuant to the schedule contained in the recently entered Consent Decree. EPA will designate additional areas for the 2010 SO_2 NAAQS in accordance with the CAA section 107 and existing EPA policy and guidance. Pennsylvania may, on its own accord, decide to impose additional SO_2 emission limitations to avoid future designations to nonattainment. If additional Pennsylvania areas are designated nonattainment, Pennsylvania will then have the initial opportunity to develop additional emissions limitations needed to attain the NAAQS, and EPA would be charged with reviewing whether the SIP is adequate to demonstrate attainment. *See Commonwealth of Virginia, et al.,* v. *EPA,* 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (DCCir.1995)) (discussing that states have primary responsibility for determining an emission reductions program for its areas subject to EPA approval dependent upon whether the SIP as a whole meets applicable requirements of the CAA). However, such considerations are not required of Pennsylvania at the infrastructure SIP stage of NAAQS implementation, as the Commenter's statements concern the separate designations process under section 107.[24] EPA disagrees that the

[21] Sierra Club cited to *In re: Mississippi Lime Co.,* PSDAPLPEAL 11–01, 2011 WL 3557194, at *26–27 (EPA Aug. 9, 2011) and 71 FR 12623, 12624 (March 13, 2006) (EPA disapproval of a control strategy SO_2 SIP).

[22] As EPA has stated, some areas are designated nonattainment areas pursuant to CAA section 107 for the 2010 SO_2 NAAQS in the Commonwealth. Thus, while the Commonwealth, at this time, has an obligation to submit attainment plans for the 2010 SO_2 NAAQS for sections 172, 191 and 192, EPA believes the appropriate time for examining necessity of the averaging periods within any submitted SO_2 emission limits on specific sources is within the attainment planning process.

[23] For a discussion on emission averaging times for emissions limitations for SO_2 attainment SIPs, see the April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.* EPA explained that it is possible, in specific cases, for states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1-hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO_2 NAAQS as long as the limits are of at least comparable stringency to a 1-hour limit at the critical emission value. EPA has not yet evaluated any specific submission of such a limit, and so is not at this time prepared to take final action to implement this concept.

[24] EPA also notes that in EPA's final rule regarding the 2010 SO_2 NAAQS, EPA noted that it anticipates several forthcoming national and

infrastructure SIP must be disapproved for not including enforceable emissions limitations to prevent future 1-hour SO_2 nonattainment designations.

D. Sierra Club Comments on Pennsylvania 2008 Ozone Infrastructure SIP

Comment 10: The Commenter claims EPA must disapprove the proposed infrastructure SIP for the 2008 ozone NAAQS for its failure to include enforceable measures on sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) to ensure attainment and maintenance of the NAAQS in areas not designated nonattainment and to ensure compliance with section 110(a)(2)(A) for the 2008 ozone NAAQS. The Commenter specifically mentions EGUs as well as the oil and gas production industry as sources needing additional controls as they are major sources of ozone precursors. The Commenter claims stringent emission limits must apply at all times to ensure all areas in Pennsylvania attain and maintain the ozone NAAQS. The Commenter claims the provisions listed by Pennsylvania for section 110(a)(2)(A) in its 2008 ozone NAAQS infrastructure SIP are insufficient for attaining and maintaining the 2008 ozone NAAQS as evidenced by the Commenter's review of air quality monitoring data in areas which are not presently designated nonattainment for the 2008 ozone NAAQS. Specifically, the Commenter cites air monitoring in a number of Pennsylvania counties including Mercer, Indiana, Lebanon, Dauphin, Erie and York counties indicating ''exceedances'' of the NAAQS and what the Commenter asserts are design values above the NAAQS in 2010–2012, 2011–2013, and 2012–2014. The Commenter alleges that these ''exceedances'' demonstrate that the Pennsylvania 2008 ozone infrastructure SIP with existing regulations, statutes, source-specific limits and programs fails to demonstrate the infrastructure SIP will ensure attainment and maintenance of the 2008 ozone NAAQS. Thus, the Commenter asserts EPA must disapprove the 2008 ozone infrastructure SIP.

In addition, the Commenter asserts that the infrastructure SIP required by section 110(a) must provide assurances that the NAAQS will be attained and maintained for areas not designated nonattainment and asserts that the Pennsylvania infrastructure SIP must contain state-wide regulations and emission limits that ''ensure that the proper mass limitations and short term averaging periods are imposed on certain specific large sources of NO_X such as power plants. These emission limits must apply at all times . . . to ensure that all areas of Pennsylvania attain and maintain the 2008 eight-hour Ozone NAAQS.'' The Commenter suggests limits should be set on a pounds per hour (lbs/hr) basis for EGUs to address variation in mass emissions and ensure protection of the ambient air quality. The Commenter cites to NO_X limits from PSD permits issued to EGUs with low NO_X emission rates, claiming such rates and related control efficiencies are achievable for EGUs. The Commenter suggests short-term averaging limits would ensure EGUs cannot emit NO_X at higher rates on days when ozone levels are worst while meeting a longer-term average. The Commenter also contends that adding control devices and emission limits on EGUs are a ''cost effective option to reduce NO_X pollution and attain and maintain the 2008 ozone NAAQS.''

Finally, the Commenter contends the proposed ozone infrastructure SIP cannot ensure Pennsylvania will attain and maintain the 2008 ozone NAAQS and contends EPA must disapprove the SIP for lack of emission limits to attain and maintain the ozone NAAQS statewide.

Response 10: EPA disagrees with the commenter that the infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if ozone air quality data that became available late in the process or after the SIP was due and submitted changes the status of areas within the state.[25] EPA has addressed in detail in prior responses above the Commenter's general arguments that the statutory language, legislative history, case law, EPA regulations, and prior rulemaking actions by EPA mandate the interpretation it advocates—*i.e.,* that infrastructure SIPs must ensure attainment and maintenance of the NAAQS. EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS, including the 2008 ozone NAAQS.

Moreover, the CAA recognizes and has provisions to address changes in air quality over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment. These include provisions providing for redesignation in section 107(d) and provisions in section 110(k)(5) allowing EPA to call on the state to revise its SIP, as appropriate.

The Commenter suggests that EPA must disapprove the Pennsylvania ozone infrastructure SIP because the fact that a few areas in Pennsylvania recently had air quality data slightly above the standard therefore proves that the infrastructure SIP is inadequate to demonstrate maintenance of the ozone NAAQS for those areas. EPA disagrees with the Commenter because EPA does not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS and designations are not due until two years (or in some cases three years) following promulgation of the NAAQS. Thus, during a significant portion of the period that a state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.[26] In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and

regional rules, such as the Industrial Boilers standard under CAA section 112, are likely to require significant reductions in SO_2 emissions over the next several years. *See* 75 FR 35520. EPA continues to believe similar national and regional rules will lead to SO_2 reductions that will help achieve compliance with the 2010 SO_2 NAAQS. If it appears that states with areas designated nonattainment in 2013 will nevertheless fail to attain the NAAQS as expeditiously as practicable (but no later than October 2018) during EPA's review of attainment SIPs required by section 172, the CAA provides authorities and tools for EPA to solve such failure, including, as appropriate, disapproving submitted SIPs and promulgating federal implementation plans. Likewise, for any areas designated nonattainment after 2013, EPA has the same authorities and tools available to address any areas which do not timely attain the NAAQS.

[25] EPA notes however that the data presented by the Commenter in table 5 of its March 9, 2015 comments indicates a general improving trend in ozone air quality for the specific counties the Commenter included. The data could equally be used to indicate improving ozone air quality based on existing measures in the Pennsylvania SIP.

[26] While it is true that there may be some monitors within a state with values so high as to make a nonattainment designation of the county with that monitor almost a certainty, the geographic boundaries of the nonattainment area associated with that monitor would not be known until EPA issues final designations. Moreover, the five areas of concern to the Commenter do not fit that description in any event.

authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

EPA's interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure as explained previously in response to prior comments. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, part D of title I of the CAA (not CAA section 110) governs the substantive planning process, including planning for attainment and maintenance of the NAAQS.

For the reasons explained by EPA in this action, EPA disagrees with the Commenter that EPA must disapprove an infrastructure SIP revision if there are monitored violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment or ensure maintenance of the NAAQS. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the submittal. EPA's NPR and TSD for this rulemaking address why the Pennsylvania SIP meets the basic structural SIP requirements as to the elements addressed in section 110(a)(2) in the NPR for the 2008 ozone NAAQS.

As addressed in EPA's proposed approval for this rule, Pennsylvania submitted a list of existing emission reduction measures in the SIP that control emissions of NO_X and VOCs. Pennsylvania's SIP revision reflects numerous provisions that have the ability to reduce ground level ozone and its precursors. The Pennsylvania SIP relies on measures and programs used to implement previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone NAAQS, other than the level of the standard, the provisions relied on by Pennsylvania will provide benefits for the new NAAQS; in other words, the measures reduce *overall* ground-level ozone and its precursors and are not limited to reducing ozone levels to meet one specific NAAQS. Although additional control measures for ozone precursors such as those mentioned by the Commenter may be considered by PADEP and could be submitted with an infrastructure SIP, these additional measures are not a requirement in order for Pennsylvania to meet CAA section 110(a)(2)(A). In approving Pennsylvania's infrastructure SIP revision, EPA is affirming that Pennsylvania has sufficient authority to take the types of actions required by the CAA in order to bring such areas back into attainment.

Finally, EPA appreciates the Commenter's information regarding EGU NO_X control measures and reduction efficiencies as well as emissions limitations applicable to new or modified EGUs which were set during the PSD or NSR permit process. Additional NO_X regulations on emissions from EGUs would likely reduce ozone levels further in one or more areas in Pennsylvania. Congress established the CAA such that each state has primary responsibility for assuring air quality within the state and each state is first given the opportunity to determine an emission reduction program for its areas subject to EPA approval, with such approval dependent upon whether the SIP as a whole meets the applicable requirements of the CAA. *See Virginia* v. *EPA,* 108 F.3d at 1410. The Commonwealth could choose to consider additional control measures for NO_X at EGUs to ensure attainment and maintenance of the ozone NAAQS as Pennsylvania moves forward to meet the more prescriptive planning requirements of the CAA in the future. However, as we have explained, the Commonwealth is not required to regulate such sources for purposes of meeting the infrastructure SIP requirements of CAA section 110(a)(2).

In addition, emission limits with the shorter-term averaging rates suggested by the Commenter could be considered within the part D planning process to ensure attainment and maintenance of the 2008 ozone NAAQS. As EPA finds Pennsylvania's NO_X and VOC provisions presently in the SIP sufficient for infrastructure SIP purposes and specifically for CAA section 110(a)(2)(A), further consideration of averaging times is not appropriate or relevant at this time. Thus, EPA disagrees with the Commenter that Pennsylvania's ozone infrastructure SIP must be disapproved for failure to contain sufficient measures to ensure attainment and maintenance of the NAAQS.

Comment 11: The Commenter states enforceable emission limits are necessary to avoid future nonattainment designations in areas where Pennsylvania's monitoring network has shown ''exceedances'' with the 2008 ozone NAAQS in recent years. The Commenter stated EPA must address inadequacies in enforceable emission limitations relied upon by Pennsylvania for its ozone infrastructure SIP to comply with CAA section 110(a)(2)(A) and stated EPA must disapprove the ozone infrastructure SIP to ensure large sources of NO_X and VOCs cannot contribute to exceedances of the ozone NAAQS and prohibit attainment and maintenance of the ozone NAAQS in all of Pennsylvania.

Response 11: For the reasons previously discussed, EPA disagrees with the Commenter that we must disapprove the Pennsylvania ozone infrastructure SIP because it does not demonstrate how areas that may be newly violating the ozone NAAQS since the time of designation can be brought back into attainment. Enforceable emission limitations to avoid future nonattainment designations are not required for EPA to approve an infrastructure SIP under CAA section 110, and any emission limitations needed to assure attainment and maintenance with the ozone NAAQS will be determined by Pennsylvania and reviewed by EPA as part of the part D attainment SIP planning process. Thus, EPA disagrees with the Commenter that EPA must disapprove the ozone infrastructure SIP to ensure large sources of NO_X and VOC do not contribute to exceedances of the NAAQS or prohibit implementation, attainment or maintenance of the ozone NAAQS. As explained in the NPR and TSD, Pennsylvania has sufficient emission limitations and measures to address NO_X and VOC emissions for CAA section 110(a)(2)(A).

III. Final Action

EPA is approving the following elements of Pennsylvania's June 15, 2014 SIP revisions for the 2008 ozone NAAQS and the 2010 SO_2 NAAQS: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD requirements), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Pennsylvania's SIP revisions provide the basic program elements specified in Section 110(a)(2) necessary to implement, maintain, and enforce the 2008 ozone NAAQS and the 2010 SO_2 NAAQS. This final rulemaking action does not include action on section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process. This final rulemaking action also does not include action on section 110(a)(2)(D)(i)(I) for interstate transport for the 2008 ozone or the 2010 SO_2 NAAQS as Pennsylvania's July 15,

2014 SIP submissions did not address this element for either NAAQS nor does this rulemaking include any action on section 110(a)(2)(D)(i)(II) for visibility protection for either NAAQS. While Pennsylvania's July 15, 2014 SIP submissions for the 2008 ozone and 2010 SO_2 NAAQS included provisions addressing visibility protection, EPA will take later, separate action on this element for both of these NAAQS.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Pennsylvania's section 110(a)(2) infrastructure elements for the 2008 ozone NAAQS and 2010 SO_2 NAAQS may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 24, 2015.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding two entries for ''Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS'' and ''Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS'' at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
*	* *		* *	* *
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	Statewide	7/15/14	8/5/15 [*Insert* ***Federal Register*** *citation*].	This rulemaking action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS.	Statewide	7/15/14	8/5/15 [*Insert* ***Federal Register*** *citation*].	This rulemaking action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2015–19090 Filed 8–4–15; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

RIN 2105–AD91

[Docket No. DOT–OST–2011–0182]

Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance (U.S. Airports)

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department is issuing a final rule to amend its rules implementing section 504 of the Rehabilitation Act of 1973, which requires accessibility in airport terminal facilities that receive Federal financial assistance. The final rule includes new provisions related to service animal relief areas and captioning of televisions and audio-visual displays that are similar to existing requirements applicable to U.S. and foreign air carriers under the Department's Air Carrier Access (ACAA) regulations. The final rule also reorganizes a provision concerning mechanical lifts for enplaning and deplaning passengers with mobility impairments, and amends this provision to require airports to work not only with U.S. carriers but also foreign air carriers to ensure that lifts are available where level entry loading bridges are not available. This final rule applies to airport facilities located in the United States with 10,000 or more annual enplanements that receive Federal financial assistance.

DATES: This rule is effective October 5, 2015.

FOR FURTHER INFORMATION CONTACT: Maegan L. Johnson, Senior Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Room W96–409, Washington, DC 20590, (202) 366–9342. You may also contact Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Room W96–464, Washington, DC 20590, (202) 366–9342. Arrangements to receive this notice in an alternative format may be made by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1996, the U.S. Department of Transportation amended its regulation implementing section 504 of the Rehabilitation Act of 1973 to create a new section, 49 CFR 27.72, concerning regulatory requirements for U.S. airports to ensure the availability of lifts to provide level-entry boarding for passengers with disabilities flying on small aircraft.[1] *See* 61 FR 56409. This requirement paralleled the lift provisions applicable to U.S. carriers in the ACAA rule, 14 CFR part 382. On May 13, 2008, the Department of Transportation published a final rule that amended part 382 by making it applicable to foreign air carriers. *See* 73 FR 27614. This amendment also included provisions that require U.S. and foreign air carriers, in cooperation with airport operators, to provide service animal relief areas for service animals that accompany passengers departing, connecting, or arriving at U.S. airports. *See* 14 CFR 382.51(a)(5). Part 382 also now requires U.S. and foreign air carriers to enable captioning on all televisions and other audio-visual displays that are capable of displaying captioning and that are located in any portion of the airport terminal to which any passengers have access. *See* 14 CFR 382.51(a)(6). As a result of the 2008 amendments to Part 382, the requirements in Part 27 no longer mirrored the requirements applicable to airlines set forth in part 382 as had been intended.

On September 21, 2011, the Department issued a notice of proposed rulemaking (NPRM) in Docket OST 2011–0182 titled, ''Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance (U.S. Airports).'' *See* 76 FR 60426 *et seq.* (September 29, 2011). The Department proposed to amend part 27 by inserting provisions that would require airport operators to work with carriers to establish relief areas for service animals that accompany passengers with disabilities departing, connecting, or arriving at U.S. airports; to enable high-contrast captioning[2] on certain televisions and audio-visual displays in U.S. airports; and to negotiate in good faith with foreign air carriers to provide, operate, and maintain lifts for boarding and deplaning where level-entry loading bridges are not available. The Department also proposed updates in the NPRM to outdated references that existed in 49 CFR part 27 by deleting obsolete references to the Uniform Federal Accessibility Standards in 49 CFR 27.3(b), and changing the language ''appendix A to part 37 of this title'' to ''appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title.''

The Department asked a series of questions regarding the proposed amendments to part 27. We received 481 comments in response to the NPRM, the majority of which were received from individual commenters. The Department also received a number of comments from disability organizations, airports, and airport associations. We have carefully reviewed and considered these comments. The significant, relevant issues raised by the public comments to the NPRM are set forth below, as is the Department's response.

Service Animal Relief Areas

In the NPRM, the Department sought comment on whether it should adopt requirements regarding the design of service animal relief areas and what, if any, provisions the rule should include concerning the dimensions, materials used, and maintenance for service animal relief areas. The Department explained that commenters should consider the size and surface material of the area, maintenance, and distance to service animal relief areas, which could vary based on the size and configuration of the airport. The Department also sought comment on the compliance date for these requirements.

Comments

Commenters that indicated that they are service animal users, and other individual commenters, favor the construction of service animal relief areas on non-cement surfaces. These commenters also expressed a desire to see overhangs covering service animal relief areas to protect service animal users from the elements. Airport and airport organization commenters, however, do not support specific mandates regarding the design, number, or location of service animal relief areas, and encourage the Department to adopt the general language that appears in part

[1] Recognizing the need for level-entry boarding for passengers with mobility impairments on larger aircraft, the Department extended the applicability of its 1996 rule to aircraft with a seating capacity of 31 or more passengers in 2001. *See* 66 FR 22107.

[2] High-contrast captioning is defined in 14 CFR 382.3 as ''captioning that is at least as easy to read as white letters on a consistent black background.'' As explained in the preamble to Part 382, defining ''high-contrast captioning'' in such a way not only ensures that captioning will be effective but also allows carriers to use existing or future technologies to achieve captioning that are as effective as white on black or more so.

382. Airports and airport organizations explain that using broader guidelines with respect to the design, materials and maintenance of service animal relief areas would allow airports to try new materials in the future as technology improves, and would allow airports to design service animal relief areas based on that airport's unique geographical location.

The Department also sought comment on what would be an appropriate number of service animal relief areas in an airport and how that number should be determined. For example, should the number be determined by the size or configuration of the airport (*e.g.,* the number, location, and design of terminals and concourses) and/or the amount of time it would take for an individual with a disability to reach a service animal relief area from any gate within the airport?

The majority of individual commenters and disability organizations favored a rule that would require at least one relief area in each airport terminal. These commenters also suggest, however, that if the rule were to only require one relief area per terminal, the airport should provide either escort service or transportation to service animal relief areas to expedite trips to service animal relief areas. A number of individual commenters opposed using the amount of time it would take an individual with a disability to reach a relief area from a particular gate as a barometer for determining the number of required service animal relief areas an airport should have, reasoning that walking time varies depending upon the individual. Some individual commenters, however, did suggest imposing a blanket standard of one service animal relief area per every 15 gates or at every quarter of a mile.

Finally, with respect to the placement of service animal relief areas, the Department sought comment on whether service animal relief areas should be located inside or outside the sterile [3] area of an airport. The Department presented this question to the public after the Transportation Security Administration (TSA) in May 2011 revised its guidelines, ''Recommended Security Guidelines for Airport Planning, Design and Construction,'' making clear that airports may provide Service Animal Relief Areas in sterile areas of the airport. There is overwhelming support by individual commenters and disability organizations that at least one relief area should be located in the sterile area of each airport terminal. Airports and airport associations, however, advocate that the rule not specifically mandate that service animal relief areas be located in the sterile area of an airport. These groups argue that the determination as to whether to place service animal relief areas in the sterile area of an airport should be made on an airport-by-airport basis.

The Department also sought comment on whether the rule should include a provision requiring airports to specify the location of service animal relief areas on airport Web sites, maps and/or diagrams of the airport, including whether the relief area is located inside or outside a sterile area. Individual commenters support requiring airports to specify relief area locations on Web sites, maps and signage, but also suggest that airports make braille maps available to individuals with visual impairments to locate service animal relief areas. Some individual commenters also suggest that the Department establish a ''universal symbol'' for service animal relief areas, which could be used by airports throughout the country to identify service animal relief areas. Conversely, the Airports Council International—North America states that additional direction signage within the terminal building could potentially overload passengers and become counterproductive in assisting passengers with locating service animal relief areas. The organization reasoned that because carriers provide escorts to passengers with service animals, escorts who know the location of the service animal relief areas should be sufficient.

Anticipating that its final rule might include requirements with respect to service animal relief areas that are more involved than the requirements for U.S. and foreign carriers that exist in part 382, the Department solicited comment in the NPRM on whether any requirement that applies to U.S. airports should also be applied to U.S. and foreign carriers. All commenters that addressed the Department's inquiry agreed that any requirement that applied to U.S. airports should also be applied to both U.S. and foreign carriers.

Finally, the NPRM sought comment on whether the final rule regarding establishing service animal relief areas should take effect 120 days after its publication in the **Federal Register**. While the majority of individual commenters believe that 120 days is an appropriate amount of time to comply with the requirements of the rule regarding service animal relief areas, airports and airport organizations generally support a longer timeframe to comply with the requirements. These groups argue that airports need additional time to raise revenue to implement any additional requirements with respect to service animal relief areas that may be imposed by the rule.

DOT Response

Having fully considered the comments, the Department has decided that it will not adopt specific requirements with respect to the dimensions, design, materials, and maintenance of service animal relief areas, with the exception that such service animal relief areas be wheelchair accessible. While the Department specifically mandates in the final rule that service animal relief areas be wheelchair accessible, this requirement, although new to part 27, is already a requirement that is imposed upon U.S. airports by the Americans with Disabilities Act. Nonetheless, the Department decided to include this mandate in the final rule to remind U.S. airports of their obligation to ensure that service animal relief areas are wheelchair accessible.

This final rule, similar to part 382, also requires airports to consult with service animal training organizations regarding the design, dimensions, materials and maintenance of service animal relief areas. We expect that most airports will likely choose to work with local chapters of national service animal training organizations to comply with this requirement as those organizations may be better suited to make specific suggestions that are tailored to individual airports though many service animal training organizations can undoubtedly be a useful resource for U.S airports.

With respect to the number of service animal relief areas required at an airport, the Department has decided to require airports to provide at least one service animal relief area in each airport terminal. As proposed in the NPRM, the Department is using airport terminals as the standard upon which airports must determine the number of required service animal relief areas, rather than using the amount of time it would take for an individual with a disability to reach a service animal relief area from a particular gate. The Department notes that while some individual commenters and disability organizations suggest that we adopt requirements in part 27 that would require escort service to relief areas in the event that the Department decided to adopt the requirement for a single relief area per terminal, part 382 already requires U.S. and foreign air carriers to provide, in cooperation with

[3] The sterile area is the area between the TSA passenger screening checkpoint and the aircraft boarding gates. *See* 49 CFR 1540.5.

U.S. airport operators, escorts to individuals with disabilities to service animal relief areas upon request. *See* 14 CFR 382.91(c). As such, the Department is not imposing a requirement for U.S. airports to provide escort service to relief areas.

This final rule does require that airports not only have at least one relief area per terminal but also that this service animal relief area, with limited exceptions, be located in the sterile area of each airport terminal to ensure that individuals with service animals are able to access service animal relief areas when traveling, particularly during layovers. Recognizing that the TSA may prohibit a particular airport from locating a relief area in the sterile area of a terminal, the rule provides airports with an exception to this requirement if TSA prohibits a particular airport from locating a relief area in the sterile area of a terminal for security-related reasons. The Department also realizes that, based on an airport's configuration, a relief area in the non-sterile area of an airport may be more desirable to relief area users. As such, the Department is allowing airports the option of placing a relief area in a location other than the sterile area of a terminal if a service animal training organization, the airport, and the carriers in the terminal in which the relief area will be located agree that a relief area would be better placed outside the terminal's sterile area instead of inside the sterile area. The airport must, however, document and retain a record of this agreement.

The Department decided not to adopt a provision in the rule requiring airports to specify the location of service animal relief areas on airport Web sites, on any airport map intended for use by travelers, and on signage located throughout the airport. The Department reasoned that a regulation requiring airports, which have already been equipped with service animal relief areas for a number of years as a result of the requirements in Part 382, to specify the location of service animal relief areas is unnecessary as a number of airports already have signage indicating the location of service animal relief areas. Airports also generally aim to provide signage in accordance with internationally-agreed standards as set forth in ICAO Annex 9. If the Department finds that there is confusion about the location of service animal relief areas at U.S. airports, it will revisit this issue.

Finally, the Department is providing U.S. airports one year to comply with the requirement to establish at least one service animal relief areas per airport terminal. The Department believes this is sufficient time for U.S. airports to raise the needed revenue [4] and determine the appropriate location as well as the design of the service animal relief areas in consultation with service animal training organizations and in cooperation with airlines.

Information for Passengers

The Department sought comment in the NPRM on its proposal to require airport operators to enable high-contrast captioning on television and audio-visual displays in U.S. airports, which is a requirement that is imposed upon U.S. and foreign carriers in part 382 for the portion of the terminal facilities they own, lease or control at U.S. airports to which passengers have access. The Department also sought comment on whether a thirty-day implementation period is adequate.

Comments

Airport and airport organization commenters suggest that the Department only require those televisions and audio-visual displays owned or controlled by airports to be subject to the captioning requirement. Individual commenters, however, favor a blanket requirement that captioning be enabled on all televisions throughout the airport. Given the non-burdensome nature of this requirement, the Department proposed a thirty-day implementation period in the NPRM. All but one of the nine commenters that submitted comments on this subject agree that 30 days is a sufficient implementation period for this requirement, while one airport commenter suggests a 90 to 120 day implementation period for larger airports with more televisions.

The Department sought comment on whether it should require U.S. airports to display messages and pages broadcast over public address systems on video monitors so that persons who are deaf or hard-of-hearing do not miss important information available to others at an airport. The Department also sought comment on whether visual display of information announced over the public address system is the best means to disseminate airport-related announcements to passengers with hearing impairments. Some airports and airport organizations commented that while displaying messages on video monitors is one method of providing information to passengers with a hearing impairment, the Department should not adopt a rule specifically requiring that this method be used. Individual commenters suggest, however, that in addition to the use of video monitors to communicate with individuals with a hearing impairment throughout the airport, the Department could require airports to install hearing loops at ticket counters and in the gate areas of airports and LED screens reserved for the display of essential announcements.

The Department also sought comment as to whether it should establish a performance standard for providing information to individuals with hearing impairments rather than require airports to use a particular medium (*e.g.,* video monitors, wireless pagers, erasable boards). Some airport and airport organization commenters support the adoption of performance standards rather than specific requirements, in order to allow airports the flexibility to determine the most effective way to communicate with passengers and to account for developing technologies.

The Department also asked interested persons to comment on whether the Department should simply require that airports provide the text of the announcements made over the public address system promptly or should instead require that there be simultaneous visual transmission of the information. While one airport organization supports providing the text of the announcement promptly, as the display of the text usually closely follows announcements made over public address systems, a disability rights organization supports simultaneous transmission of the information through public information displays.

Finally, the Department sought comment on whether all announcements made through the public address system should be displayed in a manner that is accessible to deaf and hard-of-hearing travelers, or only those announcements that are essential. The Department also sought comment on the amount of time and the cost involved in establishing such a system. Individual commenters support displaying all announcements in a manner accessible to deaf and hard-of-hearing travelers, with one commenter suggesting that essential messages should be given priority over non-essential messages. Airports and airport associations advocate that only essential messages be displayed in an accessible manner so as not to overwhelm a technology system and dilute the information that passengers need. With respect to the amount of time and cost involved in establishing such a system, one individual commenter and one

[4] See NPRM wherein the Department estimates that the initial cost to establish a relief area for each terminal is approximately $5,000 per terminal, with low- and high-cost alternatives ranging from $1,000 to $10,000.

disability organization suggest that 30 days would be a sufficient amount of time for airports to establish the system, while an airport commenter contends that 30 days is too short a time period to establish such a system and suggests a two-year implementation time period. Furthermore, one airport commenter states that it would cost $100,000 to establish such a system as long as the capability exists in the airport's visual display software. The airport further explains that the cost to establish such a system would be difficult to determine if the airport didn't have software capable of displaying visual pages.

DOT's Response

After carefully considering the comments the Department received on this subject, we have decided to adopt the proposed language in the NPRM, which closely follows the current requirements that apply to U.S. and foreign carriers in part 382. As such, airport operators will be required to enable or ensure high-contrast captioning at all times on televisions and other audio-visual displays capable of displaying captions located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which passengers have access. In the case of televisions and other audio-visual displays located in space leased by a shop or restaurant, the airport operator is obligated to ensure by contract or other means that the shop or restaurant enables the captioning feature on its televisions and other audio-visual displays in a manner that meets this obligation.

The Department decided to adopt the language in the NPRM reasoning that the adoption of a rule requiring airports to enable the captioning feature is not a costly or otherwise onerous requirement as most televisions currently in use at U.S. airports have captioning capabilities. Notwithstanding this, because the Department received such a limited number of comments with respect to its questions regarding how to best provide information to deaf and hard-of-hearing passengers in airports, we have decided not to impose any new requirements on this subject that exceed the requirements that currently exist with respect to U.S. and foreign air carriers in part 382.

Boarding Lifts for Aircraft

The Department sought comment as to whether it should require U.S. airport operators to negotiate in good faith with foreign carriers to ensure that ramps or mechanical lifts are available for enplaning and deplaning passengers with disabilities.

Comments

We received one comment from an airport organization in response to our inquiry. This commenter supports airports negotiating with foreign carriers to ensure the availability of lifts. The organization reasons that this requirement would ensure that all parties would be held accountable for providing boarding assistance to passengers.

With respect to our last inquiry, whether the Department should require airports to purchase additional lifts, the only comment we received was from an airport that opposes adopting such a requirement because of the potential financial impact it could have on airports.

DOT's Response

The Department has considered the two comments received with respect to the questions it posed regarding boarding lifts for aircraft. The Department has decided to adopt the proposed language in the NPRM, which requires airports to negotiate with foreign carriers, in addition to U.S. carriers, to ensure the provision of lifts, ramps and other devices used for boarding and deplaning where level-entry boarding is not available. This requirement only imposes the same requirement for foreign carriers that has existed for airport operators with respect to U.S. carriers. Due to the lack of commentary from the public, the Department has decided to refrain from imposing additional requirements on airports to purchase additional lifts.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This action has been determined not to be significant under Executive Order 12866 and the Department's Regulatory Policies and Procedures. It has not been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 and Executive Order 13563.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, tailor the regulation to impose the least burden on society consistent with obtaining the regulatory objectives, and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Of the three provisions in the final rule, the only element of the final rule that will involve a substantial cost to airports is the requirement that service animal relief areas for service animals be located inside the sterile area of each terminal. The relief area requirement in the final rule promotes the aforementioned qualitative values by ensuring equal access to air transportation by passengers with disabilities traveling with services animals. In the Department's view, the non-quantifiable benefits associated with requiring at least one relief area per airport terminal and requiring this service animal relief area be in the sterile area of the airport with limited exceptions is wholly consistent with the ACAA's mandate to eliminate discrimination against individuals with disabilities in air transportation.

The primary non-quantifiable benefit to a passenger with a disability traveling with a service animal is that he or she does not have to leave the sterile area of the terminal to access the airport's relief area. While the Department does not have sufficient information to quantify the value of time savings associated with requiring that service animal relief areas be located in the sterile area of the airport, a number of commenters to the NPRM commented that they were often forced to create itineraries with longer layover times because of the amount of time it takes for passengers with a disability to locate service animal relief areas and the amount of time it takes to exit the sterile area, relieve a service animal, and pass through security again. The Department recognizes that individuals with disabilities may be prevented from visiting service animal relief areas located outside the sterile area of an airport during a layover. Furthermore, travelers with disabilities that have a layover may not be able to access landside service animal relief areas due to time constraints and disability-related reasons. The new requirement in the rule requiring airports to place a relief area in the sterile area of each terminal

of the airport will allow such travelers access to service animal relief areas.[5]

Other non-quantifiable benefits associated with locating service animal relief areas in the sterile area of each airport terminal include the ability for passengers to consider more flight options. Those passengers previously limited to selecting itineraries with extended layover periods may consider travel itineraries with shorter layover times once service animal relief areas are located in the sterile area of an airport. In addition, locating service animal relief areas in the sterile area would promote independence among those passengers accompanied by service animals as they may be able to independently locate service animal relief areas without relying on the assistance of escorts, which are now commonly used to assist passengers traveling with service animals in traversing through the airports and exiting and reentering the sterile area during a layover. Locating service animal relief areas in the sterile area will also reduce the amount of effort and discomfort experienced by individuals with disabilities when trying to relieve their service animals during a layover.

The final rule also offers the benefits of improved convenience to non-disabled persons accompanied by an animal or pet while at the airport. Although these benefits are not encompassed by the rule's purpose, individuals traveling with pets or security dogs trained to detect security threats may also find it convenient to use service animal relief areas located in the secure area of the airport.

As stated above, the final regulatory assessment estimates that there will be some cost for airports to implement the service animal relief area requirements in the final rule. The Federal Aviation Administration (FAA) lists 387 airports in the United States. Of these, 29 are large hubs, 35 are medium hubs, 74 are small hubs, and 249 are non-hubs, which are defined as having more than 10,000 passenger enplanements per year but less than 0.05% of the overall total enplanements. As we explained in the NPRM, there is no consistent method for assigning a number of terminals to an airport given the widely divergent plans for airports. Notwithstanding, we were able to use the airport category defined by the FAA in terms of the number of enplanements to estimate the number of terminals in a given airport. Based on this system, we assume that large hubs have an average of 7 terminals; medium hubs average 5 terminals, small hubs average 3 terminals, and non-hubs average 1 terminal per airport. As a result, we estimate that 849 terminals would be affected by this service animal relief requirement in the final rule. We do note that this is a high estimation given that some airports may have already installed service animal relief areas within the sterile area of the airport; however, because most service animal relief areas currently reside outside of the sterile area, we expect that most of these terminals would be impacted by the requirements in the final rule.

The final regulatory assessment estimates that the service animal relief area requirements will cost those 387 airports affected by the rule approximately $88.1 million over 20 years, discounted at 7%. As explained above, the total cost of installing service animal relief areas varies by airport as the cost incurred by an airport will depend upon the number of terminals in the airport. This cost estimate, however, considers the cost of construction and maintenance of service animal relief areas and the calculation of the amount of foregone rent that airports may forfeit by using space in an airport terminal for service animal relief areas that, conceivably, would have been rented out to restaurants or other vendors. We note that the cost of foregone rent and construction materials is also dependent upon airport size as rent space and materials appear to be more expensive at larger airports. This cost estimate also factors in the cost incurred by airports from consulting with service animal training organizations on the design, dimensions, materials, maintenance, and location of service animal relief areas.

While the final regulatory assessment estimates that there will be some cost for airports to implement the service animal relief area requirements in the final rule, the boarding lift requirement and the captioning requirement are expected to have minimal financial impact on airports. The requirements in the final rule related to lifts will not require airports to purchase additional lifts because the airports with 10,000 or more enplanements will already have lifts available as a result of the existing agreements between airports and U.S. carriers requiring the availability of lifts at those airports.

There is, however, a cost associated with the enabling of captioning on airport-controlled televisions. The estimated total present value over 20 years to enable captioning on television is $410,840, discounted at 7%. The respective annualized value is $38,780. This figure is based on the assumption that, initially, captioning will need to be enabled on 100% of airport-controlled televisions; in subsequent years, captioning will only need to be reactivated on 10% per annum of those television in which captioning was initially activated.

B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not impose any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on States and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). The funding and consultation requirements of Executive Order 13084 do not apply because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires an agency to review regulations to assess their impact on small entities, including small businesses, small nonprofit organizations and small governmental jurisdictions. Privately owned airports with annual revenues that do not exceed $32.5 million are considered small businesses by the size standards created by the Small Business Administration. Furthermore, publicly owned airports are categorized as small entities if they are owned by a jurisdiction with fewer than 50,000 inhabitants. In light of this standard, we estimate that approximately 55 of the 387 airports affected by the final rule are considered small entities. Therefore, the Department has determined that this rule will have an impact on some small entities. However, the Department has determined that the impact on entities

[5] See the Transportation Security Administration's (TSA) Recommended Security Guidelines for Airport Planning, Design and Construction, May of 2011. *http://www.tsa.gov/assets/pdf/airport_security_design_guidelines.pdf.*

affected by the rule will not be significant. We estimate that the cost of constructing and maintaining service animal relief areas at those 55 airports, assuming that those airports contain only 1 terminal, is approximately $4 million over 20 years at a 7% discount rate. Considering that the combined annual revenue of small-hub and non-hub airports in 2013 alone was $2.4 billion, the costs associated with this rule will not be significant.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget (OMB) (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*). The Department may not impose a penalty on persons for violating information collection requirements when an information collection required to have a current OMB control number does not have one.

This final rule does not adopt any new information collection requirements subject to the Paperwork Reduction Act (PRA).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' The purpose of this rulemaking to amend the Department's regulations implementing section 504 of the Rehabilitation Act to require service animal relief areas and captioning of televisions and audio-visual displays. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects in 49 CFR Part 27

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Transportation is amending 49 CFR part 27 as follows:

PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for Part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

■ 2. In § 27.3, paragraph (b) is revised to read as follows:

§ 27.3 Applicability.

* * * * *

(b) Design, construction, or alteration of buildings or other fixed facilities by public entities subject to part 37 of this title shall be in conformance with appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title. All other entities subject to section 504 shall design, construct, or alter buildings, or other fixed facilities, in conformance with appendices B and D of 36 CFR part 1191, as modified by appendix A to part 37 of this title.

■ 3. In § 27.71, paragraphs (h) and (i) are added to read as follows:

§ 27.71 Airport facilities.

* * * * *

(h) *Service animal relief areas.* Each airport with 10,000 or more annual enplanements shall cooperate with airlines that own, lease, or control terminal facilities at that airport to provide wheelchair accessible animal relief areas for service animals that accompany passengers departing, connecting, or arriving at the airport subject to the following requirements:

(1) Airports must consult with one or more service animal training organizations regarding the design, dimensions, materials and maintenance of service animal relief areas;

(2) Airports must establish at least one relief area in each airport terminal;

(3) Airports must establish the relief area required by paragrah (h)(2) of this section in the sterile area of each airport terminal unless:

(i) The Transportation Security Administration prohibits the airport from locating a relief area in the sterile area, or

(ii) A service animal training organization, the airport, and the carriers in the terminal in which the relief area will be located agree that a relief area would be better placed outside the terminal's sterile area. In that event, the airport must retain documentation evidencing the recommendation that the relief area be located outside of the sterile area; and

(4) To the extent airports have established service animal relief areas prior to the effective date of this paragraph:

(i) Airports that have not consulted with a service animal training organization shall consult with one or more such organizations regarding the sufficiency of all existing service animal relief areas,

(ii) Airports shall meet the requirements of this section August 4, 2016.

(i) *High-contrast captioning (captioning that is at least as easy to read as white letters on a consistent black background) on television and audio-visual displays.* This paragraph applies to airports with 10,000 or more annual enplanements.

(1) Airport operators must enable or ensure high-contrast captioning at all times on all televisions and other audio-visual displays that are capable of displaying captions and that are located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which any passengers have access and that are owned, leased, or controlled by the airport.

(2) With respect to any televisions and other audio-visual displays located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which any passengers have access that provide passengers with safety briefings, information, or entertainment that do not have high-contrast captioning capability, an airport operator must replace or ensure the replacement of these devices with equipment that does have such capability whenever such equipment is replaced in the normal course of operations and/or whenever areas of the terminal in which such

equipment is located undergo substantial renovation or expansion.

(3) If an airport installs new televisions and other audio-visual displays for passenger safety briefings, information, or entertainment on or after October 5, 2015, such equipment must have high-contrast captioning capability.

* * * * *

■ 4. Revise § 27.72 to read as follows:

§ 27.72 Boarding assistance for aircraft.

(a) This section applies to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. This section applies to all aircraft with a passenger capacity of 19 or more passenger seats, except as provided in paragraph (e) of this section. Paragraph (c) of this section applies to U.S. carriers and paragraph (d) of this section applies to foreign carriers.

(c) Each airport operator shall negotiate in good faith with each U.S. carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator must have a written, signed agreement with each U.S. carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(1) All airport operators and U.S. carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(2) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) Each airport operator shall negotiate in good faith with each foreign carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator shall, by no later than November 3, 2015, sign a written agreement with the foreign carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(1) The agreement shall provide that all actions necessary to ensure accessible boarding and deplaning for passengers with disabilities are completed as soon as practicable, but no later than December 3, 2015.

(2) All airport operators and foreign carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(3) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) Boarding assistance agreements required in paragraphs (c) and (d) of this section are not required to apply to the following situations:

(1) Access to float planes;

(2) Access to the following 19-seat capacity aircraft models: The Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models), and the Embraer EMB–120;

(3) Access to any other aircraft model determined by the Department of Transportation to be unsuitable for boarding and deplaning assistance by lift, ramp, or other suitable device. The Department will make such a determination if it concludes that—

(i) No existing boarding and deplaning assistance device on the market will accommodate the aircraft without significant risk of serious damage to the aircraft or injury to passengers or employees, or

(ii) Internal barriers are present in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat.

(f) When level-entry boarding and deplaning assistance is not required to be provided under paragraph (e) of this section, or cannot be provided as required by paragraphs (b), (c), and (d) of this section (*e.g.,* because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents. However, hand-carrying (*i.e.,* directly picking up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft) must never be used, even if the passenger consents, unless this is the only way of evacuating the individual in the event of an emergency.

(g) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

Issued this day of July 29, 2015, in Washington, DC.

Anthony R. Foxx,

Secretary of Transportation.

[FR Doc. 2015–19078 Filed 8–4–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA–2015–0007]

RIN 2132–ZA03

Notice of Availability of Final Interim Policy Guidance for the Capital Investment Grant Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of final interim policy guidance.

SUMMARY: The Federal Transit Administration (FTA) is announcing the availability of final interim policy guidance on the Capital Investment Grant (''CIG'') program. The final interim guidance has been placed both in the docket and on FTA's Web site. In brief, the policy guidance that FTA periodically issues on the CIG program complements the FTA regulations that govern the program. The regulations set forth the process that grant applicants must follow to be eligible for discretionary funding under the CIG program. The policy guidance provides a greater level of detail about the methods FTA uses to apply the evaluation criteria and the sequential steps a sponsor must follow in developing a project.

DATES: This final policy guidance is effective August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, FTA Office of Planning and Environment, telephone (202) 366–5159 or *Elizabeth.Day@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 49 U.S.C. 5309(g)(5), FTA is required to publish policy guidance on the CIG program each time the agency makes significant changes to the process and/or evaluation criteria, and in any event, at least once every two years. Also, FTA

is required to invite public comment on the policy guidance, and to publish its response to comments. In this instance, FTA published proposed interim policy guidance on April 8, 2015, at 80 FR 18796 (*http://www.gpo.gov/fdsys/pkg/FR-2015-04-08/pdf/2015-08063.pdf*). The final interim policy guidance and our response to comments is available on FTA's public Web site at *http://www.fta.dot.gov/newstarts* and in the docket at *http://www.regulations.gov.*

The final interim policy guidance addresses four subjects not addressed in either the regulations or the previous policy guidance document for the CIG program. Specifically these are: (1) The measures and breakpoints for the congestion relief criterion applicable to New Starts and Small Starts projects; (2) the evaluation and rating process for Core Capacity Improvement projects, including the measures and breakpoints for all the project justification and local financial commitment criteria applicable to those projects; (3) the prerequisites for entry into each phase of the CIG process for each type of project in the CIG program, and the requirements for completing each phase of that process; and (4) ways in which certain New Starts, Small Starts, and Core Capacity Improvement projects can qualify for ''warrants'' entitling them to automatic ratings on some of the evaluation criteria. This final policy guidance is characterized as ''interim'' because, in the near future, FTA will initiate a rulemaking to amend the regulations at 49 CFR part 611 to fully carry out the authorizing statute for the CIG program, 49 U.S.C. 5309, as amended by the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141; July 6, 2012) (''MAP–21''). The information gained through the public comment process on the interim policy guidance will inform the future rulemaking.

The final interim policy guidance being published today is approximately 100 typewritten pages in length, arranged in three stand-alone chapters for each of the three types of projects eligible for CIG funds: New Starts, Small Starts, and Core Capacity Improvements. Each chapter provides a short introduction, a discussion of eligibility for that type of project, a summary of the requirements for entry into and getting through each step of the CIG process, information on each of the project evaluation criteria, and an explanation of how FTA will determine the overall rating for a project. Each type of project in the CIG program—a New Start, Small Start, or Core Capacity Improvement—is governed by a unique set of requirements, although there are many similarities amongst the three sets of requirements.

The final interim policy guidance does not address the Program of Interrelated Projects provisions or the pilot program for expedited project delivery included in MAP–21. The Program of Interrelated Projects provisions will be addressed through future rulemaking and policy guidance updates. On July 7, 2015, FTA published in a separate **Federal Register** notice at 80 FR 38801 (*http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16515.pdf*), a request for expressions of interest for the pilot program for expedited project delivery.

FTA received 539 separate comments on the proposed interim policy guidance from 41 commenters, including cities, transit operators, state agencies, metropolitan planning organizations, non-profit organizations, and interested citizens. FTA's summary and response to these comments is available both on the agency's public Web site at *http://www.fta.dot.gov/newstarts* and in the docket at *http://www.regulations.gov.* The public comments are available, in their entirety, on the docket at *http://www.regulations.gov.*

This final interim policy guidance is effective immediately. It provides technical details necessary for FTA to apply the project evaluation and rating criteria. Sponsors of New Starts, Small Starts, and Core Capacity projects need this final interim policy guidance to gather and submit the data and information needed by FTA to move their projects into and through the process. In turn, FTA needs this data from project sponsors to prepare the agency's annual report to Congress on capital investment funding recommendations for the forthcoming Federal fiscal year, as required by 49 U.S.C. 5309(o)(1). For these reasons, and in accordance with the Administrative Procedure Act, 5 U.S.C. 553(d), FTA finds good cause for an exception to the requirement for 30-day publication prior to an effective date.

Issued in Washington, DC, under the authority delegated at 49 CFR 1.91.

Therese W. McMillan,

Acting Administrator.

[FR Doc. 2015–19200 Filed 8–4–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130717632–4285–02]

RIN 0648–XE085

International Fisheries; Pacific Tuna Fisheries; 2015 Bigeye Tuna Longline Fishery Closure in the Eastern Pacific Ocean

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is temporarily closing the U.S. pelagic longline fishery for bigeye tuna for vessels over 24 meters in overall length in the eastern Pacific Ocean (EPO) through December 31, 2015 because the 2015 catch limit of 500 metric tons is expected to be reached. This action is necessary to prevent the fishery from exceeding the applicable catch limit established by the Inter-American Tropical Tuna Commission (IATTC) in Resolution C–13–01, which governs tuna conservation in the EPO from 2014–2016.

DATES: The rule is effective 12 a.m. local time August 12, 2015, through 11:59 p.m. local time December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, NMFS West Coast Region, 562–980–4066.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The Convention provides an international agreement to ensure the effective international conservation and management of highly migratory species of fish in the IATTC Convention Area. The IATTC Convention Area, as amended by the Antigua Convention, includes the waters of the EPO bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian.

Pelagic longline fishing in the EPO is managed, in part, under the Tuna Conventions Act of 1950 (Act), 16 U.S.C. 951–962. Under the Act, NMFS must publish regulations to carry out recommendations of the IATTC that have been approved by the Department of State (DOS). Regulations governing fishing by U.S. vessels in accordance with the Act appear at 50 CFR part 300, subpart C. These regulations implement

IATTC recommendations for the conservation and management of highly migratory fish resources in the EPO.

In 2013, the IATTC adopted Resolution C–13–01, which establishes an annual catch limit of bigeye tuna for longline vessels over 24 meters. For calendar years 2014, 2015, and 2016, the catch of bigeye tuna by longline gear in the IATTC Convention Area by fishing vessels of the United States that are over 24 meters in overall length is limited to 500 metric tons per year. With the approval of the DOS, NMFS implemented this catch limit by notice-and-comment rulemaking under the Act (79 FR 19487, April 9, 2014, and codified at 50 CFR 300.25).

NMFS, through monitoring the retained catches of bigeye tuna using logbook data submitted by vessel captains and other available information from the longline fisheries in the IATTC Convention Area, has determined that the 2015 catch limit is expected to be reached by August 12, 2015. In accordance with 50 CFR 300.25(b), this **Federal Register** notice announces that the U.S. longline fishery for bigeye tuna in the IATTC Convention Area will be closed for vessels over 24 meters in overall length starting on August 12, 2015, through the end of the 2015 calendar year. The 2016 fishing year is scheduled to open on January 1, 2016. The bigeye tuna catch limit for longline vessels over 24 meters in overall length will again be 500 metric tons for 2016.

During the closure, a U.S. fishing vessel over 24 meters in overall length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the IATTC Convention Area, except as follows:

- Any bigeye tuna already on board a fishing vessel on August 12, 2015, may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided all bigeye tuna are landed within 14 days after the effective date of this rule, that is, no later than August 26, 2015.
- In the case of a vessel that has declared to NMFS that the current trip type is shallow-set longlining, the 14-day limit to land all bigeye in the previous paragraph is waived. However, the prohibition on any additional retention of bigeye tuna still applies as of August 12, 2015.

Other prohibitions during the closure include the following:

- Bigeye tuna caught by a United States vessel over 24 meters in overall length with longline gear in the IATTC Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.[1]
- A fishing vessel of the United States over 24 meters in overall length, that is not on a declared shallow-set longline trip, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the IATTC Convention Area during the same fishing trip, with the exception of a fishing trip that was already in progress when the prohibitions were put into effect.
- If a vessel over 24 meters in overall length, that is not on a declared shallow-set longline trip, is used to fish in the Pacific Ocean using longline gear outside the IATTC Convention Area, and the vessel enters the IATTC Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing. Specifically, the hooks, branch lines, and floats must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

Classification

NMFS has determined there is good cause to waive prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). This action is based on the best available information and is necessary for the conservation and management of bigeye tuna. Compliance with the notice and comment requirement would be impracticable and contrary to the public interest because NMFS would be unable to ensure that the 2015 bigeye tuna catch limit applicable to longline vessels over 24 meters is not exceeded. The annual catch limit is an important mechanism to ensure that the United States complies with its international obligations in preventing overfishing and managing the fishery at optimum yield. Moreover, NMFS previously solicited, and considered, public comments on the rule that established the catch limit (79 FR 19487, April 9, 2014), including a provision for issuing a notice to close the fishery, if necessary, to prevent exceeding the catch limit. For the same reasons, NMFS has also determined there is good cause to waive the requirement for a 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

[1] In 50 CFR 300.25(b)(4)(ii), the reference to § 665.21 is outdated. The former 50 CFR 665.21 has been recodified to § 665.801.

This action is required by 50 CFR 300.25(b) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951 *et seq.*

Dated: July 31, 2015.

Jennifer M. Wallace,

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

[FR Doc. 2015–19230 Filed 7–31–15; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120328229–4949–02]

RIN 0648–XE079

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS is transferring 40 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Harpoon category. With this transfer, the adjusted Harpoon category quota for the 2015 fishing season is 73.4 mt. The 2015 Harpoon category fishery is open until November 15, 2015, or until the Harpoon category quota is reached, whichever comes first. The action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas Harpoon category (commercial) permitted vessels.

DATES: Effective July 31, 2015, through November 15, 2015.

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

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing

categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations.

The currently codified baseline U.S. quota is 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Among other things, Amendment 7 revised the allocations to all quota categories, effective January 1, 2015, including base quotas of 33.4 mt for the Harpoon category and 21.4 mt for the Reserve category. See § 635.27(a). To date, NMFS has published two inseason quota transfers that have adjusted the available 2015 Reserve category quota, which currently is 74.8 mt (80 FR 7547, February 22, 2015 and 80 FR 45098, July 29, 2015).

The 2015 Harpoon category fishery opened June 1 and is open through November 15, 2015, or until the Harpoon category quota is reached, whichever comes first.

Inseason Transfer to the Harpoon Category

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

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the Harpoon category fishery. These considerations include, but are not limited to, the following: Biological samples collected from BFT landed by Harpoon category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Continued BFT landings would support the collection of a broad range of data for these studies and for stock monitoring purposes. As of July 28, 2015, the Harpoon category has landed 33.1 mt. Without a quota transfer at this time, Harpoon category participants would have to stop BFT fishing activities with very short notice (*i.e.,* 3 days after the date of filing of a closure notice with the Office of the Federal Register), while commercial-sized BFT remain available in the areas Harpoon category permitted vessels operate. NMFS anticipates that the Harpoon category could harvest the transferred 40 mt prior to the end of the Harpoon category season, subject to weather conditions and BFT availability.

As this action would be taken consistent with the quotas previously established and analyzed in Amendment 7 (79 FR 71510, December 2, 2014), and consistent with objectives of the 2006 Consolidated HMS FMP, it is not expected to negatively impact stock health. A principal consideration is the objective of providing opportunities to harvest the full 2015 U.S. BFT quota without exceeding it based upon the 2006 Consolidated HMS FMP goal: ''Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.''

Based on all of these considerations, as well as the available quota, NMFS has determined that 40 mt of the available 74.8 mt of Reserve category quota should be transferred to the Harpoon category. The transfer would provide a reasonable opportunity to harvest the U.S. quota of BFT, without exceeding it, while maintaining an equitable distribution of fishing opportunities; help achieve optimum yield in the BFT fishery; allow the collection of a broad range of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP and its amendments. Therefore, NMFS adjusts the Harpoon category quota to 73.4 mt for the 2015 Harpoon category fishing season (*i.e.,* through November 15, 2015, or until the Harpoon category quota is reached, whichever comes first). NMFS has considered the fact that it has published a proposed BFT quota rule that would implement and give domestic effect to the 2014 ICCAT recommendation on western Atlantic BFT management, which increased the U.S. BFT quota for 2015 and 2016 by 14 percent from the 2014 level (80 FR 33467, June 12, 2015). The domestic subquotas proposed in that action would result from application of the allocation process established in Amendment 7 to the 2006 Consolidated HMS FMP to the increased U.S. quota, and would include an increase in the Harpoon category quota from the currently codified 33.4 mt to 38.6 mt. Although the proposed rule would increase the baseline Harpoon category quota by 5.2 mt, NMFS is transferring 40 mt at this time regardless of the proposed quota increase.

Monitoring and Reporting

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

Classification

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

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery.

Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2015 is impracticable and contrary to the public interest as such a delay would likely result in closure of the Harpoon fishery when the base quota is met and the need to re-open the fishery, with attendant administrative costs and costs to the fishery. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.27(a)(7) and is exempt from review under Executive Order 12866.

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

Dated: July 30, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–19156 Filed 7–31–15; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 141125999–5362–02]

RIN 0648–XE084

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Mid-Atlantic Access Area to General Category Individual Fishing Quota Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Mid-Atlantic Scallop Access Area will close to Limited Access General Category Individual Fishing Quota scallop vessels for the remainder of the 2015 fishing year. No vessel issued a Limited Access General Category Individual Fishing Quota permit may fish for, possess, or land scallops from the Mid-Atlantic Scallop Access Area. Regulations require this action once it is projected that 100 percent of trips allocated to the Limited Access General Category Individual Fishing Quota scallop vessels for the Mid-Atlantic Scallop Access Area will be taken.

DATES: Effective 0001 hr local time, August 4, 2015, through February 29, 2016.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, (978) 282–8456.

SUPPLEMENTARY INFORMATION: The reader can find regulations governing fishing activity in the Sea Scallop Access Areas in 50 CFR648.59 and 648.60, which authorize vessels issued a valid Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) scallop permit to fish in the Mid-Atlantic Scallop Access Area under specific conditions, including a total of 2,065 trips that may be taken by LAGC IFQ vessels during the 2015 fishing year. Section 648.60(g)(3)(iii) requires the Mid-Atlantic Scallop Access Area to be closed to LAGC IFQ permitted vessels for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that the allowed number of trips for fishing year 2015 are projected to be taken.

Based on trip declarations by LAGC IFQ scallop vessels fishing in the Mid-Atlantic Scallop Access Area, and analysis of fishing effort, we project that 2,065 trips will be taken as of August 4, 2015. Therefore, in accordance with § 648.60(g)(3)(iii), the Mid-Atlantic Scallop Access Area is closed to all LAGC IFQ scallop vessels as of August 4, 2015. No vessel issued an LAGC IFQ permit may fish for, possess, or land scallops in or from the Mid-Atlantic Scallop Access Area after 0001 local time, August 4, 2015. Any LAGC IFQ vessel that has declared into the Mid-Atlantic Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area before 0001, August 4, 2015, may complete its trip. This closure is in effect for the remainder of the 2015 scallop fishing year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The Mid-Atlantic Access Area opened for the 2015 fishing year on May 1, 2015. The regulations at § 648.60(g)(3)(iii) require this closure to ensure that LAGC IFQ scallop vessels do not take more than their allocated number of trips in the Mid-Atlantic Scallop Access Area. The projections of the date on which the LAGC IFQ fleet will have taken all of its allocated trips in an Access Area become apparent only as trips into the area occur on a real-time basis and as activity trends begin to appear. As a result, an accurate projection only can be made very close in time to when the fleet has taken all of its trips. In addition, proposing a closure would likely increase activity, triggering an earlier closure than predicted. To allow LAGC IFQ scallop vessels to continue to take trips in the Mid-Atlantic Scallop Access Area during the period necessary to publish and receive comments on a proposed rule would likely result in vessels taking much more than the allowed number of trips in the Mid-Atlantic Scallop Access Area. Excessive trips and harvest from the Mid-Atlantic Scallop Access Area would result in excessive fishing effort in the area, where effort controls are critical, thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures. Also, the public had prior notice and full opportunity to comment on this closure process when we put these provisions in place. NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: July 30, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–19150 Filed 7–31–15; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150112035–5658–02]

RIN 0648–BE80

Fisheries off West Coast States; Highly Migratory Species Fishery Management Plan; Revision to Prohibited Species Regulations

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to revise the prohibited species policy for highly migratory species off the U.S. West Coast. This action is necessary to accurately reflect the intent of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

DATES: The final rule is effective August 5, 2015.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2015–0006, or contact the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115–0070, or *RegionalAdministrator.WCRHMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, NMFS, 562–980–4066.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2015, the National Marine Fisheries Service (NMFS) published a proposed rule in the **Federal Register** (80 FR 31884) to resolve a discrepancy between the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS) [1] and the regulations that implemented the FMP.[2] This action was identified at the Pacific Fishery Management Council (Council) meeting in November 2014 and was discussed with broad support. The public comment period was open until July 19, 2015. No changes to the proposed rule were made in response to comments. This final rule is implemented under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801, *et seq.,* by regulations at 50 CFR part 660.

This final rule codifies two exceptions to the general prohibition on retention of prohibited species from the HMS FMP that were not included in the implementing regulations for the FMP. Species for which retention is, and will continue to be, prohibited are identified in the definition section, § 660.702, under ''Prohibited species.'' This revision to the definition of ''prohibited species'' makes the language at § 660.711(a) redundant and, therefore, it is deleted. Finally, the language at § 660.705(e) clearly states the prohibition of targeting these species while fishing for HMS, as well as explicitly identifies all of the exceptions to the retention prohibition. These revisions make the regulations for prohibited species consistent with the policy and analysis of the HMS FMP.

The proposed rule contains additional background information, including information on the history of the HMS FMP, the discrepancy between it and the regulations, and the need to rectify this discrepancy.

Public Comments and Responses

NMFS received one written public comment. The commenter expressed several concerns regarding more than one aspect of the rule, some being very similar; therefore, NMFS is responding to the common themes/topics. The responses are summarized below. Specific issues that were beyond the scope of this rulemaking are not addressed here.

Issue 1: The current HMS regulations already convey the prohibited species policy of the HMS FMP.

Response: Three exceptions to the prohibited species policy were outlined in the FMP, but only one is in the regulations. Since two of the exceptions are missing, the regulations do not fully convey the intent of the FMP.

Issue 2: The proposed revisions to the regulations would delete important aspects of the policy and do not make sense within the existing flow and outline of the subpart.

Response: Although parts of the regulations (not the policy) are deleted, they are administrative in nature. The revisions remove nothing of substance, but rather reorganize the language for clarity and add the missing exceptions.

Issue 3: The exceptions proposed for addition to the regulations have not been analyzed and are not consistent with the management plan.

Response: These exceptions, which were written in the HMS FMP, were analyzed in the 2003 Environmental Impact Statement (EIS) for the FMP. The EIS found that the prohibited species policy, including the exceptions, would ensure that neither the rare sharks nor the strict management of halibut and salmon are compromised by HMS fisheries.

Issue 4: This action makes catching prohibited species legal.

Response: The edited regulations continue to generally prohibit the retention of prohibited species, but add two limited circumstances in which they are allowed to be retained, as set forth in the FMP.

Classification

The Administrator, West Coast Region, NMFS, determined that this regulatory amendment under the HMS FMP is necessary for the conservation and management of the fishery, and that it is consistent with the MSA and other applicable laws.

Administrative Procedure Act (APA)

The Assistant Administrator 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 action revises the definition of prohibited species and codifies two exceptions to the general prohibition on retention of prohibited species. This action would benefit regulated entities by ensuring clarity in the definition of prohibited species, and consistency of the exceptions to the general prohibition on retention of prohibited species with the policy outlined in the HMS FMP, which allows for the retention of salmon and Pacific halibut, and basking, megamouth, and great white sharks under certain limited conditions.

Executive Order 12866

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

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not being repeated here. No comments were received regarding the certification. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

[1] *http://www.pcouncil.org/wp-content/uploads/HMS-FMP-Jul11.pdf.*

[2] Title 50, part 660, subpart K.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 30, 2015.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.702, revise the definition for ''Prohibited species'' to read as follows:

§ 660.702 Definitions.

* * * * *

Prohibited species means any highly migratory species for which quotas or catch limits under the FMP have been achieved and the fishery closed; salmon; great white shark; basking shark; megamouth shark; and Pacific halibut.

* * * * *

■ 3. In § 660.705, revise paragraph (e) to read as follows:

§ 660.705 Prohibitions.

* * * * *

(e) When fishing for HMS, fail to return a prohibited species to the sea immediately with a minimum of injury, except under the following circumstances:

(1) Any prohibited species may be retained for examination by an authorized observer or to return tagged fish as specified by the tagging agency.

(2) Salmon may be retained if harvested in accordance with subpart H of this part, and other applicable law.

(3) Great white sharks, basking sharks, and megamouth sharks may be retained if incidentally caught and subsequently sold or donated to a recognized scientific or educational organization for research or display purposes.

(4) Pacific halibut may be retained if harvested in accordance with part 300, subpart E of this Title, and other applicable law.

* * * * *

§ 660.711 [Amended]

■ 4. In § 660.711, remove paragraph (a) and redesignate paragraphs (b) through (d) as (a) through (c).

[FR Doc. 2015–19157 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XE072

Fisheries of the Exclusive Economic Zone Off Alaska; Squids in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of squids in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2015 initial total allowable catch of squids in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 30, 2015, through 2400 hrs, A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands management area (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 2015 initial total allowable catch (TAC) for squids in the BSAI is 340 metric tons as established by the final 2015 and 2016 harvest specifications for groundfish of the BSAI (80 FR 11919, March 5, 2015).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2015 initial TAC of squids in the BSAI has been reached. Therefore, NMFS is requiring that squids caught in the BSAI be treated as prohibited species in accordance with § 679.21(b).

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 prohibiting the retention of squids in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 29, 2015.

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

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 30, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–19094 Filed 7–30–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 150
Wednesday, August 5, 2015

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2015–BT–STD–0016]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Intent To Establish a Working Group for Certain Equipment Classes of Refrigeration Systems of Walk-in Coolers and Freezers To Negotiate a Notice of Proposed Rulemaking (NOPR) for Energy Conservation Standards

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

ACTION: Notice of intent and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (''DOE'' or, in context, ''the Department'') is giving notice of a public meeting and that DOE intends to establish a negotiated rulemaking working group under the Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') in accordance with the Federal Advisory Committee Act (''FACA'') and the Negotiated Rulemaking Act (''NRA'') to negotiate proposed amended energy conservation standards for six equipment classes (*i.e.,* the two equipment classes of multiplex condensing refrigeration systems operating at medium and low temperatures and the four equipment classes of dedicated condensing refrigeration systems operating at low temperatures) of walk-in cooler and freezer refrigeration systems. The purpose of the working group will be to discuss and, if possible, reach consensus on a proposed rule regarding amended energy conservation standards for only those aforementioned equipment classes of refrigeration systems of walk-in coolers and freezers, as authorized by the Energy Policy and Conservation Act (EPCA) of 1975, as amended. The working group will consist of representatives of parties having a defined stake in the outcome of the proposed standards, and will consult as appropriate with a range of experts on technical issues. Per the ASRAC Charter, the working group is expected to make a concerted effort to negotiate a final term sheet by December 27, 2015.

DATES: DOE will host the first Working Group meeting, which is open to the public, and will be broadcast via webinar on Thursday, August 27, 2015 from 9:00 a.m. to 5:00 p.m. in Washington, DC.

Written comments and applications (*i.e.,* cover letter and resume) to be appointed as members of the working group are welcome and should be submitted by August 12, 2015.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Room 8E–089. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/30.*

Interested person may submit comments and an application for membership (including a cover letter and resume), identified by docket number EERE–2015–BT–STD–0016, via any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ASRAC@ee.doe.gov.* Include docket number EERE–2015–BT–STD–0016 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-STD-0016*, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-STD-0016* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE–2J), 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: 202–287–1692. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority

DOE is announcing its intent to negotiate proposed energy conservation standards for the two walk-in cooler and freezer equipment classes applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and the four walk-in cooler and freezer equipment classes applicable to dedicated condensing refrigeration systems operating at low temperatures, under the authority of sections 563 and 564 of the NRA (5 U.S.C. 561–570, Pub. L. 104–320). The regulation of walk-in coolers and freezers standards that DOE is proposing to develop under a negotiated rulemaking will be developed under the authority of EPCA, as amended, 42 U.S.C. 6311(1) and 42 U.S.C. 6291 *et seq.*

II. Background

As required by the NRA, DOE is giving notice that it is establishing a working group under ASRAC to discuss proposed energy conservation standards for the two walk-in cooler and freezer equipment classes applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and the four walk-in cooler and freezer equipment classes applicable to dedicated condensing refrigeration systems operating at low temperatures.

A. Negotiated Rulemaking

Consistent with the parties' settlement agreement in *Lennox* v. *DOE,* No. 14–60535 (5th Cir.), DOE is supporting the use of the negotiated rulemaking process to discuss and develop proposed energy conservation standards for the two walk-in cooler and freezer equipment classes applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and the four walk-in cooler and freezer equipment classes applicable to dedicated condensing refrigeration systems operating at low temperatures. The primary reason for using the negotiated rulemaking process for this product is that stakeholders strongly support a consensual rulemaking effort. DOE believes such a regulatory negotiation process will be less adversarial and better suited to resolving complex technical issues. An important virtue of negotiated rulemaking is that it allows expert dialog that is much better than traditional techniques at getting the facts and issues right and will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation will enable DOE to engage in direct and sustained dialog with informed, interested, and affected parties when drafting the regulation, rather than obtaining input during a public comment period after developing and publishing a proposed rule. A rule drafted by negotiation with informed and affected parties is expected to be potentially more pragmatic and more easily implemented than a rule arising from the traditional process. Such rulemaking improvement is likely to provide the public with the full benefits of the rule while minimizing the potential negative impact of a proposed regulation conceived or drafted without the full prior input of outside knowledgeable parties. Because a negotiating working group includes representatives from the major stakeholder groups affected by or interested in the rule, the number of public comments on the proposed rule may be decreased. DOE anticipates that there will be a need for fewer substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final rule.

B. The Concept of Negotiated Rulemaking

Usually, DOE develops a proposed rulemaking using Department staff and consultant resources. Congress noted in the NRA, however, that regulatory development may ''discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions . . . .'' 5 U.S.C. 561(2)(2). Congress also stated that ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' 5 U.S.C. 561(2)(3).

Using negotiated rulemaking to develop a proposed rule differs fundamentally from the Department-centered process. In negotiated rulemaking, a proposed rule is developed by an advisory committee or working group, chartered under FACA, 5 U.S.C. App. 2, composed of members chosen to represent the various interests that will be significantly affected by the rule. The goal of the advisory committee or working group is to reach consensus on the treatment of the major issues involved with the rule. The process starts with the Department's careful identification of all interests potentially affected by the rulemaking under consideration. To help with this identification, the Department publishes a notice of intent such as this one in the **Federal Register**, identifying a preliminary list of interested parties and requesting public comment on that list. Following receipt of comments, the Department establishes an advisory committee or working group representing the full range of stakeholders to negotiate a consensus on the terms of a proposed rule. Representation on the advisory committee or working group may be direct; that is, each member may represent a specific interest, or may be indirect, such as through trade associations and/or similarly-situated parties with common interests. The Department is a member of the advisory committee or working group and represents the Federal government's interests. The advisory committee or working group chair is assisted by a neutral mediator who facilitates the negotiation process. The role of the mediator, also called a facilitator, is to apply proven consensus-building techniques to the advisory committee or working group process.

After an advisory committee or working group reaches consensus on the provisions of a proposed rule, the Department, consistent with its legal obligations, uses such consensus as the basis of its proposed rule, which then is published in the **Federal Register**. This publication provides the required public notice and provides for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested), and request judicial review. DOE anticipates, however, that the pre-proposal consensus agreed upon by the advisory committee or working group will narrow any issues in the subsequent rulemaking.

C. Proposed Rulemaking for Energy Conservation Standards Regarding Certain Equipment Classes of Walk-in Coolers and Freezers

The NRA enables DOE to establish an advisory committee or working group if it is determined that the use of the negotiated rulemaking process is in the public interest. DOE intends to develop Federal regulations that build on the depth of experience accrued in both the public and private sectors in implementing standards and programs.

DOE is supporting the use of the regulatory negotiation process in order to provide for obtaining a diverse array of in-depth input, as well as an opportunity for increased collaborative discussion from both private-sector stakeholders and government officials who are familiar with the energy efficiency of walk-in coolers and freezers.

D. Department Commitment

In initiating this regulatory negotiation process to develop amendments to the energy conservation standards for the two walk-in cooler and freezer equipment classes applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and the four walk-in cooler and freezer equipment classes applicable to dedicated condensing refrigeration systems operating at low temperatures, DOE is making a commitment to provide adequate resources to facilitate timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials, and personnel of the Department who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. DOE will provide administrative support for the process and will take steps to ensure that the advisory committee or working group has the dedicated resources it requires to complete its work in a timely fashion. Specifically, DOE will make available the following support services: Properly equipped space adequate for

public meetings and caucuses; logistical support; word processing and distribution of background information; the service of a facilitator; and such additional research and other technical assistance as may be necessary.

To the maximum extent possible consistent with the legal obligations of the Department, DOE will use the consensus of the advisory committee or working group as the basis for the rule the Department proposes for public notice and comment.

E. Negotiating Consensus

As discussed above, the negotiated rulemaking process differs fundamentally from the usual process for developing a proposed rule. Negotiation enables interested and affected parties to discuss various approaches to issues rather than asking them only to respond to a proposal developed by the Department. The negotiation process involves a mutual education of the various parties on the practical concerns about the impact of standards. Each advisory committee or working group member participates in resolving the interests and concerns of other members, rather than leaving it up to DOE to evaluate and incorporate different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able to control the process. The NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee or working group, unless the committee or working group itself unanimously agrees to use a different definition. 5 U.S.C. 562. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all parties, including DOE, in identifying their real interests in the rule, and thus will enable parties to focus on and resolve the important issues.

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

The following issues and concerns will underlie the work of the Negotiated Rulemaking Committee for walk-in coolers and freezers and be limited to the items specified below:

- Proposed energy conservation standards for the two walk-in cooler and freezer equipment classes applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and the four walk-in cooler and freezer equipment classes applicable to dedicated condensing refrigeration systems operating at low temperatures. See 10 CFR 431.306(e).; and
- As part of the analysis considered underlying the proposed energy conservation standards mentioned, DOE will consider any comments (including any accompanying data) regarding the potential impacts of these six proposed standards on installers.

To examine the underlying issues outlined above, all parties in the negotiation will need DOE to provide data and an analytic framework complete and accurate enough to support their deliberations. DOE's analyses must be adequate to inform a prospective negotiation—for example, DOE published the technological and economic spreadsheets associated with the June 3, 2014 final rule along with a technical support document detailing those analyses. See *http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0015-0131*). DOE expects to start the Working Group's discussions with a list of analytical issues that should be considered for revision based on the June 2014 analysis for the six equipment classes of refrigeration walk-in cooler and freezer refrigeration systems subject to the negotiations and encourages interested parties to submit any new data to be considered to the Working Group.

B. Formation of Working Group

A working group will be formed and operated in full compliance with the requirements of FACA and in a manner consistent with the requirements of the NRA. DOE has determined that the working group shall not exceed 25 members. The Department believes that more than 25 members would make it difficult to conduct effective negotiations. DOE is aware that there are many more potential participants than there are membership slots on the working group. The Department does not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations; nevertheless, each affected interest can be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. To provide adequate representation, those coalitions must agree to support, both financially and technically, a member of the working group whom they choose to represent their interests.

DOE recognizes that when it considers adding covered products and establishing energy efficiency standards for residential products and commercial equipment, various segments of society may be affected in different ways—in some cases, producing unique ''interests'' in a proposed rule based on income, gender, or other factors. The Department will pay attention to providing that any unique interests that have been identified, and that may be significantly affected by the proposed rule, are represented.

FACA also requires that members of the public have the opportunity to attend meetings of the full committee and speak or otherwise address the committee during the public comment period. In addition, any member of the public is permitted to file a written statement with the advisory committee. DOE plans to follow these same procedures in conducting meetings of the working group.

C. Interests Involved/Working Group Membership

DOE anticipates that the working group will comprise no more than 25 members who represent affected and interested stakeholder groups, at least one of whom must be a member of the ASRAC. As required by FACA, the Department will conduct the negotiated rulemaking with particular attention to ensuring full and balanced representation of those interests that may be significantly affected by the proposed rule governing standards for the two walk-in cooler and freezer equipment classes applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and the four walk-in cooler and freezer equipment classes applicable to dedicated condensing refrigeration systems operating at low temperatures. Section 562 of the NRA defines the term ''interest'' as ''with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' Listed below are parties the Department to date has identified as being ''significantly affected'' by a proposed rule regarding the energy efficiency of walk-in coolers and freezers.

- The Department of Energy;
- Trade Associations representing refrigeration system manufacturers of walk-in coolers and freezers;
- Manufacturers of refrigeration systems of walk-in coolers and freezers;
- Manufacturers of walk-in coolers and freezer refrigeration system components and related suppliers;
- Distributors or contractors selling or installers of refrigeration systems of walk-in coolers and freezers;
- Utilities;

• Energy efficiency/environmental advocacy groups; and

• Commercial customers.

One purpose of this notice of intent is to determine whether Federal regulations for the two walk-in cooler and freezer equipment classes applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and the four walk-in cooler and freezer equipment classes applicable to dedicated condensing refrigeration systems operating at low temperatures will significantly affect interests that are not listed above. DOE invites comment and suggestions on its initial list of significantly affected interests.

Members may be individuals or organizations. If the effort is to be fruitful, participants in the working group should be able to fully and adequately represent the viewpoints of their respective interests. This document gives notice of DOE's process to other potential participants and affords them the opportunity to request representation in the negotiations. Those who wish to be appointed as members of the working group, should submit a request to DOE, in accordance with the public participation procedures outlined in the **DATES** and **ADDRESSES** sections of this notice of intent. Membership of the working group is likely to involve:

• Attendance at approximately eight (8), one (1)- to two (2)-day meetings (with the potential for two (2) additional one (1)- or two (2)-day meetings);

• Travel costs to those meetings; and

• Preparation time for those meetings.

Members serving on the working group will not receive compensation for their services. Interested parties who are not selected for membership on the working group may make valuable contributions to this negotiated rulemaking effort in any of the following ways:

• The person may request to be placed on the working group mailing list and submit written comments as appropriate.

• The person may attend working group meetings, which are open to the public; caucus with his or her interest's member on the working group; or even address the working group during the public comment portion of the working group meeting.

• The person could assist the efforts of a workgroup that the working group might establish.

A working group may establish informal workgroups, which usually are asked to facilitate committee deliberations by assisting with various technical matters (*e.g.,* researching or preparing summaries of the technical literature or comments on specific matters such as economic issues). Workgroups also might assist in estimating costs or drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, or formulating drafts of the various provisions and their justifications as previously developed by the working group. Given their support function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied. Because it recognizes the importance of this support work for the working group, DOE will provide appropriate technical expertise for such workgroups.

D. Good Faith Negotiation

Every working group member must be willing to negotiate in good faith and have the authority, granted by his or her constituency, to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition, therefore, should designate as its representative a person having the credibility and authority to ensure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking can require the appointed members to give a significant sustained for as long as the duration of the negotiated rulemaking. Other qualities of members that can be helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, as opposed to keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from some of the positions often taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the working group's discussions.

E. Facilitator

The facilitator will act as a neutral in the substantive development of the proposed standard. Rather, the facilitator's role generally includes:

• Impartially assisting the members of the working group in conducting discussions and negotiations; and

• Impartially assisting in performing the duties of the Designated Federal Official under FACA.

F. Department Representative

The DOE representative will be a full and active participant in the consensus building negotiations. The Department's representative will meet regularly with senior Department officials, briefing them on the negotiations and receiving their suggestions and advice so that he or she can effectively represent the Department's views regarding the issues before the working group. DOE's representative also will ensure that the entire spectrum of governmental interests affected by the standards rulemaking, including the Office of Management and Budget, the Attorney General, and other Departmental offices, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion.

G. Working Group and Schedule

After evaluating the comments submitted in response to this notice of intent and the requests for nominations, DOE will either inform the members of the working group that they have been selected or determine that conducting a negotiated rulemaking is inappropriate.

Per the ASRAC Charter, the working group is expected to make a concerted effort to negotiate a final term sheet by December 27, 2015.

DOE will advise working group members of administrative matters related to the functions of the working group before beginning. While the negotiated rulemaking process is underway, DOE is committed to performing much of the same analysis as it would during a normal standards rulemaking process and to providing information and technical support to the working group.

IV. Comments Requested

DOE requests comments on which parties should be included in a negotiated rulemaking to develop draft language pertaining to the energy efficiency of walk-in coolers and freezers and suggestions of additional interests and/or stakeholders that should be represented on the working group. All who wish to participate as members of the working group should submit a request for nomination to DOE.

V. Public Participation

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral

statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of intent.

Issued in Washington, DC, on July 31, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 2015–19235 Filed 8–4–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–2270; Airspace Docket No. 12–AWP–11]

Proposed Establishment of Class E Airspace, Cottonwood, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Cottonwood Airport, Cottonwood, AZ, to accommodate new Standard Instrument Approach Procedures at the airport. The FAA found establishment of controlled airspace necessary for the safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before September 21, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2015–2270; Airspace Docket No. 12–AWP–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (Telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Rob Riedl, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; Telephone (425) 203–4534.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–2270/Airspace Docket No. 12–AWP–11.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Cottonwood Airport, Cottonwood, AZ. The Class E airspace area would be established within a 4-mile radius of Cottonwood Airport, with a segment extending from the 4-mile radius to 15 miles southeast of the airport. This action is necessary for the safety and management of standard instrument approach procedures for IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

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

* * * * *

AWP AZ E5 Cottonwood, AZ [New]

Cottonwoood Airport, AZ

(Lat. 34°43′48″ N., long. 112°02′07″ W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Cottonwood Airport excluding that airspace southwest of a line beginning where the 299° bearing from the airport intersects the 4-mile radius to a point where the 181° bearing from the airport intersects the 4-mile radius; and that airspace 1.8 miles southwest and 1.2 miles northeast of the 150° bearing from the 4-mile radius to 15 miles southeast of the airport.

Issued in Seattle, Washington, on July 29, 2015.

Christopher Ramirez,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–19240 Filed 8–4–15; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 22, 85, 86, 600, 1033, 1036, 1037, 1039, 1042, 1065, 1066, and 1068

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 512, 523, 534, 535, 537, and 583

[EPA–HQ–OAR–2014–0827; NHTSA–2014–0132; FRL–9931–48–OAR]

RIN 2060–AS16; 2127–AL52

Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2; Notice of Public Hearings and Comment Period

Correction

Proposed Rule document 2015–18527 was inadvertently published in the Rules section of the issue of July 28, 2015, beginning on page 44893. It should have appeared in the Proposed Rules section.

[FR Doc. 2015–19297 Filed 8–3–15; 11:15 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 296

[Docket Number MARAD–2014–0043]

RIN 2133–AB86

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The Maritime Administration (''MARAD'') is soliciting public comments on amendments to its regulations that implement amendments to the Maritime Security Act of 2003 by the National Defense Authorization Act for Fiscal Year 2013 (''NDAA 2013''). The proposed revisions to the regulation, among other things, make changes to vessel eligibility for participation in the Maritime Security Program (MSP), authorize the extension of current MSP Operating Agreements, establish a new procedure for the award of new MSP Operating Agreements, extend the MSP through fiscal year 2025, update the Operating Agreement payments and schedule of payments, and eliminate the Maintenance and Repair Pilot Program.

DATES: Comments must be received on or before October 5, 2015. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2014–0043 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search MARAD–2014–0043 and follow the instructions for submitting comments.
- *Email: Rulemakings.MARAD@dot.gov.* Include MARAD–2014–0043 in the subject line of the message.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- *Hand Delivery/Courier:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

Note: If you fax, mail or hand deliver your input we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: William G. Kurfehs, Acting Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone (202) 366–2318; Fax (202) 366–5904, electronic mail to *Bill.Kurfehs@dot.gov.* If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION:

Background

Section 3508 of the NDAA 2013 authorized the extension of the Maritime Security Program through fiscal year 2025. Under Section 3508, the Secretary of Transportation, acting through the Maritime Administrator, is authorized to offer to extend the existing 60 MSP Operating Agreements through fiscal year 2025. Section 3508 authorized a new payment schedule of increasing MSP Operating Agreement payments through fiscal year 2025. Section 3508 also provided a new procedure for awarding MSP Operating Agreements, including a new priority system for the award of operating agreements. Under the new priority, award will be first based on vessel type as determined by military requirements and then based on the citizenship status of the applicant. Section 3508 revised the procedure for the transfer of Operating Agreements by eliminating the requirement to first offer an Operating Agreement to a U.S. Citizen under 46 U.S.C. 50501. In addition, Section 3508 eliminated the procedure for early termination of MSP Operating Agreements by available replacement vessels. Section 3508 also the eliminated the eligibility of Lighter Aboard Ship (LASH) vessels to participate in the MSP Fleet as a stand-alone category of vessel. The proposed rule eliminates the Maintenance and Repair Pilot Program, which has sunset and was not extended by the NDAA 2013. The proposed rule also updates MARAD's address for the purposes of submitting required reports and vouchers.

Public Participation

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number in your comments. MARAD encourages you to provide concise comments. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**.

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. When you send comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that could be made available to the public.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date. If a comment is received too late for MARAD to consider in developing a final rule (assuming that one is issued), MARAD will consider that comment as an informal suggestion for future rulemaking action.

For access to the docket to read background documents, including those referenced in this document, or to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the

docket is also available online at *http://www.regulations.gov.,* keyword search MARAD–2014–0043.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008, (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Rulemaking Analysis and Notices

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures. Under E.O. 12866 (58 FR 51735, October 4, 1993), supplemented by E.O.13563 (76 FR 3821, January 18, 2011) and DOT policies and procedures, MARAD must determine whether a regulatory action is ''significant,'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The Order defines ''significant regulatory action'' as one likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and. (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

A determination has been made that this notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866. This rulemaking will not result in an annual effect on the economy of $100 million or more. It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis.

Executive Order 13132 (Federalism)

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rulemaking has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MARAD does not believe that this rulemaking will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

We have analyzed this rulemaking for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.)* and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

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

MARAD has determined that this rulemaking will not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

Executive Order 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing ''economically significant'' rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this rulemaking is not economically significant, and will cause no environmental or health risk that disproportionately affects children.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

International Trade Impact Assessment

This rulemaking is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–

447, div. H, 118 Stat. 2809 at 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MARAD. The processing and treatment of any claim within the scope of this rulemaking by MARAD shall comply with all legal, regulatory and policy requirements regarding privacy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking proposes to update the regulations due to amendments to the Maritime Security Act. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by OMB.

List of Subjects in 46 CFR Part 296

Assistance payments, Maritime carriers, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Maritime Administration proposes to amend 46 CFR part 296 as follows:

PART 296—MARITIME SECURITY PROGRAM

■ 1. The authority citation for part 296 is revised to read as follows:

Authority: Pub. L. 108–136, Pub. L. 109–163, Pub. L. Pub. L. 112–239; 49 U.S.C. 322(a), 49 CFR 1.93.

■ 2. Amend § 296.2 by:
■ a. Revising the definitions of *Foreign Commerce, MSA 2003, Participating Fleet Vessel,* and *Section 2 Citizen;* and
■ b. Removing the definition of *Lash Vessel.*

The revisions to read as follows:

§ 296.2 Definitions.

* * * * *

Foreign Commerce means—

(1) Commerce or trade between the United States, its territories, or the District of Columbia, and a foreign country; and

(2) Commerce or trade between foreign countries.

* * * * *

MSA 2003 means the Maritime Security Act of 2003, as amended.

* * * * *

Participating Fleet Vessel means a vessel that—

(1) On October 1, 2015—

(i) Meets the requirements of paragraph (1), (2), (3), or (4) of section 53102(c) of the MSA; and

(ii) Is less than 20 years old of age if the vessel is a tank vessel, or is less than 25 years of age for all other vessel types; and

(2) on December 31, 2014, is covered by an operating agreement under 46 U.S.C. chapter 531.

* * * * *

Section 2 Citizen means a United States citizen within the meaning of 46 U.S.C. 50501, without regard to any statute that ''deems'' a vessel to be owned and operated by a United States citizen within the meaning of 46 U.S.C. 50501.

* * * * *

■ 3. Amend § 296.11(a)(3) by revising it to read as follows:

§ 296.11 Vessel requirements.

(a) * * *

(3) The vessel is self-propelled and—

(i) Is a tank vessel that is 10 years of age or less on the date the vessel is included in the Fleet; or

(ii) Is any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

* * * * *

§§ 296.21, 296.22, 296.23 [Removed and reserved].

■ 4. Remove and reserve §§ 296.21 through 296.23.

■ 5. Revise § 296.24 to read as follows:

§ 296.24 Subsequent awards of MSP Operating Agreements.

(a) MARAD intends to ensure that all available MSP Operating Agreements are fully utilized at all times, in order to maximize the benefit of the MSP. Accordingly, when an MSP Operating Agreement becomes available through termination by the Secretary or early termination by the MSP contractor, and no transfer under 46 U.S.C. 53105(e) is involved, MARAD will reissue the MSP Operating Agreement pursuant to the following criteria:

(1) The proposed vessel shall meet the requirements for vessel eligibility in 46 U.S.C. 53102(b);

(2) The applicant shall meet the vessel ownership and operating requirements for priority in 46 U.S.C. 53103(c); and

(3) Priority will be assigned on the basis of vessel type established by military requirements specified by the Secretary of Defense. After consideration of military requirements, priority shall be given to an applicant that—

(i) Is a United States citizen under section 50501 of this title; and

(ii) Offers a vessel of the type established by the Secretary of Defense as meeting military requirements.

(b) MARAD shall allow an applicant at least 30 days to submit an application for a new Operating Agreement.

(c) MARAD and USTRANSCOM will determine if the applications received form an adequate pool for award of a reissued MSP Operating Agreement. If so, MARAD will award a reissued MSP Operating Agreement from that pool of qualified applicants in its discretion according to the procedures of paragraph (b) of this section, subject to approval of the Secretary of Defense. MARAD and USTRANSCOM may decide to open a new round of applications. MARAD shall provide written reasons for denying applications. Inasmuch as MSP furthers a public purpose and MARAD does not acquire goods or services through MSP, the selection process for award of MSP Operating Agreements does not constitute an acquisition process subject to any procurement law or the Federal Acquisition Regulations.

■ 6. Revise § 296.30 to read as follows:

§ 296.30 General conditions.

(a) *Approval.* The Secretary, in conjunction with the Secretary of Defense, may approve applications to enter into an MSP Operating Agreement and make MSP Payments with respect

to vessels that are determined by the Secretary to be commercially viable and those that are deemed by the Secretary of Defense to be militarily useful for meeting the sealift needs of the United States in time of war or national emergencies. The Secretary announced an initial award of 60 MSP Operating Agreements on January 12, 2005. In June 2014, the Secretary extended the term of all 60 MSP Operating Agreements through FY 2025.

(b) *Effective date*—(1) *General Rule.* Unless otherwise provided, the effective date of an MSP Operating Agreement is October 1, 2005.

(2) *Exceptions.* In the case of an Eligible Vessel to be included in an MSP Operating Agreement that is on charter to the U.S. Government, other than a charter under the provisions of an Emergency Preparedness Agreement (EPA) provided by section 53107 of the MSA 2003, as amended unless an earlier date is requested by the applicant, the effective date for an MSP Operating Agreement shall be:

(i) The expiration or termination date of the Government charter covering the vessel; or

(ii) Any earlier date on which the vessel is withdrawn from that charter, but not before October 1, 2005.

(c) *Replacement Vessels.* A Contractor may replace an MSP vessel under an MSP Operating Agreement with another vessel that is eligible to be included in the MSP under section 296.11(a), if the Secretary, in conjunction with the Secretary of Defense, approves the replacement vessel.

(d) *Termination by the Secretary.* If the Contractor materially fails to comply with the terms of the MSP Operating Agreement:

(1) The Secretary shall notify the Contractor and provide a reasonable opportunity for the Contractor to comply with the MSP Operating Agreement;

(2) The Secretary shall terminate the MSP Operating Agreement if the Contractor fails to achieve such compliance; and

(3) Upon such termination, any funds obligated by the relevant MSP Operating Agreement shall be available to the Secretary to carry out the MSP.

(e) *Early termination by Contractor, generally.* An MSP Operating Agreement shall terminate on a date specified by the Contractor if the Contractor notifies the Secretary not later than 60 days before the effective date of the proposed termination that the Contractor intends to terminate the MSP Operating Agreement. The Contractor shall be bound by the provisions relating to vessel documentation and national security commitments, and by its EPA for the full term, from October 1, 2005 through September 30, 2025, of the MSP Operating Agreement.

(f) [Reserved].

(g) *Non-renewal for lack of funds.* If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority of MSA 2003, as amended, for that fiscal year, the Secretary will notify the Senate Committees on Armed Services and Commerce, Science, and Transportation, and the House of Representative Committee on Armed Services, that MSP Operating Agreements for which sufficient funds are not available, will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If only partial funding is appropriated by the 60th day of such fiscal year, then the Secretary, in consultation with the Secretary of Defense, shall select the vessels to retain under MSP Operating Agreements, based on the Secretaries' determinations of the most militarily useful and commercially viable vessels. In the event that no funds are appropriated, then all MSP Operating Agreements shall be terminated and, each Contractor shall be released from its obligations under the MSP Operating Agreement. Final payments under the terminated MSP Operating Agreements shall be made in accordance with section 296.41. To the extent that funds are appropriated in a subsequent fiscal year, former MSP Operating Agreements may be reinstated if mutually acceptable to the Administrator and the Contractor provided the MSP vessel remains eligible.

(h) *Release of Vessels from Obligations:* If sufficient funds are not appropriated for payments under an MSP Operating Agreement for any fiscal year by the 60th day of that fiscal year, then—

(1) Each vessel covered by the terminated MSP Operating Agreement is released from any further obligation under the MSP Operating Agreement; and

(2) If section 902 of the Act is applicable to a vessel that has been transferred to a foreign registry due to a terminated MSP Operating Agreement, then that vessel is available to be requisitioned by the Secretary pursuant to section 902 of the Act.

(3) Paragraph (h) of this section is not applicable to vessels under MSP Operating Agreements that have been terminated for any other reason.

(i) *Foreign Transfer of Vessel.* A Contractor may transfer a non-tank vessel to a foreign registry, without approval of the Secretary, if the Secretary, in conjunction with the Secretary of Defense, determines that the contractor will provide a replacement vessel:

(1) Of equal or greater military capability or of a capacity that is equivalent or greater as measured in deadweight tons, gross tons, or container equivalent units, as appropriate;

(2) That is a documented vessel under 46 U.S.C. chapter 121 by the owner of the vessel to be placed under a foreign registry; and

(3) That is not more than 10 years of age on the date of that documentation.

(j) *Transfer of MSP Operating Agreements.* A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the operating agreement) to any person that is eligible to enter into the operating agreement under this chapter if the Secretary and the Secretary of Defense determine that the transfer is in the best interests of the United States. A transaction shall not be considered a transfer of an operating agreement if the same legal entity with the same vessels remains the contracting party under the operating agreement.

■ 7. Amend § 296.31 by revising paragraphs (a) and (d)(2) and adding paragraph (e)(2)to read as follows:

§ 296.31 MSP assistance conditions.

(a) *Term of MSP Operating Agreement.* MSP Operating Agreements are authorized for 20 years, starting on October 1, 2005, and ending on September 30, 2025, but payments to Contractors are subject to annual appropriations each fiscal year. MARAD may enter into MSP Operating Agreements for a period less than the full term authorized under the MSA 2003, as amended.

* * * * *

(d) * * *

(2) *Operation:* Be operated exclusively in the foreign trade and shall not otherwise be operated in the coastwise trade of the United States; and

* * * * *

(e) * * *

(2) [Reserved]

■ 8. Amend § 296.32 by revising the introductory text to read as follows:

The Contractor shall submit to the Director, Office of Financial Approvals, Maritime Administration, 2nd Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590, one of the following reports, including management footnotes where necessary to make a fair financial presentation:

* * * * *

■ 9. Revise § 296.40 to read as follows:

§ 296.40 Billing procedures.

Submission of voucher. For contractors operating under more than one MSP Operating Agreement, the contractor may submit a single monthly voucher applicable to all its MSP Operating Agreements. Each voucher submission shall include a certification that the vessel(s) for which payment is requested were operated in accordance with § 296.31(d) MSP Operating Agreements with MARAD, and consideration shall be given to reductions in amounts payable as set forth in § 296.41(b) and (c). All submissions shall be forwarded to the Director, Office of Accounting, MAR–330, Maritime Administration, 2nd Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590. Payments shall be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901.

■ 10. Amend § 296.41 by revising paragraph (a) to read as follows:

§ 296.41 Payment procedures.

(a) *Amount payable.* An MSP Operating Agreement shall provide, subject to the availability of appropriations and to the extent the MSP Operating Agreement is in effect, for each Agreement Vessel, an annual payment equal to $2,600,000 for FY 2006, FY 2007, FY 2008; $2,900,000 for FY 2009, FY 2010, FY 2011; and $3,100,000 for FY 2012, FY 2013, FY 2014, FY 2015, FY 2016, 2017, and 2018; $3,500,000 for FY 2019, 2020, and 2021; and $3,700,000 for FY 2022, 2023, 2024, and 2025. This amount shall be paid in equal monthly installments at the end of each month. The annual amount payable shall not be reduced except as provided in paragraphs (b) and (c) of this section.

* * * * *

Subpart G [Removed]

■ 11. Remove Subpart G, consisting of § 296.60.

Dated: July 31, 2015.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2015–19254 Filed 8–4–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 9, 17, 22, and 52

[FAR Case 2014–025; Docket No. 2014–0025; Sequence No. 1]

RIN 9000–AM81

Federal Acquisition Regulation; Fair Pay and Safe Workplaces; Second Extension of Time for Comments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; second extension of comment period.

SUMMARY: DoD, GSA, and NASA issued a proposed rule (FAR Case 2014–025) on May 28, 2015, amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13673, ''Fair Pay and Safe Workplaces,'' which is designed to improve contractor compliance with labor laws and increase efficiency and cost savings in Federal contracting.

On July 14, 2015, DoD, GSA, and NASA published an extension of the comment period by 15 days, from July 27, 2015, to August 11, 2015. The deadline for submitting comments is being further extended by an additional 15 days from August 11, 2015, to August 26, 2015, to provide additional time for interested parties to comment on the FAR case. The due date for comments on DOL's Guidance for Executive Order 13673, ''Fair Pay and Safe Workplaces'', which also implements the E.O., is being extended to August 26, 2015 as well.

DATES: The comment period for the purposed rule published on May 28, 2015 (80 FR 30548), is extended. Submit comments by August 26, 2015.

ADDRESSES: Submit comments in response to FAR Case 2014–025 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2014–025''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2014–025.'' Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2014–025'' on your attached document.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2014–025, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2014–025.

SUPPLEMENTARY INFORMATION:

Background

DoD, GSA, NASA published a proposed rule in the **Federal Register** at 80 FR 30548, May 28, 2015. The comment period is extended to provide additional time for interested parties to submit comments on the FAR case until August 26, 2015.

List of Subjects in 48 CFR Parts 1, 4, 9, 17, 22, and 52

Government procurement.

Dated: July 30, 2015.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–19169 Filed 8–4–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 150626556–5556–01]

RIN 0648–BF20

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; State Waters Exemption

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to allow an exemption for Northern Gulf of Maine federally permitted vessels with state-waters permits issued from the

State of Maine to continue fishing in the Maine state-waters portion of the Northern Gulf of Maine management area once NMFS has announced that the Federal total allowable catch has been fully harvested in a given year. Maine requested this exemption as part of the Scallop State Water Exemption Program, which specifies that a state may be eligible for a state waters exemption to specific Federal regulations if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Atlantic Sea Scallop Fishery Management Plan. The regulations further state that the Regional Administrator, Greater Atlantic Regional Fisheries Office, NMFS, shall determine if a state meets that criteria and shall authorize the exemption for such state by publishing a rule in the **Federal Register**. Based on the information that Maine has submitted, NMFS has preliminarily determined that Maine qualifies for this exemption and that this exemption would not have an impact on the effectiveness of Federal management measures for the scallop fishery overall or within the Northern Gulf of Maine management area.

DATES: Comments must be received by 5 p.m., local time, on September 4, 2015.

ADDRESSES: Documents supporting this action, including the State of Maine's (Maine) request for the exemption and Framework Adjustment 26 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) are available upon request from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

You may submit comments on this document, identified by NOAA–NMFS-2015–0079 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0079,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Maine State Waters Exemption Program.''

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

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978–281–9244.

SUPPLEMENTARY INFORMATION:

Background

The Scallop State Waters Exemption Program (Program) has been in place since 1994. The purpose of the Program is to allow Federal permit holders to harvest scallops in the state waters fishery on a more equitable basis where Federal and state laws are inconsistent, while ensuring they continue to submit catch and effort data to NMFS. The Program specifies that a state with a scallop fishery may be eligible for state waters exemptions if it has a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. Under the Program, if NMFS determines that a state is found to be eligible, federally permitted scallop vessels fishing in state waters may be exempted from the following Federal scallop regulations: Limited access scallop vessels may fish in state waters outside of scallop days-at-sea, limited access and limited access general category (LAGC) individual fishing quota vessels may be exempt from Federal gear and possession limit restrictions, and vessels with selected scallop permit types may be exempt from specific regulations pertaining to the Northern Gulf of Maine (NGOM) management area.

The exemption from specific regulations pertaining to the NGOM management area was recently added to the Program via Framework 26 to the Scallop FMP, implemented on May 1, 2015, which specifically allows states to apply for a specific exemption that would enable some scallop vessels to continue to fish in state waters within the NGOM management area once the Federal NGOM total allowable catch (TAC) is reached. Any state interested in applying for this exemption must identify the scallop-permitted vessels that would be subject to the exemption (*i.e.,* limited access, LAGC individual fishing quota, LAGC incidental, or LAGC NGOM). However, vessels would not be able to fish for scallops in the Federal portion of the NGOM once the TAC is harvested.

Maine currently has the state waters exemptions from gear and effort control restrictions for vessels issued Federal scallop permits and Maine commercial scallop licenses that are fishing exclusively in Maine waters (74 FR 37952; July 30, 2009). Following the implementation of Framework 26, NMFS received a request from the state to expand its current exemptions to allow federally NGOM-permitted vessels with Maine state-waters permits to fish in the Maine state-waters portion of the NGOM management area once we project the Federal NGOM TAC to be fully harvested. This provision would allow those vessels to continue to fish in state waters along with state permitted vessels without Federal permits. Although the 70,000-lb (31,751-kg) NGOM Federal TAC has never been exceeded since the NGOM management area was created in 2008, there is now a higher potential that the TAC will be reached because scallop effort has increased in the NGOM in recent years as the stock has improved, particularly in state waters. Without this exemption, these federally permitted vessels would be prevented from participating in Maine's state water fishery if the Federal NGOM TAC is reached. State-only permitted scallop vessels are able to continue to fish in state waters after the Federal closure.

Based on the information Maine submitted regarding its scallop conservation program, NMFS has preliminarily determined that the state qualifies for the NGOM state waters exemption under the Scallop FMP. As required by the scallop fishery regulations, exemptions can only be granted if the state's scallop fishery would not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. Maine's scallop fishery restrictions are as restrictive as Federal scallop fishing regulations. Maine's scallop fishery became limited access in 2008. Fishing time and effort on scallop trips are limited by possession limits and a short season. The fishery is open only 70 days of the year, between December and March. Maine manages the fishery in its waters by a rotational management plan and employs a trigger mechanism that closes a given area if 30 to 40 percent of the harvestable biomass has been removed. Maine has issued 545 commercial dragger scallop

licenses, in addition to 82 commercial dive licenses. In 2014, 438 of these licenses were active (*i.e.,* landed scallops at least once). There are currently 40 federally NGOM-permitted vessels also issued Maine commercial scallop licenses, and 12 of them are currently active in the state fishery. If these federally permitted vessels were allowed to continue fishing for scallops in Maine state waters after the NGOM TAC is harvested, Maines's restrictive scallop fishery regulations would still limit mortality and effort. Allowing for this NGOM exemption would have no impact on the effectiveness of Federal management measures for the scallop fishery overall or within the NGOM management area because the NGOM Federal TAC is set based only on the portion of the resource in Federal waters.

Maine is the only state that has requested a NGOM closure exemption. Maine requested that this exemption apply only to vessels with Federal NGOM permits. As such, all other federally permitted scallop vessel categories would be prohibited from retaining, possessing, and landing scallops from within the NGOM management area, in both Federal and state waters, once the NGOM hard TAC is fully harvested.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The ability for states with territorial waters located within the NGOM management area to apply for this specific exemption was included into the Scallop FMP through Framework 26, which was implemented in May 2015. That action included a Final Regulatory Flexibility Analyses (FRFA) that analyzed the economic impacts of this NGOM exemption on small entities.

This action would impact up to 40 NGOM-permitted vessels home ported in Maine. Although only 12 of these vessels are currently active, more vessels could enter the fishery at any time and benefit from the exemption. Based on available information, NMFS has determined that all 40 NGOM-permitted vessels that would be impacted by this rule are small entities under the Small Business Administration's size standards because they are all engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $5.5 million if fishing for shellfish (NAICS code: 114112).

This exemption is expected to have positive impacts on the revenues of applicable scallop vessels and positive impacts on the overall economic benefits from the scallop resource in state waters. Should the Federal NGOM fishery close, this exemption will result in moderate to high positive impacts on scallop revenue in Maine because NGOM scallopers will be able to continue fishing for scallops in state waters. This proposed action would not have any additional impacts on federally permitted vessels beyond what was analyzed in Framework 26 and would not create any additional economic impacts that were not considered in that action's FRFA.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 30, 2015.

Samuel D. Rauch III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.54, paragraph (a)(4) is revised to read as follows:

§ 648.54 State waters exemption.

(a) * * *

(4) The Regional Administrator has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption, subject to the exemptions specified in paragraphs (b) and (c) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section. In addition, a vessel issued a Federal Northern Gulf of Maine permit fishing in State of Maine waters may fish under the State of Maine state waters exemption specified in paragraph (d) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section.

* * * * *

[FR Doc. 2015–19149 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 150610515–5515–01]

RIN 0648–BF16

Fisheries of the Northeastern United States; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we, the National Marine Fisheries Service, are proposing to modify the Lobster Conservation Management Area 4 seasonal closure and are requesting comment. This action is necessary to reduce fishing effort in Area 4 by 10 percent. This action is intended to ensure fishery regulations for the lobster fishery in Federal waters remain consistent with the Commission's Interstate Fishery Management Plan for American Lobster and previously implemented state measures and the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: Comments must be received on or before September 4, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0075, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0075,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on American Lobster Proposed Rule.''

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

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

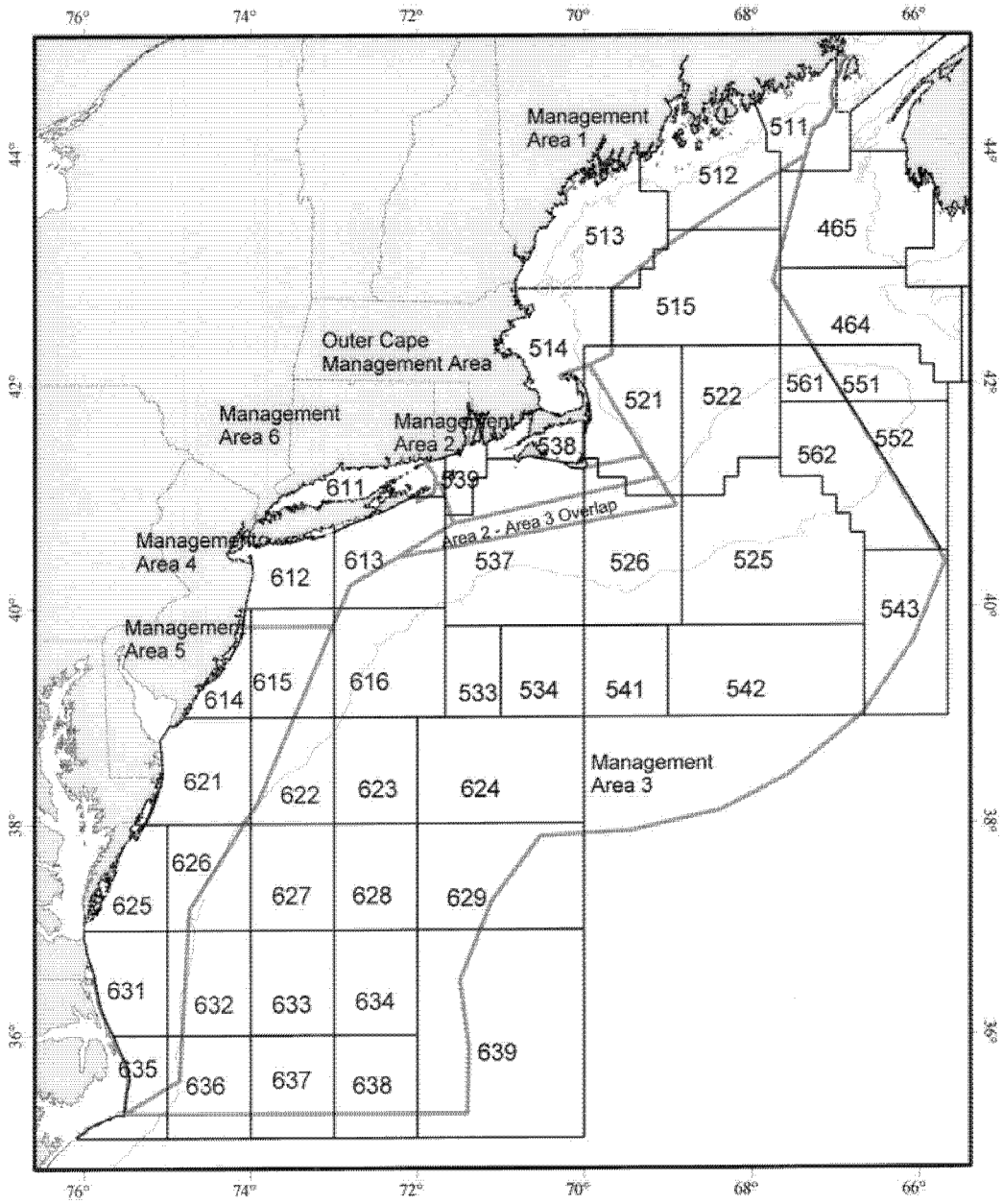
SUPPLEMENTARY INFORMATION:

Background

The American lobster fishery is managed by the Commission under Amendment 3 to the Interstate Fishery Management Pan for American Lobster (ISFMP). Since 1997, the Commission has coordinated the efforts of the states and Federal Government toward sustainable management of the American lobster fishery. We manage the portion of the fishery conducted in Federal waters from 3 to 200 miles offshore, based on management recommendations made by the Commission.

The American lobster management unit is divided between three lobster stocks and seven Lobster Conservation Management Areas.

Figure 1. Lobster Conservation Management Area and Statistical Areas



The 2009 stock assessment indicated that the Southern New England American lobster stock, which includes all or part of six areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the Southern New England stock, the Commission adopted Addendum XVII to Amendment 3 of the ISFMP in February of 2012. The measures in Addendum XVII were intended to reduce fishing exploitation on the Southern New England lobster stock by 10 percent. Copies of the Addendum are available on the Commission's Web site at: *http://www.asmfc.org.*

Consistent with the Commission's action in Addendum XVII, we issued complementary regulations (80 FR 2028; January 15, 2015) for Areas 2, 3, 4, and 5. Measures for Area 4 included mandatory v-notching requirement of egg-bearing female lobster and an annual seasonal closure from February 1–March 31. States, as required, came into compliance with Addendum XVII by January 1, 2013.

Proposed Measures

We are now proposing to change the Area 4 seasonal closure from February 1–March 31 to April 30–May 31, consistent with the Commission's recommendation. The American Lobster Technical Committee analyzed the effectiveness of the February 1–March 31 closure after it was implemented by the states and presented these results to the Commission in late 2014. The Technical Committee's analysis indicated that the February and March closure in Area 4 achieved only a 3.7-percent reduction in effort, falling short of the required 10-percent reduction. The Technical Committee recommended that the Lobster Board shift the annual seasonal closure from February 1–March 31 to April 30–May 31. The Technical Committee projected that this shift would achieve a 10.1-percent reduction in effort. The Lobster Board reviewed this analysis and approved the Area 4 seasonal closure modification during several meetings in late 2014 and early 2015. The Lobster Board also recommended that all jurisdictions change the closure date to April 30–May 31 annually. New York and New Jersey (the two states bordering Area 4) have already adjusted their regulatory closure to this later date. In addition, the states have retained the 1-week grace period at the end of the seasonal closure to reset unbaited gear. They did not retain the 2-week grace period at the start of the closure and state regulations.

The affected states have already issued or are in the process of issuing regulations that comply with this change. We are proposing to shift the timing of the Area 4 seasonal closure, consistent with the Commission's recommendation.

Classification

This proposed rule has been preliminary determined to be consistent with the provisions of the Atlantic Coastal Act, the National Standards of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with federalism implications as that term is defined in E.O. 13132. The proposed measures are based upon the American Lobster ISFMP that was created by and is overseen by the states. The proposed measures were a result of a modification to Addendum XVII measures, which was approved by the states, recommended by the states through the Commission for Federal adoption, and are in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP, which makes recommendations for Federal action. Additionally, these proposed measures would not pre-empt state law and would do nothing to directly regulate the states.

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. We prepared an Initial Regulatory Flexibility Analysis (IRFA) for this action as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The proposed management measure would affect small entities (*i.e.,* Federal lobster permit holders) fishing in Southern New England, specifically in Area 4.

Description of the Reasons Why Action by NMFS Is Being Considered

For a full description of the reasons why this action is being considered, please refer to the Background section of the preamble. The Commission has recommended a change to the Area 4 seasonal closure, which is expected to better achieve the required effort reduction. The affected states have already issued regulations that comply with this change. Consistent with the Atlantic Coastal Act, we intend to implement regulations consistent with Commission recommendations and those promulgated by our partner states.

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

The objective of the proposed action is to assist in the reduction of fishing exploitation by 10 percent as part of an overall effort to rebuild the Southern New England lobster stock. The legal basis for the proposed action is the ISFMP and promulgating regulations at 50 CFR part 697.

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

The RFA recognizes and defines three kinds of small entities: Small businesses; small organizations; and small governmental jurisdictions. The Small Business Administration (SBA) size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for ''small business'' concerns. Size standards have been established (and recently modified) for all for-profit economic activities or industries in the North American Industry Classification System (NAICS). Designations of large and small entities were based on each entity's 3-year average landings. For entities landing a plurality of revenue in shellfish (NAICS 111412), the threshold for ''large'' is $5.0 million. For entities landing a plurality of revenue in finfish (NAICS 111411), the threshold for ''large'' is $19.0 million. The number of directly regulated entities for purposes of analyzing the economic impacts and describing those that are small businesses is selected based on permits held. Since this proposed regulation applies only to the businesses that hold Area 4 permits, only those business entities are evaluated. Business entities that do not own vessels with directly regulated permits are not described.

Of the 47 small entities identified in the IRFA, 23 are considered a shellfish business, 12 are considered a finfish business, and 12 could not be identified

as either because even though they had a lobster permit (in Area 4), they had no earned revenue from fishing activity. Because they had no revenue in the last 3 years, they would be considered small by default, but would also be considered as latent effort.

The entity definition used by the Northeast Fisheries Science Center Social Sciences Branch uses only unique combinations of owners. That is, entities are not combined if they have a shared owner. Section 3 of the SBA defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

The recent addition of vessel owner information to the permit data allows us to better define fishing ''businesses.'' The vessel ownership data identify all the individual people who own fishing vessels. Vessels can be grouped together according to common owners, which can then be treated as a fishing business, for purposes of RFA analyses. Revenues summed across all vessels in the group and the activities that generate those revenues form the basis for determining whether the entity is a large or small business. Ownership data are available for the potentially impacted by the proposed action from 2010 onward.

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a ''confirmation of history'' (CPH) if the fishing and permit history of such vessel has been retained lawfully by the applicant. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. The ownership data based on the permits held do not contain information on CPH permits. A total of six CPH's exist for lobster Area 4.

While considering the number of affected entities, it is also worth noting that the vast majority of permit holders are either dually permitted (*i.e.,* issued both a Federal and state permit) or otherwise subject to a state's lobster regulations. Accordingly, most all Federal permit holders will be required to comply with the proposed measures even if NMFS does not implement these measures. In other words, these Federal permit holders will be obligated to comply with these measures and responsibilities attendant to their state permit regardless of whether these same measures are also required under their Federal permit. In fact, if we do not take the proposed action, these dual permit holders will be restricted for a total of 3 months (February 1–March 31 under the Federal permit and April 30–May 31 under the state permit). Neither the Technical Committee or the Lobster Board recommended this scenario.

Descriptions of Significant Alternatives Which Minimize Any Significant Economic Impact of Proposed Action on Small Entities

Due to the expected high rate of dual permitting and that the fact that all of the impacted states already comply with the revised Area 4 seasonal closure or soon will, the majority of Federal vessels must already abide by these requirements, and therefore have already been impacted. For those vessels not dually permitted, this change in the Area 4 seasonal closure can be expected to have limited economic impact to permit holders. Because the proposed regulations are consistent with Commission recommendations and current state regulations, alternative measures, such as maintaining the status quo, would likely create inconsistencies and regulatory disconnects with the states and would likely worsen potential economic impacts. Therefore, the status quo was not considered reasonable, and, for similar reasons, other alternatives that maintained disconnected state and Federal closures were not considered. The status quo is also inconsistent with the objectives of Addendum XVII to the ISFMP and, consequently, was not considered.

Reporting, Recordkeeping and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Duplication, Overlap or Conflict With Other Federal Rules

This action does not duplicate, overlap, or conflict with any other Federal Laws.

List of Subjects in 50 CFR Part 697

Fisheries, fishing.

Dated: July 30, 2015.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.7, revise paragraph (c)(1)(xxx)(B) to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) * * *

(1) * * *

(xxx) * * *

(B) *Area 4 seasonal closure.* The Federal waters of Area 4 shall be closed to lobster fishing from April 30 through May 31.

(*1*) Lobster fishing is prohibited in Area 4 during this seasonal closure. Federal lobster permit holders are prohibited from possessing or landing lobster taken from Area 4 during the seasonal closure.

(*2*) All lobster traps must be removed from Area 4 waters before the start of the seasonal closure and may not be re-deployed into Area 4 waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning, or in any way leaving their traps in Area 4 waters during this seasonal closure.

(*i*) Lobster fishers have a 1-week grace period from May 24 to May 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal lobster permit holder re-setting Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(*ii*) [Reserved]

(*3*) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 4 waters during this seasonal closure unless the vessel is operating subject to the grace period identified in paragraph (c)(1)(xxx)(B)(*2*)(*ii*) of this section or is transiting through Area 4 pursuant to paragraph (c)(1)(xxx)(B)(*5*) of this section.

(*4*) The Area 4 seasonal closure relates only to Area 4. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal

lobster permit holders with an Area 4 designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(*5)* Transiting Area 4. Federal lobster permit holders may possess lobster traps on their vessels in Area 4 during the seasonal closure only if:

(*i*) The trap gear is stowed; and

(*ii*) The vessel is transiting the Area 4. For the purposes of this section, transiting shall mean passing through Area 4 without stopping, to reach a destination outside Area 4.

(*6*) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from Area 4 during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(i) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(*ii*) That all lobsters caught in the subject traps will be immediately returned to the sea.

(iii) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

* * * * *

[FR Doc. 2015–19233 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 150
Wednesday, August 5, 2015

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

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee To Receive Information Regarding State Compliance With the Help America Vote Act

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the California Advisory Committee (Committee) to the Commission will be held on Friday, August 28, 2015. The purpose of the meeting is for the Committee to receive information regarding state compliance with the Help America Vote Act. The meeting will be held at the Los Angeles Central Library, 630 W. Fifth Street, Los Angeles, CA 90071. It is scheduled to begin at 10:00 a.m. and adjourn at approximately 5:00 p.m.

Members of the public are entitled to make comments in the open period at the end of the meeting. Members of the public may also submit written comments. The comments must be received in the Western Regional Office of the Commission by September 28, 2015. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Peter Minarik, Regional Director, Western Regional Office, at *pminarik@usccr.gov.* Persons who desire additional information should contact the Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *pminarik@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=237* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

Agenda:

Morning Session—Presentations by the State Auditor and election officials of Los Angeles County and San Diego County
Afternoon Session—Presentations from invited community organizations
Open Comment
Adjournment

DATES: Friday, August 28, 2015 from 10:00 a.m. to 5:00 p.m. PST.

ADDRESSES: The Los Angeles Central Library, 630 W. Fifth Street, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Peter Minarik, DFO, at (213) 894–3437 or *pminarik@usccr.gov*.

Dated: July 31, 2015.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2015–19187 Filed 8–4–15; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee for a Meeting To Discuss Potential Project Topics

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Monday, October 26, 2015, at 3:00 p.m. EST for the purpose of reviewing and discussing for approval a project proposal regarding the civil rights impact of civil forfeiture practices in the State. The Committee met on July 20, 2015 and voted to take up a study on this topic and potential disparate impact or denial of equal protection under the law on the basis of relevant protected classes.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–461–2024, conference ID: 5095705. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement at the end of the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also entitled to submit written comments; the comments must be received in the regional office by October 26, 2015. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=255. C*lick on the ''Meeting Details'' and ''Documents'' links to download. Records generated from this meeting

may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
Donna Budnick, Chair
Review, Discussion and Approval of Project Proposal: Civil Rights Impact of Civil Forfeiture Practices in Michigan
Future plans and actions
Adjournment

DATES: The meeting will be held on Monday, October 26, 2015, at 3:00 p.m. EST

Public Call Information

Dial: 888–461–2024
Conference ID: 5095705

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski at *mwojnaroski@usccr.gov* or 312–353–8311.

Dated: July 31, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015–19185 Filed 8–4–15; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i State Advisory Committee for the Purpose of Holding a Public Meeting on the Civil Rights of Micronesians

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Hawai'i State Advisory Committee (Committee) to the Commission will be held on Thursday, August 20, 2015, for the purpose of holding a public meeting on the civil rights of Micronesians. The meeting will be held at the Hawaii State Capitol Auditorium, 415 S. Beretania Street, Honolulu, HI 96813. The meeting is scheduled to begin at 9:30 a.m. and adjourn at approximately 5:00 p.m.

Members of the public are entitled to make comments in the open period at the end of the meeting. Members of the public may also submit written comments. The comments must be received in the Western Regional Office of the Commission by September 20, 2015. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Peter Minarik, Regional Director, Western Regional Office, at *pminarik@usccr.gov.* Persons who desire additional information should contact the Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *pminarik@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://database.faca.gov/committee/meetings.aspx?cid=244* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

Agenda

Public meeting on the civil rights of Micronesians—9:30 a.m.
Public comment—4:00 p.m.
Adjournment—5:00 p.m.

DATES: Thursday, August 20, 2015.

ADDRESSES: The Hawai'i State Capitol Auditorium, 415 S. Beretania Street, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Peter Minarik, DFO, at (213) 894–3437 or *pminarik@usccr.gov.*

Dated: July 31, 2015.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2015–19186 Filed 8–4–15; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–805]

Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Final Results of Expedited First Sunset Review of the Countervailing Duty Order

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

SUMMARY: The Department of Commerce (the Department) finds that revocation of the countervailing duty (CVD) order on polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: *Effective Date:* August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1396.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2010, the Department published the CVD order on PRCBs from Vietnam.[1] On April 1, 2015, the Department published a notice of initiation of the first sunset review of the *CVD Order* on PRCBs from Vietnam, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

On April 16, 2015, the Polyethylene Retail Carrier Bag Committee (the Committee), an *ad hoc* association of five producers of the domestic like product, timely notified the Department of its intent to participate.[3] The Committee is comprised of the following five domestic producers of PRCBs: Hilex Poly Co., LLC, Superbag Corporation, Unistar Plastics, LLC, Command Packaging, and Roplast Industries, Inc.

On May 1, 2015, the Department received a substantive response from the Committee within the 30-day deadline

[1] *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Countervailing Duty Order,* 75 FR 23670 (May 4, 2010) (*CVD Order*).

[2] *See Initiation of Five-Year* (''*Sunset*'') *Review,* 80 FR 17388 (April 1, 2015).

[3] *See* Letter to the Department from the Committee, dated April 16, 2015.

specified in 19 CFR 351.218(d)(3)(i).[4] The Department did not receive substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the CVD order on PRCBs from Vietnam.

Scope of the Order

This order covers PRCBs. Imports of merchandise included within the scope of this order are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States. The Issues and Decision Memorandum, which is hereby adopted by this notice, provides a full description of the scope of the order.[5]

The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Analysis of Comments Received

In the Issues and Decision Memorandum, we have addressed all issues that parties raised in this review. The issues include the likelihood of continuation or recurrence of countervailable subsidies and the net countervailable subsidies likely to prevail if the Department revoked the order.

Final Results of Sunset Review

Pursuant to sections 752(b)(1) and (3) of the Act, we determine that revocation of the *CVD Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Exporter/manufacturer	Net subsidy rate (percent) [6]
Advance Polybag Co., Ltd	52.56
Fotai Vietnam Enterprise Corp. and Fotai Enterprise Corporation	5.28
All Others	5.28

Administrative Protective Order

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

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: July 24, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

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

1. Summary
2. Background
3. Scope of the Order
4. History of the Order
5. Discussion of the Issues
   a. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
   b. Net Countervailable Subsidy Likely To Prevail
6. Nature of the Subsidies
7. Final Results of Sunset Review
8. Recommendation

[FR Doc. 2015–19248 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* Letter from the Committee to the Department, entitled ''Five-Year (''Sunset'') Review Of Countervailing Duty Order On Polyethylene Retail Carrier Bags From The Socialist Republic Of Vietnam: Domestic Industry's Substantive Response,'' dated May 1, 2015.

[5] *See* ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Polyethylene Retail Carrier Bags from the Socialist Republic Of Vietnam,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with this notice (Issues and Decision Memorandum).

[6] Chin Sheng Company, Ltd. was excluded from the order as the company received a *de minimis* rate in the original investigation.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From the Republic of Korea: Rescission of Antidumping Duty Administrative Review; 2014–2015

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

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain polyester staple fiber (PSF) from the Republic of Korea (Korea) for the period of review (POR) May 1, 2014, through April 30, 2015, based on the timely withdrawal of the request for review.

DATES: *Effective date:* August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Lana Nigro, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–1779.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2015, the Department published the notice of opportunity to request an administrative review of the order on PSF from Korea for the period of review May 1, 2014, through April 30, 2015.[1] On May 29, 2015, DAK Americas LLC and Auriga Polymers, Inc., the successor to Invista, S.a.r.L (collectively, the petitioners) requested that the Department conduct an administrative review of Huvis Corporation (Huvis) and Toray Chemical Korea, Inc (Toray).[2] On June 1, 2015, Huvis requested an administrative review of its POR sales.[3] On June 18, 2015, the petitioners withdrew their request for an administrative review of Huvis.[4] Huvis withdrew its request for an administrative review on June 19, 2015.[5] Pursuant to the remaining request, for Toray, and in accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 80 FR 24898, 24899 (May 1, 2015).

[2] *See* Letter from the petitioners to the Department, dated May 29, 2015, at 2.

[3] *See* Letter from Huvis to the Department, dated June 1, 2015, at 1–2.

[4] *See* Letter from the petitioners, dated June 18, 2015, at 2.

[5] *See* Letter from Huvis, dated June 19, 2015.

an administrative review solely of Toray.[6] The petitioners withdrew their request for an administrative review of Toray on July 13, 2015.[7]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, the petitioners withdrew their request for review of Toray within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of PSF from Korea. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notifications

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 30, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–19246 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 37588, 36464 (July 1, 2015).

[7] *See* Letter from the petitioners, dated July 13, 2015, at 2.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–805]

Stainless Steel Bar from Spain: Rescission of Antidumping Duty Administrative Review; 2014–2015

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

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on stainless steel bar (SSB) from Spain for the period of review (POR) March 1, 2014, through February 28, 2015.

DATES: *Effective date:* August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Andre Gziryan or Minoo Hatten AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2201 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2015, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSB from Spain for the POR.[1] On March 31, 2015, the petitioners [2] requested an administrative review of the order with respect to Gerdau Aceros Especiales Europa, S.L. (Gerdau).[3] On April 30, 2015, in accordance with section 751(a) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on SSB with respect to Gerdau.[4] On July 13, 2015, the petitioners timely withdrew their request for an administrative review of Gerdau.[5]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioners withdrew their request for review within the 90-day time limit. Because no other party requested a review of Gerdau, we are rescinding this administrative review of the order on SSB from Spain.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of SSB from Spain during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 11161 (March 2, 2015).

[2] Carpenter Technology Corporation, Crucible Industries EEC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively, the petitioners)

[3] *See* Letter from the petitioners to the Department, ''Stainless Steel Bar from Spain; Petitioners' Request for 2014/2015 Administrative Review'' (March 31, 2015).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 24233 (April 30, 2015).

[5] *See* Letter from the petitioners to the Department, ''Stainless Steel Bar from Spain: Petitioners' Withdrawal of Request for 2014/2015 Administrative Review'' (July 13, 2015).

disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: July 28, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–19104 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light-Walled Rectangular Pipe and Tube From Turkey: Final Results of Antidumping Duty Administrative Review; 2013–2014

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

SUMMARY: On April 22, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Turkey.[1] The review covers ÇINAR Boru Profil Sanayi ve Ticaret A.Ş. (CINAR). The period of review (POR) is May 1, 2013, through April 30, 2014. We invited interested parties to comment on our *Preliminary Results.* CINAR submitted a case brief on May 22, 2015.[2] Based on CINAR's comments, we made certain changes to our *Preliminary Results.* The final results are listed in the section entitled ''Final Results of Review'' below.

DATES: Effective Date: August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert M. James, AD/CVD Operations Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 2015, the Department published the *Preliminary Results* of this review in the **Federal Register**. We invited parties to comment on the *Preliminary Results.* CINAR submitted a case brief. No other party submitted case or rebuttal briefs. No party requested a hearing.

Scope of the Order

The merchandise subject to this order[3] is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.[4]

Analysis of Comments Received

All issues raised in the case brief submitted in this review are addressed in the Issues and Decision Memorandum which is hereby adopted with this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://iaaccess.trade.gov* and it is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made certain changes to the *Preliminary Results.* For a discussion of these changes, *see* Issues and Decision Memorandum.

Final Results of Review

The estimated weighted-average dumping margin for the period May 1, 2013, through April 30, 2014, is as follows:

Producer/exporter	Weighted average margin (percentage)
ÇINAR Boru Profil Sanayi ve Ticaret AŞ	0.00

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department intends to issue appropriate assessment instructions for the companies subject to this review to CBP 15 days after the date of publication of these final results.

CINAR's weighted-average dumping margin in these final results is zero percent. Therefore, we will instruct CBP to liquidate all appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of light-walled rectangular pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For ÇINAR Boru Profil Sanayi ve Ticaret A.Ş., the cash deposit rate will be equal to the weighted-average dumping margin listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, any previous review, or the original investigation, the cash deposit rate will be 27.04 percent *ad valorem,* the ''all others'' rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[1] *See Light-Walled Rectangular Pipe and Tube from Turkey; Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 22475 (April 22, 2015) (*Preliminary Results*).

[2] *See* letter from CINAR to the Secretary of Commerce entitled, ''Case Brief of ÇINAR Boru Profil Sanayi ve Ticaret A.Ş. (''CINAR'') to the Preliminary Determination on the Administrative Review on Light-Walled Rectangular Pipe and Tube (LWRP) from Turkey,'' dated May 22, 2015.

[3] *See Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube From Turkey,* 73 FR 31065 (May 30, 2008).

[4] For a full description of the scope of the order, *see* the memorandum from Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, ''Issues and Decision Memorandum for the Final Results in the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Turkey; 2013–2014,'' dated concurrently with this notice (Issues and Decision Memorandum).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order Notification to Interested Parties

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), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: July 27, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Issues Raised in Case and Rebuttal Briefs

Summary
Background
Scope of the Order
Discussion of the Issue
Issue 1: Use of CINAR's Revised Home Market Data Base Conclusion

[FR Doc. 2015–19095 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 130917811–5349–02]

Announcing Approval of Federal Information Processing Standard (FIPS) 202, SHA–3 Standard: Permutation-Based Hash and Extendable-Output Functions, and Revision of the Applicability Clause of FIPS 180–4, Secure Hash Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This notice announces the Secretary of Commerce's approval of Federal Information Processing Standard (FIPS) 202, *SHA–3 Standard: Permutation-Based Hash and Extendable-Output Functions,* and a revision of the Applicability Clause of FIPS 180–4, *Secure Hash Standard.* FIPS 202 specifies the SHA–3 family of hash functions, as well as mechanisms for other cryptographic functions to be specified in the future. The revision to the Applicability Clause of FIPS 180–4 approves the use of hash functions specified in either FIPS 180–4 or FIPS 202 when a secure hash function is required for the protection of sensitive, unclassified information in Federal applications, including as a component within other cryptographic algorithms and protocols.

DATES: FIPS 202 and FIPS 180–4 are effective on August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Shu-jen Chang, (301) 975–2940, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930, email: *Shu-jen.Chang@nist.gov.*

SUPPLEMENTARY INFORMATION: NIST announced the SHA–3 Cryptographic Hash Algorithm Competition in the **Federal Register** (72 FR 62212, available at *https://federalregister.gov/a/E7-21581*) on November 2, 2007. The purpose of the SHA–3 Competition was to develop a new cryptographic hash algorithm for standardization to augment the hash functions specified in FIPS 180–4, *Secure Hash Standard.* NIST announced the winning algorithm, Keccak, in a press release on October 2, 2012, which is available at *http://www.nist.gov/itl/csd/sha-100212.cfm.*

NIST then developed Draft FIPS 202, *SHA–3 Standard: Permutation-Based Hash and Extendable-Output Functions* to specify Keccak for use in the Federal Government. On May 28, 2014, NIST announced Draft FIPS 202 in the **Federal Register** (79 FR 30549, available at *https://federalregister.gov/a/2014-12336*) and requested comments. In the same notice, NIST also proposed a revision of the Applicability Clause (#6) of the Announcement Section of FIPS 180–4, *Secure Hash Standard,* and requested comments. The revision of this clause allows the use of hash functions specified in either FIPS 180–4 or FIPS 202, modifying the original mandate to use only the hash functions specified in FIPS 180–4. The other sections of FIPS 180–4 remain unchanged. FIPS 202 and FIPS 180–4 are available at: *http://csrc.nist.gov/publications/PubsFIPS.html.*

The May 28, 2014 notice solicited comments from the public. An announcement was also posted on a public hash forum (*hash-forum@nist.gov*) and on the NIST hash Web site (*http://csrc.nist.gov/groups/ST/hash/sha-3/sha-3_standard_fips202.html*). A ninety-day public comment period commenced on May 28, 2014, and ended on August 26, 2014.

NIST received comments on Draft FIPS 202 from seven commenters: Two government agencies, two industry groups, and three individuals. In addition, NIST received one comment on the Draft Revision of the Applicability Clause of FIPS 180–4 from one individual, although this comment was not related to the revision of the specific clause for which NIST was requesting comments. All comments received are posted at *http://csrc.nist.gov/groups/ST/hash/sha-3/fips-202-public-comments-aug2014.html.* None of the comments opposed the adoption of the SHA–3 Standard or the revision of the Applicability Clause of FIPS 180–4. Some comments offered editorial suggestions, pointed out inconsistencies in the text, or suggested structural changes. All of the comments were carefully reviewed, and changes were made to FIPS 202, where appropriate. NIST made additional editorial changes to improve FIPS 202.

The following section summarizes the comments received during the public comment period, and includes NIST's responses to each comment.

Comment: One commenter submitted two editorial comments on Draft FIPS 202. The first comment was to replace ''relatively small'' with ''sufficiently small'' in the fourth footnote, on page 1. The second comment applied to an earlier draft of FIPS 202.

Response: The first comment was accepted; the error that the second comment identified had already been corrected in the draft that was released for public comment.

Comment: One commenter agreed with the inclusion of the Extendable-Output Functions in Draft FIPS 202, citing the TUAK algorithm—for authentication and key generation in mobile telephony—as a suitable application.

Response: NIST acknowledges the comment. No change to the Standard was made as a result of the comment.

Comment: Two commenters recommended a significant restructuring of Draft FIPS 202. One commenter's proposal was to emphasize the role of the Keccak-*p* permutation as a ''primitive,'' *i.e.,* a fundamental cryptographic technique. This permutation family is the main component of each SHA–3 function. The comment included a detailed outline of the commenter's proposal. The other commenter's proposal was to replace FIPS 202 with three standards. The first standard would specify the Keccak[*c*] sponge functions as a distinct primitive, and the second and third standards would specify the SHA–3 hash functions and extendable-output functions, respectively, as instances of these sponge functions. For both commenters, the rationale for their proposals was to provide greater flexibility to extend the technology in the future.

Response: The restructuring proposals were not accepted. The text in Section 7 on conformance already explicitly accommodates the possibility of developing new uses of the Keccak[*c*] sponge functions and other intermediate functions, as well as new functions based on the Keccak-*p* permutations. Moreover, the primary purpose of FIPS 202 is to standardize the winning algorithm from the SHA–3 competition. Both of the restructuring proposals would detract from the perception of the Standard as fulfilling that goal.

Comment: One of the previous commenters also submitted several editorial comments and one general comment on Draft FIPS 202. The general comment suggested that hyphens be inserted into the names ''SHAKE128'' and ''SHAKE256'' in order to separate the numerical parameter, which would be consistent with the naming convention for the SHA–3 hash functions.

Response: The editorial comments were accepted, with a modification to the suggested resolution in one case. In particular, the commenter observed that the following sentence in Section 3 could be clarified to distinguish between the input, which is fixed, and the state, which is mutable: ''The set of values for the *b*-bit input to the permutation, as it undergoes successive applications of the step mappings, culminating in the output, is called the state.'' The commenter suggested the following replacement: ''The permutation, as it undergoes successive applications of the step mappings, maintains a *b*-bit state, which is initially set to the input values.'' Instead, NIST revised the sentence as follows: ''The permutation is specified in terms of an array of values for *b* bits that is repeatedly updated, called the *state;* the state is initially set to the input values of the permutation.'' This revision is preferable because it retains an explicit definition of the term ''state.'' NIST did not include the change requested in the general comment. Although the stated rationale for the general comment is reasonable, it is preferable to omit the hyphens, as originally specified, in order to help distinguish the different roles of the parameters. In particular, the numerical suffixes in ''SHAKE128'' and ''SHAKE256'' indicate security strengths, while for the SHA–3 hash functions such as SHA3–256, the suffix indicates the digest length of the hash function.

Comment: One commenter requested that FIPS 202 clarify how the SHA–3 hash functions would be implemented within the keyed-hash message authentication code (HMAC) that is specified in FIPS 198–1.

Response: The comment was accepted and addressed with new text in the conformance section that identified the value of the HMAC parameter *B* for each of the SHA–3 hash functions.

Comment: One commenter expressed appreciation for the opportunity to review Draft FIPS 202.

Response: NIST acknowledges the comment. No change was made as a result of the comment.

Comment: One commenter discussed the use of the extendable-output functions specified in Draft FIPS 202. The comment distinguished between two types of applications: (1) Variable-length hash functions, and (2) random-looking functions, such as key derivation functions (KDFs). The comment explained why variable-length hash functions were not very interesting from a cryptographic perspective, suggesting that NIST approval be limited to KDF-like functions. The comment also pointed out that the incorporation of the output length into the input for these functions could be specified as a method of addressing the prefix property that is discussed in the Standard.

Response: The text in Section 7 on conformance explicitly asserts that approved uses of the extendable-output functions will be specified in NIST special publications. NIST will consider the commenter's suggestions in the development of those publications. Also, text was added to clarify that extendable-output functions are not yet approved as variable-length hash functions.

Comment: The only comment on FIPS 180–4 recommended that the SHA–1 hash algorithm be excluded ''due to highly untrusted security algorithm.''

Response: NIST made no change based on this comment. The comment does not directly apply to the Revised Applicability Clause of FIPS 180–4, which simply acknowledges that FIPS 202 specifies valid options for secure hash functions. Moreover, NIST has already developed and adopted an appropriate policy for the use of SHA–1, based on the latest security information, as described in NIST Special Publication 800–131A.

The Secretary of Commerce hereby approves FIPS 202 and FIPS 180–4. Copies of FIPS 202 and FIPS 180–4 are available at: *http://csrc.nist.gov/publications/PubsFIPS.html.*

Authority: In accordance with the Information Technology Management Reform Act of 1996 (Pub. L. 104–106) and the Federal Information Security Management Act of 2002 (FISMA) (Pub. L. 107–347), the Secretary of Commerce is authorized to approve FIPS. NIST activities to develop computer security standards to protect federal sensitive (unclassified) information systems are undertaken pursuant to specific responsibilities assigned to NIST by Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3), as amended.

Richard R. Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–19181 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE074

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting and webinar/conference call.

SUMMARY: NMFS will hold a 2-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in

September 2015. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held from 9 a.m. to 6 p.m. on Wednesday, September 9, 2015; and from 8:30 a.m. to 12 p.m. on Thursday, September 10, 2015.

ADDRESSES: The meeting will be held at the Sheraton Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting presentations will also be available via WebEx webinar/conference call.

On Wednesday, September 9, 2015, the conference call information is phone number 1–800–857–6552; Participant Code: 8099565; and the webinar event address is: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=393951018&t=a*; event password: NOAA.

On Thursday, September 10, 2015, the conference call information is phone number 1–800–857–6552; Participant Code: 8099565; and the webinar event address is: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=395887510&t=a*; event password: NOAA.

Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT: LeAnn Hogan or Margo Schulze-Haugen at (301) 427–8503.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for Atlantic HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks.

The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999); the HMS FMP (April 1999); Amendment 1 to the HMS FMP (December 2003); the Consolidated HMS FMP (October 2006); and Amendments 1, 2, 3, 4, 5a, 5b, 6, 7, 8, and 9 to the 2006 Atlantic Consolidated HMS FMP (April and October 2008, February and September 2009, May and September 2010, April and September 2011, March and September 2012, January and September 2013, April and September 2014 and March 2015), among other things.

The intent of this meeting is to consider alternatives for the conservation and management of all Atlantic tunas, swordfish, billfish, and shark fisheries. We anticipate discussing Final Amendment 6 to the 2006 Consolidated HMS FMP on the future of shark fishery, providing updates on Amendment 5b on dusky shark management and Amendment 9 on smoothhound shark management, reviewing the results of the smoothhound shark stock assessment, discussing implementation of Final Amendment 7 on bluefin tuna management measures, as well as discussing the Final HMS Essential Fish Habitat 5-Year Review and next steps. The meeting will also include discussion of a survey of Atlantic HMS tournaments that is in development, and providing updates on various topics relevant to Atlantic HMS fisheries management.

Additional information on the meeting and a copy of the draft agenda will be posted prior to the meeting at: *http://www.nmfs.noaa.gov/sfa/hms/advisory_panels/hms_ap/meetings/ap_meetings.html.*

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to LeAnn Hogan at (301) 427–8503 at least 7 days prior to the meeting.

Dated: July 30, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–19148 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE056

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Wharf Recapitalization Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to construction activities as part of a wharf recapitalization project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting public comment on its proposal to issue an incidental harassment authorization (IHA) to the Navy to take, by Level B harassment only, during the specified activity.

DATES: Comments and information must be received no later than September 4, 2015.

ADDRESSES: Comments on this proposal should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

National Environmental Policy Act

The Navy prepared an Environmental Assessment (EA; 2013) for this project. We subsequently adopted the EA and signed our own Finding of No Significant Impact (FONSI) prior to

issuing the first IHA for this project, in accordance with NEPA and the regulations published by the Council on Environmental Quality. Information in the Navy's application, the Navy's EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. All documents are available at the aforementioned Web site. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to reaffirm the existing FONSI, prior to a final decision on the incidental take authorization request.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On January 28, 2015, we received a request from the Navy for authorization to take marine mammals incidental to pile driving in association with the Wharf C–2 recapitalization project at Naval Station Mayport, Florida (NSM). That request was modified on April 17 and the Navy submitted a revised version of the request on July 24, 2015, which we deemed adequate and complete. In-water work associated with the project is expected to be completed within the one-year timeframe of the proposed IHA, which would be valid for one year from the date of issuance.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Two species of marine mammal have the potential to be affected by the specified activities: Bottlenose dolphin (*Tursiops truncatus truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*). These species may occur year-round in the action area. However, we have determined that incidental take of spotted dolphins is not reasonably likely and do not propose to authorize such take.

This is expected to be the second and final year of in-water work associated with the Wharf C–2 project. This would be the second such IHA, if issued, following the IHA issued effective from September 1, 2014, through August 31, 2015 (78 FR 71566; November 29, 2013). Please note that the previous IHA was initially issued with effective dates from December 1, 2013, through November 30, 2014. However, no work was conducted during this period and the effective dates were changed to those stated above (79 FR 27863; May 15, 2014).

Description of the Specified Activity

Overview

Wharf C–2 is a single level, general purpose berthing wharf constructed in 1960. The wharf is one of NSM's two primary deep-draft berths and is one of the primary ordnance handling wharfs. The wharf is a diaphragm steel sheet pile cell structure with a concrete apron, partial concrete encasement of the piling and an asphalt paved deck. The wharf is currently in poor condition due to advanced deterioration of the steel sheeting and lack of corrosion protection, and this structural deterioration has resulted in the institution of load restrictions within 60 ft of the wharf face. The purpose of this project is to complete necessary repairs to Wharf C–2. Please refer to Appendix A of the Navy's application for photos of existing damage and deterioration at the wharf, and to Appendix B for a contractor schematic of the project plan.

Dates and Duration

The total project was expected to require a maximum of fifty days of in-water vibratory pile driving work over a twelve-month period, with an additional twenty days of impact pile driving included in the specified activity as a contingency for a total of seventy days in-water pile driving. Based on work completed to date and in consideration of the number of piles yet to be driven and pile production rates to date, the Navy estimates that remaining work may require 47 days in total.

Specific Geographic Region

NSM is located in northeastern Florida, at the mouth of the St. Johns River and adjacent to the Atlantic Ocean (see Figures 2–1 and 2–2 of the Navy's application). The St. Johns River is the longest river in Florida, with the final 35 mi flowing through the city of Jacksonville. This portion of the river is significant for commercial shipping and military use. At the mouth of the river, near the action area, the Atlantic Ocean is the dominant influence and typical salinities are above 30 ppm. Outside the river mouth, in nearshore waters, moderate oceanic currents tend to flow southward parallel to the coast. Sea surface temperatures range from around 16 °C in winter to 28 °C in summer.

The specific action area consists of the NSM turning basin, an area of approximately 2,000 by 3,000 ft containing ship berthing facilities at sixteen locations along wharves around

the basin perimeter. The basin was constructed during the early 1940s by dredging the eastern part of Ribault Bay (at the mouth of the St. Johns River), with dredge material from the basin used to fill parts of the bay and other low-lying areas in order to elevate the land surface. The basin is currently maintained through regular dredging at a depth of 50 ft, with depths at the berths ranging from 30–50 ft. The turning basin, connected to the St. Johns River by a 500-ft-wide entrance channel, will largely contain sound produced by project activities, with the exception of sound propagating east into nearshore Atlantic waters through the entrance channel (see Figure 2–2 of the Navy's application). Wharf C–2 is located in the northeastern corner of the Mayport turning basin.

Detailed Description of Activities

In order to rehabilitate Wharf C–2, the Navy proposes to install a new steel king pile/sheet pile (SSP) bulkhead, consisting of large vertical king piles with paired steel sheet piles driven between and connected to the ends of the king piles. Over the course of the entire project, the Navy will install approximately 120 single sheet piles and 119 king piles (all steel) to support the bulkhead wall, as well as fifty polymeric (plastic) fender piles. The SSP wall is anchored at the top and filled behind the wall before a concrete cap is formed along the top and outside face to tie the entire structure together and provide a berthing surface for vessels. The new bulkhead will be designed for a fifty-year service life.

Installation of approximately seventy percent of steel piles (84 of 120 sheet piles and 81 of 119 king piles) has been completed as of July 2015, and the Navy expects that all installation of steel piles may be complete by the expiration of the current IHA. However, we include here as a contingency the installation of 25 percent of steel piles in the event that there is a work stoppage or other unforeseen delay prior to expiration of the current IHA. All fifty plastic fender piles would be installed during the period of validity of the proposed IHA.

All piles would be driven by vibratory hammer, although impact pile driving may be used as a contingency in cases when vibratory driving is not sufficient to reach the necessary depth. In the unlikely event that impact driving is required, either impact or vibratory driving could occur on a given day, but concurrent use of vibratory and impact drivers would not occur. Including the installation of 25 percent of steel piles as a contingency, the Navy estimates that 47 in-water work days may be required to complete pile driving activity, including ten days for vibratory driving of plastic piles, seventeen days for contingency vibratory driving of steel piles, and twenty days for contingency impact driving, if necessary.

Description of Marine Mammals in the Area of the Specified Activity

There are four marine mammal species which may inhabit or transit through the waters nearby NSM at the mouth of the St. Johns River and in nearby nearshore Atlantic waters. These include the bottlenose dolphin, Atlantic spotted dolphin, North Atlantic right whale (*Eubalaena glacialis*), and humpback whale (*Megaptera novaeangliae*). Multiple additional cetacean species occur in South Atlantic waters but would not be expected to occur in shallow nearshore waters of the action area. Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NSM during the project timeframe and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2014). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Charleston/Jacksonville Operating Area, which documents and describes the marine resources that occur in Navy operating areas of the Southeast (DoN, 2008). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed July 16, 2015).

In the species accounts provided here, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and describe any information regarding local occurrence. Multiple stocks of bottlenose dolphins may be present in the action area, either seasonally or year-round, and are described further below. We first address the two large whale species that may occur in the action area.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NSM

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales) Family Balaenidae						
North Atlantic right whale	Western North Atlantic [5]	E/D; Y	465 (n/a; 2013)	0.9	4.75	Rare inshore, regular near/offshore; Nov–Apr.
Humpback whale	Gulf of Maine	E/D; Y	823 (n/a; 2008)	2.7	10.15	Rare; Fall–Spring.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises) Family Delphinidae						
Common bottlenose dolphin.	Western North Atlantic Offshore.	-; N	77,532 (0.4; 56,053; 2011).	561	45.1	Rare; year-round.
Common bottlenose dolphin.	Western North Atlantic Coastal, Southern Migratory.	-/D; Y	9,173 (0.46; 6,326; 2010–11).	63	2.6–16.5	Possibly common; [8] Jan–Mar.
Common bottlenose dolphin.	Western North Atlantic Coastal, Northern Florida.	-/D; Y	1,219 (0.67; 730; 2010–11).[9]	7	unk	Possibly common; [8] year-round.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NSM—Continued

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence; season of occurrence
Common bottlenose dolphin.	Jacksonville Estuarine System.[6]	-; Y	412 [7] (0.06; unk; 1994–97).	undet.	unk	Possibly common; [8] year-round.
Atlantic spotted dolphin ..	Western North Atlantic ..	-; N	44,715 (0.43; 31,610; 2011).	316	0	Rare; year-round.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the draft 2014 SARs (*www.nmfs.noaa.gov/pr/sars/draft.htm*).

[5] Abundance estimates (and resulting PBR values) for these stocks are new values presented in the draft 2014 SARs. This information was made available for public comment and is currently under review and therefore may be revised prior to finalizing the 2014 SARs. However, we consider this information to be the best available for use in this document.

[6] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[7] This abundance estimate is considered an overestimate because it includes non- and seasonally-resident animals.

[8] Bottlenose dolphins in general are common in the project area, but it is not possible to readily identify them to stock. Therefore, these three stocks are listed as possibly common as we have no information about which stock commonly only occurs.

Right whales occur in sub-polar to temperate waters in all major ocean basins in the world with a clear migratory pattern, occurring in high latitudes in summer (feeding) and lower latitudes in winter (breeding). North Atlantic right whales exhibit extensive migratory patterns, traveling along the eastern seaboard from calving grounds off Georgia and northern Florida to northern feeding areas off of the northeast U.S. and Canada in March/April and returning in November/December. Migrations are typically within 30 nmi of the coastline and in waters less than 50 m deep. Although this migratory pattern is well-known, winter distribution for most of the population—the non-calving portion—is poorly known, as many whales are not observed on the calving grounds. It is unknown where these animals spend the winter, although they may occur further offshore or may remain on foraging grounds during winter (Morano *et al.,* 2012). During the winter calving period, right whales occur regularly in offshore waters of northeastern Florida. Critical habitat for right whales in the southeast (as identified under the ESA) is designated to protect calving grounds, and encompasses waters from the coast out to 15 nmi offshore from Mayport. More rarely, right whales have been observed entering the mouth of the St. Johns River for brief periods of time (Schweitzer and Zoodsma, 2011). Right whales are not present in the region outside of the winter calving season.

Humpback whales are a cosmopolitan species that migrate seasonally between warm-water (tropical or sub-tropical) breeding and calving areas in winter months and cool-water (temperate to sub-Arctic/Antarctic) feeding areas in summer months (Gendron and Urban, 1993). They tend to occupy shallow, coastal waters, although migrations are undertaken through deep, pelagic waters. In the North Atlantic, humpback whales are known to aggregate in six summer feeding areas representing relatively discrete subpopulations (Clapham and Mayo, 1987), which share common wintering grounds in the Caribbean (and to a lesser extent off of West Africa) (Winn *et al.,* 1975; Mattila *et al.,* 1994; Palsbøll *et al.,* 1997; Smith *et al.,* 1999; Stevick *et al.,* 2003; Cerchio *et al.,* 2010). These populations or aggregations range from the Gulf of Maine in the west to Norway in the east, and the migratory range includes the east coast of the U.S. and Canada. The only managed stock in U.S. waters is the Gulf of Maine feeding aggregation, although other stocks occur in Canadian waters (*e.g.,* Gulf of St. Lawrence feeding aggregation), and it is possible that whales from other stocks could occur in U.S. waters. Significant numbers of whales do remain in mid- to high-latitude waters during the winter months (Clapham *et al.,* 1993; Swingle *et al.,* 1993), and there have been a number of humpback sightings in coastal waters of the southeastern U.S. during the winter (Wiley *et al.,* 1995; Laerm *et al.,* 1997; Waring *et al.,* 2014). According to Waring *et al.* (2014), it is unclear whether the increased numbers of sightings represent a distributional change, or are simply due to an increase in sighting effort and/or whale abundance. These factors aside, the humpback whale remains relatively rare in U.S. coastal waters south of the mid-Atlantic region, and is considered rare to extralimital in the action area. Any occurrences in the region would be expected in fall, winter, and spring during migration, as whales are unlikely to occur so far south during the summer feeding season.

Neither the humpback whale nor the right whale would occur within the turning basin, and only the right whale has been observed to occur as far inshore as the mouth of the St. Johns River. Therefore, the only potential for interaction with these species is likely to be within the narrow sliver of ensonified area expected to extend eastward from the entrance channel during vibratory driving of steel piles (see Figure 6–1 of the application). As described above, humpback whales are considered rare in the region, and, when considering frequency of occurrence, size of ensonified area (approximately 2.9 km^2 during vibratory driving of steel

piles but less than one square kilometer during vibratory driving of plastic piles), and duration (likely ten days, but no greater than approximately fifty days), we consider the possibility for harassment of humpback whales to be discountable. For right whales, due to the greater potential for interaction during the calving season we considered available density information, including abundance data from NMFS surveys, as analyzed for use in Navy environmental compliance efforts (Roberts *et al.,* 2015), to produce a representative estimate for the specific action area. Use of this estimate ($0.045028/km^2$) resulted in zero estimated exposures of right whales to sound produced by project activities. Therefore, the humpback whale and right whale are excluded from further analysis and are not discussed further in this document.

The following summarizes the population status and abundance of the remaining species.

Bottlenose Dolphin

Bottlenose dolphins are found worldwide in tropical to temperate waters and can be found in all depths from estuarine inshore to deep offshore waters. Temperature appears to limit the range of the species, either directly, or indirectly, for example, through distribution of prey. Off North American coasts, common bottlenose dolphins are found where surface water temperatures range from about 10 °C to 32 °C. In many regions, including the southeastern U.S., separate coastal and offshore populations are known. There is significant genetic, morphological, and hematological differentiation evident between the two ecotypes (*e.g.,* Walker, 1981; Duffield *et al.,* 1983; Duffield, 1987; Hoelzel *et al.,* 1998), which correspond to shallow, warm water and deep, cold water. Both ecotypes have been shown to inhabit the western North Atlantic (Hersh and Duffield, 1990; Mead and Potter, 1995), where the deep-water ecotype tends to be larger and darker. In addition, several lines of evidence, including photo-identification and genetic studies, support a distinction between dolphins inhabiting coastal waters near the shore and those present in the inshore waters of bays, sounds and estuaries. This complex differentiation of bottlenose dolphin populations is observed throughout the Atlantic and Gulf of Mexico coasts where bottlenose dolphins are found, although estuarine populations have not been fully defined.

In the Mayport area, four stocks of bottlenose dolphins are currently managed, none of which are protected under the ESA. Of the four stocks—offshore, southern migratory coastal, northern Florida coastal, and Jacksonville estuarine system—only the latter three are likely to occur in the action area. Bottlenose dolphins typically occur in groups of 2–15 individuals (Shane *et al.,* 1986; Kerr *et al.,* 2005). Although significantly larger groups have also been reported, smaller groups are typical of shallow, confined waters. In addition, such waters typically support some degree of regional site fidelity and limited movement patterns (Shane *et al.,* 1986; Wells *et al.,* 1987). Observations made during marine mammal surveys conducted during 2012–2013 in the Mayport turning basin show bottlenose dolphins typically occurring individually or in pairs, or less frequently in larger groups. The maximum observed group size during these surveys is six, while the mode is one. Navy observations indicate that bottlenose dolphins rarely linger in a particular area in the turning basin, but rather appear to move purposefully through the basin and then leave, which likely reflects a lack of any regular foraging opportunities or habitat characteristics of any importance in the basin. Based on currently available information, it is not possible to determine which stock dolphins occurring in the action area may belong to. These stocks are described in greater detail below.

Western North Atlantic Offshore—This stock, consisting of the deep-water ecotype or offshore form of bottlenose dolphin in the western North Atlantic, is distributed primarily along the outer continental shelf and continental slope, but has been documented to occur relatively close to shore (Waring *et al.,* 2014). The separation between offshore and coastal morphotypes varies depending on location and season, with the ranges overlapping to some degree south of Cape Hatteras. Based on genetic analysis, Torres *et al.* (2003) found a distributional break at 34 km from shore, with the offshore form found exclusively seaward of 34 km and in waters deeper than 34 m. Within 7.5 km of shore, all animals were of the coastal morphotype. More recently, coastwide, systematic biopsy collection surveys were conducted during the summer and winter to evaluate the degree of spatial overlap between the two morphotypes. South of Cape Hatteras, spatial overlap was found although the probability of a sampled group being from the offshore morphotype increased with increasing depth, and the closest distance for offshore animals was 7.3 km from shore, in water depths of 13 m just south of Cape Lookout (Garrison *et al.,* 2003). The maximum radial distance for the largest ZOI is approximately 7.4 km (Table 3); therefore, while possible, it is unlikely that any individuals of the offshore morphotype would be affected by project activities. In terms of water depth, the affected area is generally in the range of the shallower depth reported for offshore dolphins by Garrison *et al.* (2003), but is far shallower than the depths reported by Torres *et al.* (2003). South of Cape Lookout, the zone of spatial overlap between offshore and coastal ecotypes is generally considered to occur in water depths between 20–100 m (Waring *et al.,* 2014), which is generally deeper than waters in the action area. This stock is thus excluded from further analysis.

Western North Atlantic Coastal, Southern Migratory—The coastal morphotype of bottlenose dolphin is continuously distributed from the Gulf of Mexico to the Atlantic and north approximately to Long Island (Waring *et al.,* 2014). On the Atlantic coast, Scott *et al.* (1988) hypothesized a single coastal stock, citing stranding patterns during a high mortality event in 1987–88 and observed density patterns. More recent studies demonstrate that there is instead a complex mosaic of stocks (Zolman, 2002; McLellan *et al.,* 2003; Rosel *et al.,* 2009). The coastal morphotype was managed by NMFS as a single stock until 2009, when it was split into five separate stocks, including northern and southern migratory stocks. The original, single stock of coastal dolphins recognized from 1995–2001 was listed as depleted under the MMPA as a result of a 1987–88 mortality event. That designation was retained when the single stock was split into multiple coastal stocks. Therefore, all coastal stocks of bottlenose dolphins are listed as depleted under the MMPA, and are also considered strategic stocks.

According to the Scott *et al.* (1988) hypothesis, a single stock was thought to migrate seasonally between New Jersey (summer) and central Florida (winter). Instead, it was determined that a mix of resident and migratory stocks exists, with the migratory movements and spatial distribution of the southern migratory stock the most poorly understood of these. Stable isotope analysis and telemetry studies provide evidence for seasonal movements of dolphins between North Carolina and northern Florida (Knoff, 2004; Waring *et al.,* 2014), and genetic analyses and tagging studies support differentiation of northern and southern migratory stocks (Rosel *et al.,* 2009; Waring *et al.,* 2014). Although there is significant

uncertainty regarding the southern migratory stock's spatial movements, telemetry data indicates that the stock occupies waters of southern North Carolina (south of Cape Lookout) during the fall (October–December). In winter months (January–March), the stock moves as far south as northern Florida where it overlaps spatially with the northern Florida coastal and Jacksonville estuarine system stocks. In spring (April-June), the stock returns north to waters of North Carolina, and is presumed to remain north of Cape Lookout during the summer months. Therefore, the potential exists for harassment of southern migratory dolphins, most likely during the winter only.

Bottlenose dolphins are ubiquitous in coastal waters from the mid-Atlantic through the Gulf of Mexico, and therefore interact with multiple coastal fisheries, including gillnet, trawl, and trap/pot fisheries. Stock-specific total fishery-related mortality and serious injury cannot be directly estimated because of the spatial overlap among stocks of bottlenose dolphins, as well as because of unobserved fisheries. The primary known source of fishery mortality for the southern migratory stock is the mid-Atlantic gillnet fishery (Waring *et al.,* 2014). Between 2004 and 2008, 588 bottlenose dolphins stranded along the Atlantic coast between Florida and Maryland that could potentially be assigned to the southern migratory stock, although the assignment of animals to a particular stock is impossible in some seasons and regions due to spatial overlap amongst stocks (Waring *et al.,* 2014). Many of these animals exhibited some evidence of human interaction, such as line/net marks, gunshot wounds, or vessel strike. In addition, nearshore and estuarine habitats occupied by the coastal morphotype are adjacent to areas of high human population and some are highly industrialized. It should also be noted that stranding data underestimate the extent of fishery-related mortality and serious injury because not all of the marine mammals that die or are seriously injured in fishery interactions are discovered, reported or investigated, nor will all of those that are found necessarily show signs of entanglement or other fishery interaction. The level of technical expertise among stranding network personnel varies widely as does the ability to recognize signs of fishery interactions. Finally, multiple resident populations of bottlenose dolphins have been shown to have high concentrations of organic pollutants (*e.g.,* Kuehl *et al.,* 1991) and, despite little study of contaminant loads in migrating coastal dolphins, exposure to environmental pollutants and subsequent effects on population health is an area of concern and active research.

Western North Atlantic Coastal, Northern Florida—Please see above for description of the differences between coastal and offshore ecotypes and the delineation of coastal dolphins into management stocks. The northern Florida coastal stock is one of five stocks of coastal dolphins and one of three known resident stocks (other resident stocks include South Carolina/Georgia and central Florida dolphins). The spatial extent of these stocks, their potential seasonal movements, and their relationships with estuarine stocks are poorly understood. During summer months, when the migratory stocks are known to be in North Carolina waters and further north, bottlenose dolphins are still seen in coastal waters of South Carolina, Georgia and Florida, indicating the presence of additional stocks of coastal animals. Speakman *et al.* (2006) documented dolphins in coastal waters off Charleston, South Carolina, that are not known resident members of the estuarine stock, and genetic analyses indicate significant differences between coastal dolphins from northern Florida, Georgia and central South Carolina (NMFS, 2001; Rosel *et al.,* 2009). The northern Florida stock is thought to be present from approximately the Georgia–Florida border south to 29.4° N.

The northern Florida coastal stock is susceptible to interactions with similar fisheries as those described above for the southern migratory stock, including gillnet, trawl, and trap/pot fisheries. From 2004–08, 78 stranded dolphins were recovered in northern Florida waters, although it was not possible to determine whether there was evidence of human interaction for the majority of these (Waring *et al.,* 2014). The same concerns discussed above regarding underestimation of mortality hold for this stock and, as for southern migratory dolphins, pollutant loading is a concern.

Jacksonville Estuarine System—Please see above for description of the differences between coastal and offshore ecotypes and the delineation of coastal dolphins into management stocks primarily inhabiting nearshore waters. The coastal morphotype of bottlenose dolphin is also resident to certain inshore estuarine waters (Caldwell, 2001; Gubbins, 2002; Zolman, 2002; Gubbins *et al.,* 2003). Multiple lines of evidence support demographic separation between coastal dolphins found in nearshore waters and those in estuarine waters, as well as between dolphins residing within estuaries along the Atlantic and Gulf coasts (*e.g.,* Wells *et al.,* 1987; Scott *et al.,* 1990; Wells *et al.,* 1996; Cortese, 2000; Zolman, 2002; Speakman, *et al.* 2006; Stolen *et al.,* 2007; Balmer *et al.,* 2008; Mazzoil *et al.,* 2008). In particular, a study conducted near Jacksonville demonstrated significant genetic differences between coastal and estuarine dolphins (Caldwell, 2001; Rosel *et al.,* 2009). Despite evidence for genetic differentiation between estuarine and nearshore populations, the degree of spatial overlap between these populations remains unclear. Photo-identification studies within estuaries demonstrate seasonal immigration and emigration and the presence of transient animals (*e.g.,* Speakman *et al.,* 2006). In addition, the degree of movement of resident estuarine animals into coastal waters on seasonal or shorter time scales is poorly understood (Waring *et al.,* 2014).

The Jacksonville estuarine system (JES) stock has been defined as separate primarily by the results of photo-identification and genetic studies. The stock range is considered to be bounded in the north by the Georgia-Florida border at Cumberland Sound, extending south to approximately Jacksonville Beach, Florida. This encompasses an area defined during a photo-identification study of bottlenose dolphin residency patterns in the area (Caldwell, 2001), and the borders are subject to change upon further study of dolphin residency patterns in estuarine waters of southern Georgia and northern/central Florida. The habitat is comprised of several large brackish rivers, including the St. Johns River, as well as tidal marshes and shallow riverine systems. Three behaviorally different communities were identified during Caldwell's (2001) study: The estuarine waters north (Northern) and south (Southern) of the St. Johns River and the coastal area, all of which differed in density, habitat fidelity and social affiliation patterns. The coastal dolphins are believed to be members of a coastal stock, however (Waring *et al.,* 2014). Although Northern and Southern members of the JES stock show strong site fidelity, members of both groups have been observed outside their preferred areas. Dolphins residing within estuaries south of Jacksonville Beach down to the northern boundary of the Indian River Lagoon Estuarine System (IRLES) stock are currently not included in any stock, as there are insufficient data to determine whether animals in this area exhibit affiliation to the JES stock, the IRLES stock, or are

simply transient animals associated with coastal stocks. Further research is needed to establish affinities of dolphins in the area between the ranges, as currently understood, of the JES and IRLES stocks.

The JES stock is susceptible to similar fisheries interactions as those described above for coastal stocks, although only trap/pot fisheries are likely to occur in estuarine waters frequented by the stock. Only one dolphin carcass bearing evidence of fisheries interaction was recovered during 2003–07 in the JES area, and an additional sixteen stranded dolphins were recovered during this time, but no determinations regarding human interactions could be made for the majority (Waring *et al.,* 2014). The same concerns discussed above regarding underestimation of mortality hold for this stock and, as for stocks discussed above, pollutant loading is a concern. Although no contaminant analyses have yet been conducted in this area, the JES stock inhabits areas with significant drainage from industrial and urban sources, and as such is exposed to contaminants in runoff from these. In other estuarine areas where such analyses have been conducted, exposure to anthropogenic contaminants has been found to likely have an effect (Hansen *et al.* 2004; Schwacke *et al.,* 2004; Reif *et al.,* 2008).

The original, single stock of coastal dolphins recognized from 1995–2001 was listed as depleted under the MMPA as a result of a 1987–88 mortality event. That designation was retained when the single stock was split into multiple coastal stocks. However, Scott *et al.* (1988) suggested that dolphins residing in the bays, sounds and estuaries adjacent to these coastal waters were not affected by the mortality event and these animals were explicitly excluded from the depleted listing (Waring *et al.,* 2014). Gubbins *et al.* (2003), using data from Caldwell (2001), estimated the stock size to be 412 (CV = 0.06). However, NMFS considers abundance unknown because this estimate likely includes an unknown number of non-resident and seasonally-resident dolphins. It nevertheless represents the best available information regarding stock size. Because the stock size is likely small, and relatively few mortalities and serious injuries would exceed PBR, the stock is considered to be a strategic stock (Waring *et al.,* 2014).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are distributed in tropical and warm temperate waters of the western North Atlantic predominantly over the continental shelf and upper slope, from southern New England through the Gulf of Mexico (Leatherwood *et al.,* 1976). Spotted dolphins in the Atlantic Ocean and Gulf of Mexico are managed as separate stocks. The Atlantic spotted dolphin occurs in two forms which may be distinct sub-species (Perrin *et al.,* 1987; Rice, 1998); a larger, more heavily spotted form inhabits the continental shelf inside or near the 200-m isobath and is the only form that would be expected to occur in the action area. Although typically observed in deeper waters, spotted dolphins of the western North Atlantic stock do occur regularly in nearshore waters south of the Chesapeake Bay (Mullin and Fulling, 2003). Specific data regarding seasonal occurrence in the region of activity is lacking, but higher numbers of individuals have been reported to occur in nearshore waters of the Gulf of Mexico from November to May, suggesting seasonal migration patterns (Griffin and Griffin, 2003).

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals. This discussion also includes reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The Estimated Take by Incidental Harassment section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analyses section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the Estimated Take by Incidental Harassment section, the Proposed Mitigation section, and the Anticipated Effects on Marine Mammal Habitat section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks. In the following discussion, we provide general background information on sound and marine mammal hearing before considering potential effects to marine mammals from sound produced by vibratory and impact pile driving.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 muPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions

away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

The underwater acoustic environment in the Mayport turning basin is likely to be dominated by noise from day-to-day port and vessel activities. The basin is sheltered from most wave noise, but is a high-use area for naval ships, tugboats, and security vessels. When underway, these sources can create noise between 20 Hz and 16 kHz (Lesage *et al.,* 1999), with broadband noise levels up to 180 dB. While there are no current measurements of ambient noise levels in the turning basin, it is likely that levels within the basin periodically exceed the 120 dB threshold and, therefore, that the high levels of anthropogenic activity in the basin create an environment far different from quieter habitats where behavioral reactions to sounds around the 120 dB threshold have been observed (*e.g.,* Malme *et al.,* 1984, 1988).

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003; ANSI, 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine

mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007). The functional groups and the associated frequencies are indicated below (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species):

- Low-frequency cetaceans (mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz (extended from 22 kHz; Watkins, 1986; Au *et al.,* 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* now considered to include two members of the genus *Lagenorhynchus* on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.* 2009, 2010; Tougaard *et al.* 2010]): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: Functional hearing is estimated to occur between approximately 75 Hz to 100 kHz for Phocidae (true seals) and between 100 Hz and 40 kHz for Otariidae (eared seals), with the greatest sensitivity between approximately 700 Hz and 20 kHz. The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

Two cetacean species are expected to potentially be affected by the specified activity. The bottlenose and Atlantic spotted dolphins are classified as mid-frequency cetaceans.

Acoustic Effects, Underwater

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Marine mammals depend on acoustic cues for vital biological functions, (*e.g.,* orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa^2-s (*i.e.,* 186 dB sound exposure level [SEL] or approximately 221–226 dB p-p [peak]) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy.

The above TTS information for odontocetes is derived from studies on

the bottlenose dolphin and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.,* 2009). As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 µPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to a sound source might incur TTS, there has been further speculation about the possibility that some individuals might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa^2-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Measured source levels from impact pile driving can be as high as 214 dB rms. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.,* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.,* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.,* 2004; Wartzok *et al.,* 2003; Nowacek *et al.,* 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke

slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Masking has the potential to impact species at the population or community levels as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Habitat

The proposed activities at NSM would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near NSM and minor impacts to the immediate substrate during installation and removal of piles during the wharf construction project.

Pile Driving Effects on Potential Prey (Fish)

Construction activities may produce both pulsed (*i.e.,* impact pile driving) and continuous (*i.e.,* vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving (or other types of sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB re 1 µPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from pile driving activities at the project

area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Pile Driving Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in nearshore and estuarine waters in the region. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Therefore, pile driving is not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area. The Mayport turning basin itself is a man-made basin with significant levels of industrial activity and regular dredging, and is unlikely to harbor significant amounts of forage fish. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see Estimated Take by Incidental Harassment); these values were used to develop mitigation measures for pile driving activities at NSM. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the 190 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described previously under Potential Effects of the Specified Activity on Marine Mammals, serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 3. However, a minimum shutdown zone of 15 m (which is larger than the maximum predicted injury zone) will be established during all pile driving activities, regardless of the estimated zone. Vibratory pile driving activities are not predicted to produce sound exceeding the 190-dB Level A harassment threshold, but these precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury. For impact driving of steel piles, if necessary, the radial distance of the shutdown would be established at 40 m.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see Proposed Monitoring and Reporting). Nominal radial distances for disturbance zones are shown in Table 3. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.,* what may be reasonably observed by visual observers stationed within the turning basin) would be observed.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than

thirty minutes. Please see the Monitoring Plan (*www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*), developed by the Navy in agreement with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are typically trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science, wildlife management, mammalogy, or related fields (bachelor's degree or higher is required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

For this project, we waive the requirement for advanced education, as the observers will be personnel hired by the engineering contractor that may not have backgrounds in biological science or related fields. These observers will be required to watch the Navy's Marine Species Awareness Training video and shall receive training sufficient to achieve all other qualifications listed above (where relevant).

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Navy's proposed measures, as well as any other potential measures that may be relevant to the specified activity, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat,

paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The Navy's proposed monitoring and reporting is also described in their Marine Mammal Monitoring Plan, on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy would implement the following procedures for pile driving:

- MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or sixty days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Monitoring Results From Previously Authorized Activities

The Navy complied with the mitigation and monitoring required under the previous authorization for the Wharf C–2 project. Marine mammal monitoring occurred before, during, and after each pile driving event. During the course of these activities, the Navy did not exceed the take levels authorized under the IHA. The Navy has summarized monitoring results to date in their application, and we will make the required monitoring report available to the public when submitted. Under the terms of the previous IHA, the Navy was required to conduct acoustic monitoring and to submit a report within 75 days of completion. Those results are not yet available but will be provided upon report submittal. As noted previously, the Navy has completed approximately seventy percent of steel pile installation required for the project, over the course of 28 in-water work days. During this time, 117 observations of bottlenose dolphins have occurred within the defined Level B harassment zone. No Atlantic spotted dolphins, or any other species, have been observed.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving and involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered discountable. However, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The turning basin is not important habitat for marine mammals, as it is a man-made, semi-enclosed basin with frequent industrial activity and regular maintenance dredging. The small area of ensonification extending out of the turning basin into nearshore waters is also not believed to be of any particular importance, nor is it considered an area frequented by marine mammals. Bottlenose dolphins may be observed at any time of year in estuarine and nearshore waters of the action area, but sightings of other species are rare. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. The Navy has requested authorization for the incidental taking of small numbers of bottlenose dolphins and Atlantic spotted dolphins in the Mayport turning basin and associated nearshore waters that may result from pile driving during construction activities associated with the project described previously in this document.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidents of take.

Sound Thresholds

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. To date, no studies have been conducted that explicitly examine impacts to marine mammals from pile driving sounds or from which empirical sound thresholds have been established. These thresholds (Table 2) are used to estimate when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS is working to revise these acoustic guidelines; for more information on that process, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 2—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level A harassment (underwater)	Injury (PTS—any level above that which is known to cause TTS).	180 dB (cetaceans)/190 dB (pinnipeds) (rms).
Level B harassment (underwater)	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne)	Behavioral disruption	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

Where:

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the

initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as at the NSM turning basin, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. However, these data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles. We know of no existing measurements for the specific pile types planned for use at NSM (*i.e.,* king piles, paired sheet piles, plastic pipe piles), although some data exist for single sheet piles. Results of acoustic monitoring are not yet available for consideration here. It was therefore necessary to extrapolate from available data to determine reasonable source levels for this project.

In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from pile driving at NSM, the Navy first compared linear lengths (in terms of radiative surface length) of the pile types proposed for use with those for which measurements of underwater SPLs exist. For example, the total linear length of a king pile (with width of 17.87 in and height of 41.47 in) is equivalent to the circumference (*i.e.,* linear length) of a 24-in diameter pipe pile. Please see Table 6–2 of the Navy's application for more detail on these comparisons. We recognize that these pile types may produce sound differently, given different radiative geometries, and that there may be differences in the frequency spectrum produced, but believe this to be the best available method of determining proxy source levels.

We considered existing measurements from similar physical environments (sandy sediments and water depths greater than 15 ft) for impact and vibratory driving of 24-in steel pipe piles and for steel sheet piles. These studies, largely conducted by the Washington State Department of Transportation and the California Department of Transportation, show typical values around 160 dB for vibratory driving of 24-in pipe piles and sheet piles, and around 185–195 dB for impact driving of similar pipe piles (all measured at 10 m; *e.g.,* Laughlin, 2005a, 2005b; Illingworth and Rodkin, 2010, 2012, 2013; CalTrans, 2012). For vibratory driving, a precautionary value of 163 dB (the highest representative value; CalTrans, 2012) was selected as a proxy source value for both sheet piles and king piles. For impact driving of both sheet piles and king piles (should it be required), a proxy source value of 189 dB (CalTrans, 2012) was selected for use in acoustic modeling based on similarity to the physical environment at NSM and because of the measurement location in mid-water column.

No measurements are known to be available for vibratory driving of plastic polymer piles, so timber piles were considered as likely to be the most similar pile material. Although timber piles are typically installed via impact drivers, Laughlin (2011) reported a mean source measurement (at 16 m) for vibratory removal of timber piles. This value (150 dB) was selected as a proxy source value on the basis of similarity of materials between timber and polymer. CalTrans (2012) reports one dataset for impact driving of plastic piles (153 dB at 10 m). Please see Tables 6–3 and 6–4 in the Navy's application. All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 3.

TABLE 3—DISTANCES TO RELEVANT UNDERWATER SOUND THRESHOLDS AND AREAS OF ENSONIFICATION

Pile type	Method	Threshold	Distance (m) [1]	Area (sq km) [2]
Steel (sheet and king piles)	Vibratory	Level A harassment (180 dB)	n/a	0
		Level B harassment (120 dB)	7,356	2.9
	Impact	Level A harassment (180 dB)	40	0.004
		Level B harassment (160 dB)	858	0.67
Polymeric (plastic fender piles)	Vibratory	Level A harassment (180 dB)	n/a	0
		Level B harassment (120 dB)	1,585	0.88
	Impact	Level A harassment (180 dB)	n/a	0
		Level B harassment (160 dB)	3.4	0.00004

[1] Areas presented take into account attenuation and/or shadowing by land. Calculated distances to relevant thresholds cannot be reached in most directions form source piles. Please see Figures 6–1 through 6–3 in the Navy's application.

The Mayport turning basin does not represent open water, or free field, conditions. Therefore, sounds would attenuate as per the confines of the basin, and may only reach the full estimated distances to the harassment thresholds via the narrow, east-facing entrance channel. Distances shown in Table 1 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Figures 6–1 through 6–3 of the Navy's application for a depiction of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Marine Mammal Densities

For all species, the best scientific information available was considered for use in the marine mammal take assessment calculations. Density value for the Atlantic spotted dolphin is from recent density estimates produced by Roberts *et al.* (2015); we use the highest

relevant seasonal density value (spring). Density for bottlenose dolphins is derived from site-specific surveys conducted by the Navy; it is not currently possible to identify observed individuals to stock. This survey effort consists of 24 half-day observation periods covering mornings and afternoons during four seasons (December 10–13, 2012, March 4–7, 2013, June 3–6, 2013, and September 9–12, 2013). During each observation period, two observers (a primary observer at an elevated observation point and a secondary observer at ground level) monitored for the presence of marine mammals in the turning basin (0.712 km^2) and an additional grid east of the basin entrance. Observers tracked marine mammal movements and behavior within the observation area, with observations recorded for five-minute intervals every half-hour. Morning sessions typically ran from 7:00–11:30 and afternoon sessions from 1:00 to 5:30.

Most observations were of individuals or pairs, although larger groups were occasionally observed (median number of dolphins observed ranged from 1–3.5 across seasons). Densities were calculated using observational data from the primary observer supplemented with data from the secondary observer for grids not visible by the primary observer. Season-specific density was then adjusted by applying a correction factor for observer error (*i.e.,* perception bias). The seasonal densities range from 1.98603 (winter) to 4.15366 (summer) dolphins/km^2. We conservatively use the largest density value to assess take, as the Navy does not have specific information about when in-water work may occur during the proposed period of validity.

Description of Take Calculation

The following assumptions are made when estimating potential incidents of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period; and,
- There will be 27 total days of vibratory driving (seventeen days for steel piles and ten days for plastic piles) and twenty days of impact pile driving.
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

The estimation of marine mammal takes typically uses the following calculation:

Exposure estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is estimated using the relevant distances in Table 3, taking into consideration the possible affected area with attenuation due to the constraints of the basin. Because the basin restricts sound from propagating outward, with the exception of the east-facing entrance channel, the radial distances to thresholds are not generally reached.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative.

The quantitative exercise described above indicates that no incidents of Level A harassment would be expected, independent of the implementation of required mitigation measures. The twenty days of contingency impact driving considered here could include either steel or plastic piles on any of the days; because the ZOI for impact driving of steel piles subsumes the ZOI for impact driving of plastic piles, we consider only the former here. See Table 4 for total estimated incidents of take.

TABLE 4—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	n (animals/km^2)	Activity	n * ZOI [1]	Proposed authorized takes [2]	Total proposed authorized takes
Bottlenose dolphin	4.15366	Impact driving (steel)	3	60	[3] 304
		Vibratory driving (steel)	12	204	
		Vibratory driving (plastic)	4	40	
Atlantic spotted dolphin	0.005402 (spring)	Impact driving (steel)	0	0	0
		Vibratory driving (steel)	0	0	
		Vibratory driving (plastic)	0	0	

[1] See Table 3 for relevant ZOIs. The product of this calculation is rounded to the nearest whole number.
[2] The product of n * ZOI is multiplied by the total number of activity-specific days to estimate the number of takes.
[3] It is impossible to estimate from available information which stock these takes may accrue to.

Analyses and Preliminary Determinations

Negligible Impact Analysis

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken''

through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with the wharf construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation (impact driving is included only as a contingency and is not expected to be required), and this activity does not have the potential to cause injury to marine mammals due to the relatively low source levels produced (less than 180 dB) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. Environmental conditions in the confined and protected Mayport turning basin mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the turning basin while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, these stocks are not listed under the ESA, although coastal bottlenose dolphins are designated as depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from the Navy's wharf construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

As described previously, of the 304 incidents of behavioral harassment predicted to occur for bottlenose dolphin, we have no information allowing us to parse those predicted incidents amongst the three stocks of bottlenose dolphin that may occur in the project area. Therefore, we assessed the total number of predicted incidents of take against the best abundance estimate for each stock, as though the total would occur for the stock in question. For two of the bottlenose dolphin stocks, the total predicted number of incidents of take authorized would be considered small—approximately three percent for the southern migratory stock and less than 25 percent for the northern Florida coastal stock—even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for bottlenose dolphins in estuarine and nearshore waters, there is likely to be some overlap in individuals present day-to-day.

The total number of authorized takes proposed for bottlenose dolphins, if assumed to accrue solely to new individuals of the JES stock, is higher relative to the total stock abundance, which is currently considered unknown. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is highly likely that a relatively small subset of JES bottlenose dolphins would be harassed by project activities. JES bottlenose dolphins range from Cumberland Sound at the Georgia-Florida border south to approximately Palm Coast, Florida, an area spanning over 120 linear km of coastline and including habitat consisting of complex inshore and estuarine waterways. JES dolphins, divided by Caldwell (2001) into Northern and Southern groups, show strong site fidelity and, although members of both groups have been observed outside their preferred areas, it is likely that the majority of JES dolphins would not occur within waters ensonified by project activities. Further, although the largest area of ensonification is predicted to extend up to 7.5 km offshore from NSM, estuarine dolphins are generally considered as restricted to inshore waters and only 1–2 km offshore. In summary, JES dolphins are (1) known to form two groups and exhibit strong site fidelity

(*i.e.,* individuals do not generally range throughout the recognized overall JES stock range); (2) would not occur at all in a significant portion of the larger ZOI extending offshore from NSM; and (3) the specified activity will be stationary within an enclosed basin not recognized as an area of any special significance that would serve to attract or aggregate dolphins. We therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that these estimated incidents of take represent small numbers of bottlenose dolphins.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that section 7 consultation under the ESA are not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the pier maintenance project. NMFS made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the Navy's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) on November 20, 2013.

We have reviewed the Navy's application for a renewed IHA for ongoing construction activities for 2015–16 and preliminary results of required marine mammal monitoring. Based on that review, we have determined that the proposed action is very similar to that considered in the previous IHA. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined preliminarily that the preparation of a new or supplemental NEPA document is not necessary, and will, after review of public comments determine whether or not to reaffirm our 2013 FONSI. The 2013 NEPA documents are available for review at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Proposed Authorization

As a result of these preliminary determinations, we propose to authorize the take of marine mammals incidental to the Navy's wharf project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Specific language from the proposed IHA is provided next.

This section contains a draft of the IHA. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid for one year from the date of issuance.

2. This IHA is valid only for pile driving activities associated with the Wharf C–2 Recapitalization Project at Naval Station Mayport, Florida.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking is the bottlenose dolphin (*Tursiops truncatus*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 for numbers of take authorized.

TABLE 1—AUTHORIZED TAKE NUMBERS

Species	Authorized take
Bottlenose dolphin	304

(d) The taking by injury (Level A harassment), serious injury, or death of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) For all pile driving, the Navy shall implement a minimum shutdown zone of 15 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease. For impact driving of steel piles, the minimum shutdown zone shall be of 40 m radius.

(b) The Navy shall establish monitoring locations as described below. Please also refer to the Marine Mammal Monitoring Plan (Monitoring Plan; attached).

i. For all pile driving activities, a minimum of two observers shall be deployed, with one positioned to achieve optimal monitoring of the shutdown zone and the second positioned to achieve optimal monitoring of surrounding waters of the turning basin, the entrance to that basin, and portions of the Atlantic Ocean. If practicable, the second observer should be deployed to an elevated position, preferably opposite Wharf C–2 and with clear sight lines to the wharf and out the entrance channel.

ii. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals. Observations within the turning basin shall be distinguished from those in the entrance channel and nearshore waters of the Atlantic Ocean.

iii. All observers shall be equipped for communication of marine mammal observations amongst themselves and to other relevant personnel (*e.g.,* those necessary to effect activity delay or shutdown).

(c) Monitoring shall take place from fifteen minutes prior to initiation of pile driving activity through thirty minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for fifteen minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have

declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

(d) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(e) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start and in accordance with the monitoring plan, and shall include instruction on species identification (sufficient to distinguish the species listed in 3(b)), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

(f) The Navy shall use soft start techniques recommended by NMFS for impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(g) Pile driving shall only be conducted during daylight hours.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for projects at NSM, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see attached), and shall also include:

i. Detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any.

ii. Description of attempts to distinguish between the number of individual animals taken and the number of incidents of take, such as ability to track groups or individuals.

iii. An estimated total take estimate extrapolated from the number of marine mammals observed during the course of construction activities, if necessary.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

ii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

iii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHAs for Navy's wharf construction activities. Please include with your comments any supporting data or literature citations to

help inform our final decision on Navy's request for an MMPA authorization.

Dated: July 31, 2015.

Angela Somma,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–19184 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE029

Pacific Islands Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

ACTION: Notice; availability of permits.

SUMMARY: NMFS announces that 12 American Samoa pelagic longline limited entry permits in three vessel size classes are available for 2015. NMFS is accepting applications for these available permits.

DATES: NMFS must receive completed permit applications and payment by December 3, 2015.

ADDRESSES: Request a blank application form from the NMFS Pacific Islands Regional Office (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, or the PIR Web site *http://www.fpir.noaa.gov/Library/SFD/Samoa_LE_App_Fillable_02Feb15.pdf.* Mail your completed application and payment to: ASLE Permits, NOAA NMFS PIR, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, Sustainable Fisheries, NMFS PIR, tel 808–725–5175, fax 808–725–5215, or email *PIRO-permits@noaa.gov.*

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR 665.816 allow NMFS to issue new permits for the American Samoa pelagic longline limited entry program if the number of permits in a size class falls below the maximum allowed. At least 12 permits are available for issuance, as follows:

- Nine in Class A (vessels less than or equal to 40 ft in overall length);
- Two in Class B (over 40 ft to 50 ft); and
- One in Class D (over 70 ft).

Please note that the number of available permits may change before the application period closes.

Each application must be complete for NMFS to consider it. An application must include the completed and signed application form, evidence of documented participation in the fishery, and non-refundable payment for the application-processing fee.

If NMFS receives more completed applications than the available permits for a given permit class, NMFS will prioritize applicants using only the information in the applications and documentation provided by the applicants. If an applicant requests NMFS, in writing, that NMFS use NMFS longline logbook data as evidence of documented participation, the applicant must specify the qualifying vessel, official number, and month and year of the logbook records. NMFS will not conduct an unlimited search for records.

Applicants with the earliest documented participation in the fishery on a Class A sized vessel will receive the highest priorities for obtaining permits in any size class, followed by applicants with the earliest documented participation in Classes B, C, and D, in that order. In the event of a tie in the priority ranking between two or more applicants, NMFS will rank higher in priority the applicant whose second documented participation is earlier. Detailed criteria for prioritization of eligible applicants are in the regulations at 50 CFR 665.816(g).

NMFS must receive applications by December 3, 2015 to be considered for a permit (see **ADDRESSES**). NMFS will not accept applications received after that date.

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

Dated: July 30, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–19102 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD330

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Breakwater Replacement Project in Eastport, Maine

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

ACTION: Notice; revision of an incidental harassment authorization.

SUMMARY: Notice is hereby given that we have revised an incidental harassment authorization (IHA) issued to the Maine Department of Transportation (ME DOT) to incidentally harass, by Level B harassment only, small numbers of four species of marine mammals during construction activities associated with a breakwater replacement project in Eastport, Maine. The project has been delayed and the effective dates revised accordingly.

DATES: This authorization is now effective from July 20, 2015, through July 19, 2016.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 2014, NMFS received an application from ME DOT requesting an IHA for the take, by Level B harassment, of small numbers of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harbor porpoises (*Phocoena phocoena*), and Atlantic white-sided dolphins (*Lagenorhynchus acutus*) incidental to in-water construction activities in Eastport, Maine. On July 31, 2014, NMFS published a **Federal Register** notice (FR 79 44407) for the proposed IHA, and subsequently published final notice of our issuance of the IHA on October 1, 2014 (79 FR 59247), effective from October 1, 2014, through September 30, 2015. In June 2015, ME DOT informed NMFS that no work had occurred relevant to the IHA specified activity due to difficulties in developing a passive acoustic monitoring plan for sound source verification of test pile driving. Accordingly, ME DOT requested that NMFS revise the effective date of the IHA to a one-year period beginning on July 20, 2015, to accommodate the delayed schedule, with no other changes.

Summary of the Activity

The proposed Eastport breakwater replacement project will replace an open pier that is supported by 151 piles, consisting of steel pipe piles, reinforced concrete pile caps, and a pre-stressed plank deck with structural overlay. The proposed approach pier will be 40 ft by 300 ft and the proposed main pier section that would be parallel to the shoreline will be 50 ft by 400 ft.

The replacement pier will consist of two different sections. The approach pier will be replaced in kind by placing fill inside of a sheet pile enclosure, supported by driven piles. The approach section will consist of sheet piles that are driven just outside of the existing sheet piles. The sheet piles can

be installed by use of a vibratory hammer only. The main pier, fender system, and wave fence system will be pile supported with piles ranging from 16 inch–36 inch diameter pipe piles. These piles will be driven with a vibratory hammer to a point and must be seated with an impact hammer to ensure stability.

The vibratory hammer will drive the pile by applying a rapidly alternating force to the pile by rotating eccentric weights resulting in a downward vibratory force on the pile. The vibratory hammer will be attached to the pile head with a clamp. The vertical vibration in the pile functions by disturbing or liquefying the soil next to the pile, causing the soil particles to lose their frictional grip on the pile. The pile moves downward under its own weight, plus the weight of the hammer. It takes approximately one to three minutes to drive one pile. An impact hammer will be used to ensure the piles are embedded deep enough into the substrate to remain stable for the life of the pier. The impact hammer works by dropping a mass on top of the pile repeatedly to drive it into the substrate. Diesel combustion is used to push the mass upwards and allow it to fall onto the pile again to drive it.

Findings

Marine Mammal Protection Act (MMPA)—As required by the MMPA, for the original IHA, we determined that (1) the required mitigation measures are sufficient to reduce the effects of the specified activities to the level of least practicable impact; (2) the authorized takes will have a negligible impact on the affected marine mammal species; (3) the authorized takes represent small numbers relative to the affected stock abundances; and (4) the ME DOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action. No substantive changes have occurred in the interim.

National Environmental Policy Act (NEPA)—In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the environmental impacts of issuance of a one-year IHA. A Finding of No Significant Impact was signed on September 24, 2014. No substantive changes have occurred in the interim.

Endangered Species Act (ESA)—No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS determined that a section 7 consultation under the ESA is not required. No substantive changes have occurred in the interim.

Summary of the Revision

Construction activities have been delayed for the project due to difficulties in developing a passive acoustic monitoring plan. No in-water work has occurred, including all aspects of the specified activity considered in our issuance of the IHA. The original IHA issued is a one-year IHA with no consideration of seasonality in timing any component of the specified activity. Therefore, shifting the effective dates of the IHA by approximately ten months to accommodate the ME DOT's delayed schedule for this project has no effect on our analysis of project impacts and does not affect our findings. No new information is available that would substantively affect our analyses under the MMPA, NEPA, or ESA. All mitigation, monitoring, and reporting measures described in our notice of issuance of the IHA remain in effect. The species for which take was authorized and the numbers of incidents of take authorized are unchanged.

As a result of the foregoing, we have revised the IHA issued to the ME DOT to conduct the specified activities in Eastport, Maine. Originally valid for one year, from October 1, 2014, through September 30, 2015, the IHA now becomes effective on July 20, 2015, and is valid for one year, until July 19, 2016.

Dated: July 29, 2015.

Perry Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–19113 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Community Broadband Summit

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA), through the BroadbandUSA program, in conjunction with Next Century Cities will hold a one-day regional broadband summit, ''Digital New England,'' to share information to help communities build their broadband capacity and utilization. The summit will present best practices and lessons learned from broadband network infrastructure build-outs and digital inclusion programs from Maine and surrounding states, including projects funded by NTIA's Broadband Technology Opportunities Program (BTOP) and State Broadband Initiative (SBI) grant programs funded by the American Recovery and Reinvestment Act of 2009.[1] The summit will also explore effective business and partnership models.

DATES: The Digital New England Broadband Summit will be held on September 28, 2015, from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held in the Holiday Inn by the Bay, Portland, Maine at 88 Spring Street, Portland, Maine 04101.

FOR FURTHER INFORMATION CONTACT: Barbara Brown, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4628, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4374; email: *bbrown@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email: *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: NTIA's BroadbandUSA initiative provides expert advice and field-proven tools for assessing broadband adoption, planning new infrastructure and engaging a wide range of partners in broadband projects. BroadbandUSA convenes workshops on a regular basis to bring stakeholders together to discuss ways to improve broadband policies, share best practices, and connect communities to other federal agencies and funding sources for the purpose of expanding broadband infrastructure and adoption throughout America's communities.

The Digital Broadband Summit will feature subject matter experts from NTIA's BroadbandUSA initiative and include NTIA presentations that discuss lessons learned through the implementation of the BTOP and SBI grants. A panel will explore key elements required for successful broadband projects using a mix of regional examples. Topics will include marketing/demand aggregation, outreach, coordination with government agencies, partnership strategies, construction and oversight. A second panel will explore why broadband matters in comprehensive community

[1] American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

planning and will provide real-world examples of how broadband applications help communities improve economic development, workforce development, and educational opportunities. A third panel will examine business model options, including private networks, public/private partnerships, co-ops and municipal systems. Panelists will provide tips to communities on how to research funding options, make a compelling case to funders, and leverage multiple federal, state, and nonprofit funding streams. Community leaders interested in expanding economic development opportunities or commercial providers interested in expanding their markets, among others, should find the information presented at the summit valuable as they plan their broadband projects.

The summit will be open to the public and press. Pre-registration is required, and space is limited. Portions of the meeting will be webcast. Information on how to pre-register for the meeting, and how to access the free, live Webcast will be available on NTIA's Web site: *http://www.ntia.doc.gov/other-publication/2015/NEsummit*. NTIA will ask registrants to provide their first and last names and email addresses for both registration purposes and to receive any updates on the summit. If capacity for the meeting is reached, NTIA will maintain a waiting list and will inform those on the waiting list if space becomes available. Meeting updates, changes in the agenda, if any, and relevant documents will be also available on NTIA's Web site at *http://www.ntia.doc.gov/other-publication/2015/NEsummit*.

The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as language interpretation or other ancillary aids, are asked to notify Barbara Brown at the contact information listed above at least five (5) business days before the meeting.

Dated: July 31, 2015.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2015–19229 Filed 8–4–15; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Air Force

United States Air Force Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, Air Force Scientific Advisory Board, DOD.

ACTION: ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense hereby announces that the United States Air Force (USAF) Scientific Advisory Board (SAB) Fall Board meeting will take place from 8:00 a.m. to 4:30 p.m. on September 23, 2015 at the SAFTAS Conference and Innovation Conference Center, located on the plaza level of 1550 Crystal Drive in Crystal City, Virgina. The purpose of this Air Force Scientific Advisory Board quarterly meeting is to receive strategic level briefings related to Science and Technology from Air Force Senior Leaders, and to initiate planning for FY16 studies. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, several sessions of the USAF SAB Fall Board meeting will be closed to the public because they will discuss classified information covered by section 5 U.S.C. 552b(c)(1). The session that will be open to the general public will be held from 9:30 a.m. to 10:30 a.m. on September 23, 2015.

Any member of the public that wishes to attend this meeting or provide input to the USAF SAB must contact the Designated Federal Officer at the phone number or email address listed below at least five working days prior to the meeting date. Please ensure that you submit your written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting commencement date. The Designated Federal Officer will review all timely submissions and respond to them prior to the start of the meeting identified in this noice. Written statements received after this date may not be considered by the USAF SAB until the next scheduled meeting.

FOR FURTHER INFORMATION CONTACT: Major Mike Rigoni at, *michael.j.rigoni.mil@mail.mil* or 240–612–5504, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762.

Henry Williams,

Acting Air Force Federal Register Liaison Officer, DAF.

[FR Doc. 2015–19198 Filed 8–4–15; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0156]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 5, 2015.

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

- *Federal eRulemaking 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, docket 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.

Any associated forms for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Family Readiness Policy, ATTN: Program Manager, Spouse Education & Career Opportunities Program, 4800 Mark Center Drive, Suite 03G15, Alexandria, VA 22350–2300.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military Spouse Career Advancement Accounts Scholarship (MyCAA); OMB Control Number 0704–XXXX.

Needs and Uses: This information collection requirement is necessary to allow eligible military spouses to submit information for approval of financial scholarships to pursue portable careers.

To Utilize MyCAA Scholarship

Affected Public: Military spouse users of MyCAA.

Annual Burden Hours: 63,752.

Number of Respondents: 85,033.

Responses per Respondent: 1.

Annual Responses: 85,033.

Average Burden per Response: 45 minutes.

Frequency: On occasion.

To Apply for Participation in the MyCAA Program

Affected Public: Schools.

Annual Burden Hours: 93.

Number of Respondents: 370.

Responses per Respondent: 1.

Annual Responses: 370.

Average Burden per Response: 15 minutes.

Frequency: Once.

The Military Spouse Career Advancement Accounts Scholarship (MyCAA) is a career development and employment assistance program sponsored by the Department of Defense (DoD) to assist military spouses pursue licenses, certificates, certifications or associate's degrees (excluding associate's degrees in general studies, liberal arts, and interdisciplinary studies that do not have a concentration) necessary for gainful employment in high demand, high growth portable career fields and occupations; to provide a record of educational endeavors and progress of military spouses participating in education services; and to manage the tuition assistance scholarship, track enrollments and funding and to facilitate communication with participants via email. Records may also be used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

Dated: July 31, 2015.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2015–19199 Filed 8–4–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research. This meeting is open to the public.

DATES AND LOCATION: The Board on Coastal Engineering Research will meet from 8:00 a.m. to 1:00 p.m. on September 1, 2015, and reconvene from 8:00 a.m. to 5:30 p.m. on September 2, 2015. The Executive Session of the Board will convene from 8:00 a.m. to 12:00 p.m. on September 3, 2015. All sessions will be held Rooms 175–185, Jadwin Building, U.S. Army Engineer District, Galveston, 2000 Fort Point Road, Galveston, TX 77550. All sessions are open to the public. For more information about the Board, please visit *http://chl.erdc.usace.army.mil/cerb.*

FOR FURTHER INFORMATION CONTACT: Mr. José E. Sánchez, Alternate Designated Federal Officer (ADFO), U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, phone 601–634–2001, or *Jose.E.Sanchez@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Board on Coastal Engineering Research provides broad policy guidance and reviews plans for the conduct of research and the development of research projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers.

Purpose of the Meeting: The theme of the meeting is Coastal Navigation—Driving the U.S. Economy by Integrating Marine Transportation Infrastructure with Natural Coastal Systems. The purpose of the meeting is to identify the U.S. Gulf region's engineering challenges with nature and nature-based systems to enhance the resilience of coastal systems and marine transportation infrastructure and sustain the values they produce and to identify research and development needs to enable the U.S. Army Corps of Engineers and the Nation to deliver innovative solutions to meet these challenges and opportunities.

Agenda: On Tuesday morning, September 1, 2015, panel presentations will deal with the Integrated Coastal and Navigation Systems of the Texas Coast. Presentations will include The Texas Coast: Shoring Up Our Future—Implementation Challenges and Coastal Engineering Concerns; Storm Hazard Resilience Requirements of the Texas Coastal Industry's Energy Infrastructure and Implications for Modernizing Maritime Transportation Connections; Tackling the Most Challenging Built and Natural Infrastructure Sustainability and Resilience Problems of the Texas Coast; Leveraging Natural Systems and Functions for Delivering a Spectrum of Ecosystem Services, Restoration of Half Moon Reef in Matagorda Bay; The Galveston Bay Plan—A Comprehensive Conservation Management Plan for Galveston Bay, Galveston Bay Estuary Program: Regional Water and Sediment Quality Monitoring and Research Action Plan; USACE Engineering with Nature and Regional Sediment Management ''Proving Ground'' Initiatives; and a presentation from the Texas A&M University Coastal Engineering Department. There will be an optional field trip Tuesday afternoon, which is open to the public. It includes a bus tour to a beach nourishment project; inspection of integrated petrochemical facility, navigation, and structural flood risk management infrastructure; inspection of Port of Galveston facilities and cruise terminal with non-structural flood proofing; and a ferry ride across

Bolivar Pass and return for inspection of potential surge gate location across Houston-Galveston Navigation Channel.

On Wednesday morning, September 2, 2015, the Board will reconvene to discuss Coastal Engineering with Nature and Regional Sediment Management. Presentations will include Performance Trends of South Padre Island Onshore and Nearshore Placement of Navigation Channel Maintenance Dredging Materials, Brazos Island Harbor; Challenges and Opportunities of In-Bay Sediment Placement in Mobile Bay: Science, Technology and Research Needs; Use of USACE Enterprise Tools for Life Cycle Systems Management of Dredged Materials: Gulf Intracoastal Waterway Pilot Project; and The Future of Nearshore Processes Research: Implementing a Research Plan by the Nearshore Processes Community. Wednesday morning and afternoon session continues with the Integrated Coastal and Navigation Systems panel. Presentations include Dredging Equipment/Environmental Windows Optimization of Navigation Systems in the Gulf of Mexico; Coastal and Navigation Asset Management: System Optimization Based on Cargo Flows for the Houston-Galveston Navigation Channel; Informing Coastal Vulnerabilities with World Class Science: Texas Coastal Ocean Observation Network; Research Needs on the Texas Coast for Resilient Regionally Integrated Multiple Lines of Defense for Coastal Storm Risk Management and Navigation Sustainability; Research Needs on a Hurricane Surge Barrier for the Houston-Galveston Bay Region; Research Needs of the Texas Protection and Restoration Project; and Navigation and Coastal Tools for the US. Gulf Coast: Capabilities and Research Needs.

The Board will meet in Executive Session to discuss ongoing initiatives and future actions on Thursday morning, September 3, 2015.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public. Because seating capacity is limited, advance registration is required. Registration can be accomplished as set forth below. Because the meeting will be held in a Federal Government facility, security screening is required. A photo ID is required, and the name of each person seeking entry onto the facility will be checked against the list of names of those persons who have registered to attend the meeting. The guards reserve the right to inspect vehicles seeking to enter the facility. Individuals will be directed to the District Office building, where further security screening is required.

Oral participation by the public is scheduled for 3:45 p.m. on Wednesday, September 2, 2015. The Galveston District is fully handicap accessible. For additional information about public access procedures, please contact Mr. Sánchez, the Board's ADFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: Individuals who wish to attend the meeting of the Board must register with the ADFO by email, the preferred method of contact, no later than August 28, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section, above. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Comments and Statements: Pursuant to 41 CFR 102–3.015(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Mr. José E. Sánchez, ADFO, via electronic mail, the preferred mode of submission, as the address listed in the **FOR FURTHER INFORMATION CONTACT** section above. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The ADFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the ADFO at least five business days prior to the meeting to be considered by the Board. The ADFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's ADFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The ADFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the ADFO.

José E. Sánchez,

Director, Coastal and Hydraulics Laboratory, Alternate Designated Federal Officer.

[FR Doc. 2015–19242 Filed 8–4–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0064]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Health Education Assistance Loan (HEAL) Program: Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 4, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://wwww.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0064. Comments submitted in response to this notice should be submitted electronically through the

Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Health Education Assistance Loan (HEAL) Program: Forms.

OMB Control Number: 1845–0128.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households, Private Sector.

Total Estimated Number of Annual Responses: 167.

Total Estimated Number of Annual Burden Hours: 24.

Abstract: The Health Education Assistance Loan (HEAL) forms are required for lenders to make application to the HEAL insurance program, to report accurately and timely on loan actions, including transfer of loans to a secondary agent, and to establish the repayment status of borrowers who qualify for deferment of payments using form 508. The reports assist in the diligent administration of the HEAL program, protecting the financial interest of the federal government.

Dated: July 30, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–19101 Filed 8–4–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7320–042]

Erie Boulevard Hydropower, L.P.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the existing 3.35-megawatt (MW) Chasm Hydroelectric Project, located on the Salmon River, near the Town of Malone, in Franklin County, New York. Commission staff prepared an Environmental Assessment (EA) which analyzes the potential environmental effects of the project and concludes that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

FOR FURTHER INFORMATION CONTACT: John Mudre at (202) 502–8902.

Dated: July 30, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–19208 Filed 8–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR15–32–000]

Noble Energy, Inc.; Notice of Request for Waiver

Take notice that on July 23, 2015, pursuant to Rule 204 of the Commission's Rules of Practices and Procedure, 18 CFR 385.204 (2014), Noble Energy, Inc. filed a petition requesting temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on August 6, 2015.

Dated: July 30, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–19204 Filed 8–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–87–000]

Starwood Energy Group Global, L.L.C., Beaver Falls, L.L.C., Syracuse, L.L.C., Hazleton Generation, L.L.C., Startrans IO, LLC, Gainesville Renewable Energy Center, LLC; Notice of Petition for Declaratory Order

Take notice that on July 29, 2015, pursuant to Rules 207 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,18 CFR 385.207 and 385.212, Starwood Energy Group Global, L.L.C, Beaver Falls, L.L.C., Syracuse, L.L.C., Hazleton Generation, L.L.C., Startrans IO, LLC, and Gainesville Renewable Energy Center, LLC filed a petition for a Declaratory Order (petition) requesting the Commission determine that: (1) Current and future Limited Partnerships (LP) Interests are passive investments that do not allow the LP Investors to manage, direct, or control the activities of the Starwood Funds, the Project Companies or future Commission jurisdictional public utilities; (2) Transactions resulting in the purchase and sale of LP Interests do not require case specific approval pursuant to section 203 of the Federal Power Act (FPA) and, to the extent relevant, qualify for the benefit of blanket authorization with respect to non-voting securities under 18 CFR 33.1(c)(2)(i); (3) the Starwood Funds or their affiliates do not need to identify the LP Investors in any future FPA section 203 application, FPA section 205 market-based rate application, notice of change in status or updated market power analysis; and (4) the Commission does not have jurisdiction under FPA section 201 over the Starwood Funds and the LP Investors are not holding companies under the Public Utility Holding Company Act of 205 (PUHCA), as more fully explained in its petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on August 28, 2015.

Dated: July 30, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–19201 Filed 8–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR15–31–000]

Noble Midstream Services, LLC; Notice of Request for Waiver

Take notice that on July 23, 2015, pursuant to Rule 204 of the Commission's Rules of Practices and Procedure, 18 CFR 385.204 (2014), Noble Midstream Services, LLC filed a petition requesting temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on August 6, 2015.

Dated: July 30, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–19203 Filed 8–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER15–1919–000; ER15–1919–001]

California Independent System Operator Corporation; Notice of Conference

Take notice that a staff-led conference will be convened in this proceeding

commencing at 10 a.m. (EST) on Tuesday, August 11, 2015, at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The purpose of the conference is to further explore the questions raised in the concurrently issued deficiency letter in these proceedings, and the discussion at this informal conference will be limited to the issues raised in the deficiency letter.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

This conference will not be webcasted or transcribed. However, an audio listen-only line will be provided. If you need a listen-only line, please email Sarah McKinley (*Sarah.McKinley@ferc.gov*) by 5:00 p.m. (EST) on Thursday, August 6, with your name, email, and phone number, in order to receive the call-in information the day before the conference. Please use the following text for the subject line, ''ER15–1919 listen-only line registration.''

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For additional information, please contact Laura Switzer at (202) 502–6231, *laura.switzer@ferc.gov* or Jennifer Shipley at (202) 502–6822, *jennifer.shipley@ferc.gov*.

Dated: July 30, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–19202 Filed 8–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–533–000]

Hiland Partner Holdings, LLC; Notice of Application

Take notice that on July 17, 2015 and supplemented on July 29, 2015, Hiland Partner Holdings LLC (Hiland), pursuant to section 7(c) of the Federal Energy Regulatory Commission's (FERC) regulations under the Natural Gas Act (NGA), filed in Docket No. CP15–533–000, an application for a certificate of public convenience and necessity to own, operate, and maintain the existing 9.64 mile long, 8 inch diameter natural gas pipeline (Bakken Residue Line) located in Richland County, Montana, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to: Mr. Peter Trombley, Associate General Counsel, Kinder Morgan Inc., 1001 Louisiana Street, Suite 1000, Houston, Texas, 77002, by phone at (713) 420–3348, or email at *peter_trombley@kindermorgan.com.*

Specifically, Hiland requests (i) certificate authorization of Bakken Residue Line for the limited purpose of transporting its own natural gas from the Hiland owned Bakken processing plant to an interconnect with Williston Basin Pipeline Company; (ii) a Part 157, Subpart F blanket certificate authorizing certain routine construction, operation, and abandonment activities; (iii) waivers of certain regulatory requirements; and (iv) confirmation that the Commission's assertion of jurisdiction over the Bakken Residue Line will not jeopardize the non-jurisdictional status of Hiland's otherwise non-jurisdictional gathering and processing facilities and operations.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time August 20, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–19205 Filed 8–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11175–025]

Crown Hydro, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Amendment of License.

b. *Project No.:* 11175–025.

c. *Date Filed:* April 30, 2015.

d. *Licensee:* Crown Hydro, LLC.

e. *Name of Project:* Crown Mill Hydroelectric Project.

f. *Location:* The 3.4-Megawatt (MW) Crown Mill Hydroelectric Project would be located on U.S. Army Corps of Engineers (''Corps'') lands within the campus of the Upper St. Anthony Falls Lock and Dam on the Mississippi River, in the City of Minneapolis, Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* Donald H. Clarke and Joshua E. Adrian, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street NW., Washington, DC 20036, Telephone: (202) 467–6370, Email: *dhc@dwgp.com, jea@dwgp.com.*

i. *FERC Contact:* Mr. M Joseph Fayyad, (202) 502–8759, *mo.fayyad@ferc.gov.*

j. Deadline for filing comments, interventions and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–11175–025.

k. *Description of Request:* The licensee proposes to move the project site about 250 feet north to a property owned by the U.S. Army Corps of Engineers (''Corps'') within the campus of the Upper St. Anthony Falls Lock and Dam that is adjacent to the as-licensed site. The most significant difference will be that the Crown Project will move the location of the powerhouse and will be using a new tunnel tailrace as opposed to connecting to an old existing tunnel.

l. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 30, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–19207 Filed 8–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation, Member Representatives Committee and Board of Trustees Meetings, Board of Trustees Corporate Governance and Human Resources Committee, Finance and Audit Committee, Compliance Committee, and Standards Oversight and Technology Committee Meetings

The Ritz Carlton Toronto, 181 Wellington Street West, Toronto, ON M5V 3G7

August 12 (7:30 a.m.–5:00 p.m.) and August 13 (8:30 a.m.–12:00 p.m.), 2015

Further information regarding these meetings may be found at: *http://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RR15–4, North American Electric Reliability Corporation
Docket No. RR15–12, North American Electric Reliability Corporation
Docket Nos. RD14–14, RD15–3, RD15–5, North American Electric Reliability Corporation

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Dated: July 30, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–19206 Filed 8–4–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0021; FRL–9931–00]

Pesticide Product Registrations; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 4, 2015.

ADDRESSES: Submit your comments, identified by the Docket Identification Number (ID) and the File Symbol of interest as shown in the body of this document, 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: Robert McNally, Director, Biopesticides and Pollution Prevention Division (BPPD) (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

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, EPA 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. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by EPA on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation Web site for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*). EPA received the following applications to register pesticide products containing active ingredients not included in any currently registered pesticide products:

1. *File Symbol:* 64137–RE. *Docket ID number:* EPA–HQ–OPP–2015–0484. *Applicant:* OMC Ag Consulting, Inc., 828 Tanglewood Ln., East Lansing, MI 48823 (on behalf of Verdera Oy, Kurjenkellontie 5 B, FI–02270 Espoo, Finland). *Product name:* Rotstop C Biofungicide. *Active ingredient:* Fungicide—*Phlebiopsis gigantea* strain VRA 1992 at 10%. *Proposed use:* End-use product for control of root and butt

rot (species of *Heterobasidion annosum* complex, including *Heterobasidion irregulare*) on conifers by treatment of freshly cut stumps. *Contact:* BPPD.

2. *File Symbol:* 90866–E. *Docket ID number:* EPA–HQ–OPP–2015–0458. *Applicant:* Spring Trading Company, 10805 W. Timberwagon Cir., Spring, TX 77380–4030 (on behalf of CH Biotech R&D Co. LTD, No. 121, Xian an Rd., Xianxi Township, Changhua County 507, Taiwan (R.O.C.) 50741). *Product name:* CH Biotech R&D Co. Betaine. *Active ingredient:* Plant Growth Regulator—Methanaminium, 1-carboxy-N, N, N-trimethyl-, inner salt (Betaine) at 98.5%. *Proposed use:* Plant growth regulator for amelioration of growth reduction caused by saline or sodic soils and environmental stress. *Contact:* BPPD.

3. *File Symbol:* 90866–R. *Docket ID number:* EPA–HQ–OPP–2015–0458. *Applicant:* Spring Trading Company, 10805 W. Timberwagon Cir., Spring, TX 77380–4030 (on behalf of CH Biotech R&D Co. LTD, No. 121, Xian an Rd., Xianxi Township, Changhua County 507, Taiwan (R.O.C.) 50741). *Product name:* CH Biotech Betaine Technical. *Active ingredient:* Plant Growth Regulator—Methanaminium, 1-carboxy-N, N, N-trimethyl-, inner salt (Betaine) at 98.5%. *Proposed use:* Manufacturing-use product. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 24, 2015.

John E. Leahy, Jr.,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2015–19263 Filed 8–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[9931–85–Region 10]

Final Reissuance of a General NPDES Permit (GP) for Oil and Gas Exploration Facilities in the Federal Waters of Cook Inlet, Alaska

AGENCY: Region 10, Environmental Protection Agency.

ACTION: Final notice of reissuance of a general permit.

SUMMARY: EPA is reissuing a National Pollutant Discharge Elimination System (NPDES) GP (AKG–28–5100) to cover Oil and Gas Exploration Facilities in the Federal Waters of Cook Inlet. EPA proposed the GP on March 22, 2013 for a 60 day comment period. Public Hearings were held the week of April 29, 2013, in Kenai (April 29), Homer (April 30), and Anchorage (May 2).

DATES: The effective date of this GP will be September 1, 2016.

ADDRESSES: Copies of the GP and Response to Comments are available through written requests submitted to EPA, Region 10, 1200 Sixth Avenue, Suite 900, OWW–191, Seattle, WA 98101. Electronic requests may be sent to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov.* For requests by phone, call Audrey Washington at (206) 553–0523 or Cindi Godsey at (206) 553–1676.

FOR FURTHER INFORMATION CONTACT: The GP, Fact Sheet, Response to Comments and Ocean Discharge Criteria Evaluation may be found on the Region 10 Web site at *http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/General+NPDES+Permits/#oilgas.*

SUPPLEMENTARY INFORMATION: EPA prepared a Biological Evaluation for consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. EPA received concurrence from both Services on a Not Likely to Adversely Affect determination.

Executive Order 12866: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* a Federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that this GP, as issued, will not have a significant economic impact on a substantial number of small entities.

Dated: July 29, 2015.

Daniel D. Opalski,

Director, Office of Water & Watersheds, Region 10.

[FR Doc. 2015–19255 Filed 8–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9931–41–OA]

Notification of a Closed Teleconference of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office is announcing a teleconference of the Chartered SAB to conduct a review of a draft report of recommendations regarding the agency's 2015 Scientific and Technological Achievement Awards (STAA). The Chartered SAB teleconference will be closed to the public.

DATES: The Chartered SAB teleconference date is Thursday, September 10, 2015, from 2:00 p.m. to 3:30 p.m. (Eastern Time).

ADDRESSES: The Chartered SAB closed teleconference will take place via telephone only. General information about the SAB may be found on the SAB Web site at *http://www.epa.gov/sab.*

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Mr. Thomas Carpenter, Designated Federal Officer, by telephone: (202) 564–4885 or email at *carpenter.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), the EPA has determined that the chartered SAB quality review teleconference will be closed to the public. The purpose of the teleconference is for the chartered SAB to conduct a review of a draft SAB advisory report of recommendations regarding the agency's 2015 STAA. The Chartered SAB teleconference will be closed to the public.

Quality review is a key function of the chartered SAB. Draft reports prepared by SAB committees, panels, or work groups must be reviewed and approved by the chartered SAB before transmittal to the EPA Administrator. The chartered SAB makes a determination in a meeting consistent with FACA about all draft reports and determines whether the report is ready to be transmitted to the EPA Administrator.

At the teleconference, the chartered SAB will conduct a review of draft report developed by an SAB committee

charged with developing recommendations regarding the agency's 2015 STAA. (for more information, see *http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/3c60dba294ebf58885257da2004d194f!OpenDocument&Highlight=0,staa.*

The STAA awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. I have determined that the Chartered SAB quality review teleconference will be closed to the public because it is concerned with recommending employees deserving of awards. In making these draft recommendations, the EPA requires full and frank advice from the SAB. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature, the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, is protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). Minutes of the Chartered SAB teleconference will be certified by the chair and retained in the public record.

Dated: July 29, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–19257 Filed 8–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9930–13]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 4, 2015.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of interest as shown in the body of this document, 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: Robert McNally, Director, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Susan Lewis, Director, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

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:

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- 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 regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

EPA Registration Number: 86174–3. Docket ID number: EPA–HQ–OPP–2010–0100. Applicant: SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192 (on behalf of bio-ferm GmbH, Technologiezentrum Tulln, Technopark 1, Tulln, 3430, Austria). Active ingredients: *Aureobasidium pullulans* strains DSM 14940 and DSM 14941. Product type: Fungicide. Proposed use: Post-harvest application to citrus. Contact: BPPD.

EPA Registration Numbers: 264–1137 (technical); 264–1169 (end use); Docket ID number: EPA–HQ–OPP–2015–0318. Applicant: Bayer CropScience, 2 T.W. Alexander Drive, RTP, NC 27709. Active ingredient: Fluoxastrobin. Product type: Fungicide. Proposed use: Soybean seed treatment. Contact: RD.

EPA Registration Numbers: 62719–499 and 62719–611. Docket ID number: EPA–HQ–OPP–2015–0188. Applicant: 9330 Zionsville Road, Indianapolis, IN 46268. Active ingredient: Penoxasulam. Product type: Herbicide. Proposed use:

Pome fruit group 11–10; stone fruit group 12–12; small fruit vine climbing subgroup 13–07F, except fuzzy kiwifruit; olive; pomegranate; and tree nut group 14–12. Contact: RD.

EPA Registration Numbers: 59639–3, 59639–132, 59639–2, 59639–83, and 59639–148. Docket ID number: EPA–HQ–OPP–2015–0035. Applicant: Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200 Walnut Creek, CA 94596–8025. Active ingredient: Clethodim. Product type: Herbicide. Proposed use: Onion, bulb subgroups 3–07A; vegetable, fruiting group 8–10; fruit, pome group 11–10; fruit, stone group 12–12; berry, low growing subgroup 13–07G (except cranberry); rapeseed subgroup 20A (except flax); sunflower subgroup 20B; cotton seed subgroup 20C; Stevia. Contact: RD.

EPA Registration Number: 100–1120 and 100–1098; Docket ID number: EPA–HQ–OPP–2014–0822. Applicant: Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. Active ingredient: Azoxystrobin. Product type: Fungicide. Proposed use: Ti palm. Contact: RD.

EPA Registration Number: 100–618, 100–617, 100–1312, 100–1178, 100–1324. Docket ID number: EPA–HQ–OPP–2014–0788. Applicant: Syngenta Crop Protection LLC., P.O. Box 18300, Greensboro, NC 27419. Active ingredient: Propiconazole. Product type: Fungicide. Proposed use: Dill, fresh; dill dried; dill, dill seed; leafy *Brassica* greens, subgroup 5B; radish, tops; radish, roots; Ti palm, leaves; Ti palm, roots, watercress, fruit, stone, group 12–12, except plum and nut, tree, group 14–12. Contact: RD.

EPA Registration Numbers: 7969–312 (Technical), 7969–309 and 7969–306 (Enduse products). Docket ID number: EPA–HQ–OPP–2015–0324. Applicant: BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. Active ingredient: Fluxapyroxad. Product type: Fungicide. Proposed uses: Citrus, dried pulp; citrus, oil; fruit, citrus, group 10–10; grass forage, fodder and hay, group 17; non-grass animal feeds, group 18; and poultry, fat. Contact: RD.

EPA Registration Numbers: 241–245 and 241–418. Docket ID number: EPA–HQ–OPP–2014–0397. Applicant: BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. Active ingredient: Pendimethalin. Product type: Herbicide. Proposed use: Caneberry subgroup 13–07A, bushberry subgroup 13–07B and tree nut group 14–12. Contact: RD.

EPA Registration Number: 81880–4, and 81880–5. Docket ID number: EPA–HQ–OPP–2015–0390. Applicant: Gowan Company, P.O. Box 5569, Yuma, AZ 85366. Active ingredient: Pyridaben. Product type: Insecticide. Proposed use: Greenhouse cucumber, pome fruit group 11–10; low growing berry 13–07G; and small fruit vine climbing subgroup 13–07F. Contact: RD.

EPA Registration Number: 33906–20. Docket ID number: EPA–HQ–OPP–2015–0390. Applicant: Nissan Chemical Industries, Ltd., c/o Lewis & Harrison, LLC., 122 C St., NW., Suite 505, Washington, DC 20001. Active ingredient: Pyridaben. Product type: Insecticide. Proposed use: Greenhouse cucumber, pome fruit group 11–10; low growing berry 13–07G; and small fruit vine climbing subgroup 13–07F. Contact: RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 29, 2015.

Jennifer L. McLain,

Acting, Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2015–19273 Filed 8–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9930–88]

Pesticide Product Registrations; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 4, 2015.

ADDRESSES: Submit your comments, identified by the Docket Identification Number (ID) and the EPA Registration Number of interest as shown in the body of this document, by one of the following methods:

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FOR FURTHER INFORMATION CONTACT: Jennifer McLain, Acting Director, Antimicrobials Division (AD) (7510P), main telephone number: (703) 305–7090, email address: *ADFRNotices@epa.gov;* or Susan Lewis, Director, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

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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.

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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, EPA 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. Registration Applications

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1. *EPA Registration Number:* 707–259. *Docket ID number:* EPA–HQ–OPP–2015–0466. *Applicant:* Rohm and Hass Co., 100 Independence Mall West, Philadelphia, PA 19106. *Active ingredient:* 3(2H)-Isothiazolone, 4,5-dichloro-2-octyl-. *Product type:* Algaecide, Bacteriostat, and Fungicide. *Proposed use:* Increase in non-food contact paper use rate. *Contact:* AD.

2. *EPA Registration Numbers:* 33906–9 and 33906–10. *Docket ID number:* EPA–HQ–OPP–2015–0412. *Applicant:* Lewis and Harrison, LLC, 122 C St., NW., Suite 505, Washington, DC 20001 (on behalf of Nissan Chemical Industries, Ltd., 7–1, 3-chome, Kanda-Nishiki-cho, Chiyoda-ku, Tokyo 101–0054, Japan). *Active ingredient:* Quizalofop-p-ethyl. *Product type:* Herbicide. *Proposed use:* Postemergence use on herbicide-tolerant Provisia™ rice. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 24, 2015.

John E. Leahy, Jr.,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2015–19259 Filed 8–4–15; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2015–6017]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

EXIM Bank's borrowers, financial institution policy holders and guaranteed lenders provide this form to U.S. exporters, who certify to the eligibility of their exports for EXIM Bank support. For direct loans and loan guarantees, the completed form is required to be submitted at time of disbursement and held by either the guaranteed lender or EXIM Bank. For MT insurance, the completed forms are held by the financial institution, only to be submitted to EXIM Bank in the event of a claim filing.

EXIM Bank uses the referenced form to obtain information from exporters regarding the export transaction and content sourcing. These details are necessary to determine the value and legitimacy of EXIM Bank financing support and claims submitted. It also provides the financial institutions a check on the export transaction's eligibility at the time it is fulfilling a financing request.

The information collection tool can be reviewed at: *http://www.exim.gov/sites/default/files/pub/pending/EIB11–05_MT_LT_Exporter_Certificate.pdf*

Form Title: EIB 11–05 Exporter's Certificate for Loan Guarantee & MT Insurance Programs.

DATES: Comments must be received on or before October 5, 2015 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Michele Kuester, Export-Import Bank, 811 Vermont Ave. NW., Washington, DC 20571

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 11–05 Exporter's Certificate for Loan Guarantee & MT Insurance Programs

OMB Number: 3048–0043

Type of Review: Regular

Need and Use: The information collected will allow EXIM Bank to determine compliance and content for transaction requests submitted to the Export-Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public:

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 4,000

Estimated Time per Respondent: 30 minutes

Annual Burden Hours: 2,000 hours

Frequency of Reporting of Use: As required

Government Expenses:

Reviewing time per year: 67 hours

Average Wages per Hour: $42.50

Average Cost per Year: (time*wages) $2,847.50

Benefits and Overhead: 20%

Total Government Cost: $3,417

Bonita Jones-McNeil,

Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2015–19093 Filed 8–4–15; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2015–6018]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 94–07 Exporters Certificate for Use with a Short Term Export Credit Insurance Policy.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

EXIM Bank's financial institution policy holders provide this form to U.S. exporters, who certify to the eligibility of their exports for EXIM Bank support. The completed forms are held by the financial institution policy holders, only to be submitted to EXIM Bank in the event of a claim filing. A requirement of EXIM Bank's policies is that the insured financial institution policy holder obtains a completed Exporter's Certificate at the time it provides financing for an export. This form will enable EXIM Bank to identify the specific details of the export transaction. These details are necessary for determining the eligibility of claims for approval. EXIM Bank staff and contractors review this information to assist in determining that an export transaction, on which a claim for non-payment has been submitted, meets all of the terms and conditions of the insurance coverage.

The form can be viewed at *http://exim.gov/sites/default/files/pub/pending/eib94-07.pdf*.

DATES: Comments must be received on or before October 5, 2015 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Michele Kuester, Export-Import Bank, 811 Vermont Ave NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 94–07 Exporters Certificate for Use with a Short Term Export Credit Insurance Policy.

OMB Number: 3048–0041.

Type of Review: Regular.

Need and Use: EXIM Bank uses the referenced form to obtain exporter certification regarding the export transaction, U.S. content, non-military use, non-nuclear use, compliance with EXIM Bank's country cover policy, and their eligibility to participate in USG programs. These details are necessary to determine the legitimacy of claims submitted. It also provides the financial institution policy holder a check on the export transaction's eligibility, at the time it is fulfilling a financing request.

Affected Public

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 240.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 60 hours.

Frequency of Reporting of Use: As required.

Government Expenses

Reviewing Time per Year: 12 hours.
Average Wages per Hour: $42.50.
Average Cost per Year: $510.
*(time * wages)*
Benefits and Overhead: 20%.
Total Government Cost: $612.

Bonita Jones-McNeil,

Program Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–19212 Filed 8–4–15; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1033 and 3060–1163]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 5, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1033.

Title: Multi-Channel Video Program Distributor EEO Program Annual Report, FCC Form 396–C.

Form Number: FCC Form 396–C.

Type of Review: Extension of a currently approved collection.

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

Number of Respondents and Responses: 2,200 respondents and 2,620 responses.

Frequency of Response: Recordkeeping requirement; Once every five year reporting requirement; Annual reporting requirement.

Estimated Time per Response: 10 minutes—2.5 hours.

Total Annual Burden: 3,187 hours.

Total Annual Cost to Respondents: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Sections 154(i), 303 and 634 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC Form 396–C is a collection device used to assess compliance with the Equal Employment Opportunity (EEO) program requirements by Multi-channel Video programming Distributors (''MPVDs''). It is publicly filed to allow interested parties to monitor a ''MPVD's'' compliance with the Commission's EEO requirements. All ''MVPDs'' must file annually an EEO report in their public file detailing various facts concerning their outreach efforts during the preceding year and the results of those efforts. ''MVPDs'' will be required to file their EEO public file report for the

preceding year as part of the in-depth ''MVPD'' investigation conducted once every five years.

OMB Control Number: 3060–1163.

Title: Regulations Applicable to Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other profit entities.

Number of Respondents and Responses: 47 respondents and 47 responses.

Estimated Time per Response: 1 hour to 46 hours.

Frequency of Response: On occasion and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these proposed information collections is found in Sections 1, 4(i)–(j), 211, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 211, 309, 310, and 403.

Total Annual Burden Hours: 660 hours.

Total Annual Costs: $198,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered. This information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Act Impact Assessment: No impacts.

Needs and Uses: The Federal Communications Commission (Commission) is requesting a three-year extension of OMB Control No. 3060–1163 from the Office of Management and Budget (OMB).

On April 18, 2013, the Commission adopted final rules in Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11–133, Second Report and Order, FCC 13–50 (rel. Apr. 18, 2013) (Second Report and Order). Among other changes, the final rules eliminated the current need for licensees that have received a foreign ownership ruling to return to the Commission for approval of increased interests by previously approved foreign investors, of foreign ownership in subsidiaries or affiliates, or of new services or new geographic service areas. In addition, the final rules eliminated the current need for approval of certain corporate reorganizations, subject only to a post-closing notification.

This information collection did not replace the existing information collection for section 310(b) of the Act (OMB Control Number 3060–0686). Licensees who received foreign ownership rulings prior to the effective date of the new rules will continue to be subject to the Commission's foreign ownership policies and procedures within the parameters of their rulings, until they seek and obtain a new ruling under the new rules. The Commission determined in the Second Report and Order that it would permit such licensees to file a new petition for declaratory ruling under the new rules, but would not require them to do so.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–19155 Filed 8–4–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010071–043.

Title: Cruise Lines International Association Agreement.

Parties: Acromas Shipping, Ltd./Saga Shipping; Aida Cruises; AMA Waterways; American Cruise Lines, Inc.; Aqua Expeditions Pte. Ltd.; Australian Pacific Touring Pty Ltd.; Avalon Waterways; Azamara Cruises; Carnival Cruise Lines; CDF Croisieres de France; Celebrity Cruises, Inc.; Celestyal Cruises; Costa Cruise Lines; Compagnie Du Ponant; Croisieurope; Cruise & Maritime Voyages; Crystal Cruises; Cunard Line; Disney Cruise Line; Emerald Waterways; Evergreen Tours; Fred.Olsen Cruise Lines Ltd.; Hapag-Lloyd Kreuzfahrten Gmbh; Hebridean Island Cruises; Holland America Line; Hurtigruten, Inc.; Island Cruises; Lindblad Expeditions Pty Ltd.; Luftner Cruises; Mekong Waterways; MSC Cruises; NCL Corporation; Oceania Cruises; P & O Cruises; P & O Cruises Australia; Paul Gauguin Cruises; Pearl Seas Cruises; Phoenix Reisen Gmbh; Princess Cruises; Pullmantur Cruises Ship Management Ltd.; Regent Seven Seas Cruises; Riviera Tours Ltd.; Royal Caribbean International; Scenic Tours UK Ltd.; Seabourn Cruise Line; SeaDream Yacht Club; Shearings Holidays Ltd.; Silversea Cruises, Ltd.; Star Cruises (HK) Limited; St. Helena Line/Andrew Weir Shipping Ltd.; Swan Hellenic; Tauck River Cruising; The River Cruise Line; Thomson Cruises; Travelmarvel; Tui Cruises Gmbh; Un-Cruises Adventures; Uniworld River Cruises, Inc.; Venice Simplon-Orient-Express Ltd./Belmond; Voyages of Discovery; Voyages to Antiquity (UK) Ltd.; and Windstar Cruises.

Filing Party: Andre Picciurro, Esq. Kaye, Rose & Partners, LLP; Emerald Plaza, 402 West Broadway, Suite 1300; San Diego, CA 92101–3542

Synopsis: The Amendment would update the parties and amend Appendix B to address membership criteria for startup cruise lines.

Agreement No.: 010979–062.

Title: Caribbean Shipowners Association.

Parties: CMA CGM, S.A.; Crowley Caribbean Services LLC; Hybur Ltd.; King Ocean Services Limited; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Tropical Shipping and Construction Company Limited; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor, 1627 I Street NW., Washington, DC 20006.

Synopsis: The amendment would add inland points in Mexico to the geographic scope of the agreement. The parties have requested expedited review.

Agreement No.: 011679–014.

Title: ASF/SERC Agreement.

Parties: American President Lines, Ltd./APL Co. Pte Ltd.; ANL Singapore Pte Ltd.; China Shipping (Group) Company/China Shipping Container Lines, Co. Ltd.; COSCO Container Lines Company, Ltd.; Evergreen Line Joint Service; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Ltd.; Wan Hai Lines Ltd.; and Yang Ming Marine Transport Corp.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would delete certain unused authorities of the agreement, and clarify remaining authorities.

Agreement No.: 012352.

Title: Network Shipping Ltd./Trans Global Shipping N.V. Space Charter and Sailing Agreement.

Parties: Network Shipping Ltd. and Trans Global Shipping N.V.

Filing Party: Antonio Fernandez; Network Shipping; 241 Sevilla Ave.; Coral Cables, FL 33134.

Synopsis: The agreement authorizes Network Shipping to charter space to Trans Global Shipping N.V. for the carriage of empty refrigerated containers between Port Hueneme, CA and ports in Ecuador, and between Port Gloucester, NJ and Costa Rica.

Agreement No.: 012353.

Title: Crowley/Marinex Space Charter Agreement.

Parties: Crowley Caribbean Services, LLC and Marinex Cargo Line, Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20036.

Synopsis: The agreement authorizes Marinex to charter space to Crowley in the trade between Puerto Rico and St. Maarten.

By Order of the Federal Maritime Commission.

Dated: July 31, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–19258 Filed 8–4–15; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Request for Renewal of Previously Approved Collection Form FMCS F–7.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) invites comments about our intention to request the Office of Management and Budget (OMB) to approve the renewal of the Notice to Mediation Agencies Form (FMCS Form F–7; OMB control number 3076–0004). The request will seek a three-year extension. There are no changes being submitted with this request. FMCS is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before October 5, 2015.

ADDRESSES: Submit written comments by mail to the Office of Arbitration Services, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427 or by contacting the person whose name appears under the section titled **FOR FURTHER INFORMATION CONTACT**. Comments may be submitted also by fax at (202) 606–3749 or electronic mail (email) to *arbitration@fmcs.gov.* All comments must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through email. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI''. Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential publicly without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Arthur Pearlstein, Director of Arbitration Services, FMCS, 2100 K Street NW., Washington, DC 20427. Telephone (202) 606–5111; Fax (202) 606–3749.

SUPPLEMENTARY INFORMATION: Copies of the Notice to Mediation Agencies (FMCS Form 7; OMB control number 3076–0004) are available from the Office of Arbitration Services by calling, faxing or writing to Arthur Pearlstein at the address above. Please ask for the form by title and agency form number.

I. Information Collection Requests

FMCS is seeking comments on the following Information Collection Request (ICR).

Title: Notice to Mediation Agencies; FMCS Form F–7; OMB No. 3076–0004; Expiration date: October 31, 2015.

Type of Request: Request for Renewal of a previously approved notice without changes in the collection.

Affected Entities: Parties affected by this information collection are private sector employers and labor unions involved in interstate commerce who file notices for mediation services to the FMCS.

Frequency: Parties complete this form once, which is at the time of an impending expiration of a collective bargaining agreement.

Abstract: Under the Labor Management Relations Act of 1947, 29 U.S.C. 158(d), Congress listed specific notice provisions so that no party to a collective bargaining agreement can terminate or modify a collective bargaining contract, unless the party wishing to terminate or modify the contract sends a written notice to the other party sixty days prior to the expiration date (29 U.S.C. 158(d)(1)), and offers to meet and confer with the other party for the purpose of negotiating a new or modified contract (29 U.S.C. 158(d)(2)). The Act requires that parties notify FMCS within thirty days after such notice of the existence of a bargaining dispute (29 U.S.C. 158(d)(3)). The 1974 amendments to the National Labor Relations Act extended coverage to nonprofit health care institutions, including similar notices to FMCS. 29 U.S.C. 158(d) and (g). To facilitate handling around 14,400 notices a year, FMCS created information collection form F–7. The purpose of this information collection activity is for FMCS to comply with its statutory duty to receive these notices, to facilitate assignment of mediators to assist in labor disputes, and to assist the parties in knowing whether or not proper notice was given. The information from these notices is sent electronically to the appropriate field manager who assigns the cases to a mediator so that the mediator may contact labor and management quickly, efficiently, and offer dispute resolution services. Either party to a contract may make a request in writing for a copy of the notice filed with FMCS. Form F–7 was created to allow FMCS to gather desired information in a uniform manner. The collection of such information, including the name of the employer or employer association, address and phone number, email address, official contact, bargaining unit and establishment size, location of affected establishment and negotiations, industry, union address, phone number, email address and official contact, contract expiration date or renewal date, whether the notice is filed on behalf of the employer or the union, and whether this is a health care industry notice is critical for reporting and mediation purposes.

Burden Statement: The current annual burden estimate is approximately 14,400 respondents. The annual hour burden is estimated at 2,400 hours, approximately 10 minutes for each notice to fill out a one-page form.

II. Request for Comments

FMCS solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information to be collected will have practical utility.

(ii) Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. The Official Record

The official record is the paper electronic record maintained at the address at the beginning of this document. FMCS will transfer all electronically received comments into printed-paper form as they are received.

List of Subjects

Labor-Management relations, Employee Management Relations, and Information Collections Requests.

Dated: July 30, 2015.

Jeannette Walters-Marquez,

Attorney-Advisor.

[FR Doc. 2015–19167 Filed 8–4–15; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Notice; Correction

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On July 2, 2015, the Board published a notice of final approval (80 FR 38201) of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. The estimated annual reporting hours for the FR Y–9C (non-Advanced Approaches holding companies) and FR Y–9C (Advanced Approaches holding companies) were understated. Accordingly, this notice corrects the July 2, 2015 notice with current estimated burden hours.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The following information corrects the estimated annual reporting hours and estimated average hours per response for the FR Y–9C (non-Advanced Approaches holding companies) and FR Y–9C (Advanced Approaches holding companies).

Estimated Annual Reporting Hours

FR Y–9C (non-Advanced Approaches holding companies)—130,964 hours;

FR Y–9C (Advanced Approaches holding companies)—2,500 hours.

Estimated Average Hours per Response

FR Y–9C (non-Advanced Approaches holding companies)—50.84 hours;

FR Y–9C (Advanced Approaches holding companies)—52.09 hours.

Board of Governors of the Federal Reserve System, July 23, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–18572 Filed 8–4–15; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 2015.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Farmers National Banc Corp,* Canfield, Ohio; to acquire 100 percent of the voting shares of Tri-State 1st Banc, Inc., East Liverpool, Ohio and thereby indirectly acquire 1st National Community Bank, East Liverpool, Ohio.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. Southern States Bancshares, Inc., Anniston, Alabama; to acquire 100 percent of the outstanding shares of Columbus Community Bank, Columbus, Georgia.

In addition, Southern States Bank, Anniston, Alabama, a wholly-owned subsidiary of Southern States Bancshares, Inc., proposes to become a bank holding company by acquiring Columbus Community Bank, for a moment in time.

C. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Hometown Bancorp, Ltd.,* Fond Du Lac, Wisconsin; to acquire 100 percent of the outstanding shares of Farmers Exchange Bank, Neshkoro, Wisconsin.

Board of Governors of the Federal Reserve System, July 30, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–19115 Filed 8–4–15; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007; Docket 2015–0001; Sequence 4]

Submission to OMB; General Services Administration Acquisition Regulation; Contractor's Qualifications and Financial Information (GSA Form 527)

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

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Contractor's Qualifications and Financial Information (GSA Form 527). A notice published in the **Federal Register** at 80 FR 27309, on May 13, 2015. No comments were received.

DATES: Submit comments on or before: September 4, 2015.

FOR FURTHER INFORMATION CONTACT: Janet Fry, Program Analyst, Office of Governmentwide Policy, at 703–605–3167, or via email at *janet.fry@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0007, Contractor's Qualifications and Financial Information, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal searching Information Collection 3090–0007. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0007, Contractor's Qualifications and Financial Information.

Instructions: Please submit comments only and cite Information Collection 3090–0007, Contractor's Qualifications and Financial Information, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget to extend information collection 3090–0007, concerning GSA Form 527, Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation 9.103(a) and 9.104–1 and also the General Services Administration Acquisition Manual 509.105–1.

B. Annual Reporting Burden

Respondents: 2,940.
Responses Per Respondent: 1.2.
Total Responses: 3,528.
Hours per Response: 1.5.
Total Burden Hours: 5,292.

The estimated annual burden has decreased since GSA's 2012 submission from 8,820 burden hours to 5,292 burden hours to reflect the widespread use of the option for potential contractors to submit financial statements and balance sheets in lieu of completing the applicable fields on GSA Form 527. The alternate submission of financial statements and balance sheets significantly reduces the burden on prospective contractors, as these documents are generally readily available. As such, the average estimated hours to complete a response has been reduced from 2.5 hours per response to 1.5 hours.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0007, Contractor's Qualifications and Financial Information (GSA Form 527), in all correspondence.

Public Comments: Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Dated: July 30, 2015.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–19223 Filed 8–4–15; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0286; Docket 2015–0001; Sequence 14]

General Services Administration Acquisition Regulation; Submission for OMB Review; GSA Mentor-Protégé Program

AGENCIES: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection concerning the GSA Mentor-Protégé Program, in the General Services Administration Acquisition Manual (GSAM). A notice was published in the **Federal Register** at 80 FR 27310 on May 13, 2015. One comment was received.

DATES: Submit comments on or before September 4, 2015.

ADDRESSES: Submit comments identified by Information Collection 3090–0286, GSA Mentor-Protégé Program by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0286, GSA Mentor-Protégé Program'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0286, GSA Mentor-Protégé Program.

Instructions: Please submit comments only and cite Information Collection 3090–0286, GSA Mentor-Protégé Program, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, Procurement Analyst, General Services Acquisition Policy Division, GSA, 202–969–4066 or email *christina.mullins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA Mentor-Protégé Program is designed to encourage GSA prime contractors to assist small businesses, small disadvantaged businesses, women-owned small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, and HUBZone small businesses in enhancing their capabilities to perform GSA contracts and subcontracts, foster the establishment of long-term business relationships between these small business entities and GSA prime contractors, and increase the overall number of small business entities that receive GSA contract and subcontract awards.

B. Discussion and Analysis

One comment was received from the Center for Equal Opportunity. The comment suggests that the GSA Mentor-Protégé Program use neither preferences nor classifications on the basis of race, ethnicity, or sex. The program does not distinguish firms on the basis of race or ethnicity. Women-owned small business firms may be distinguished as this is a small business category recognized by statute through the Small Business Act (15 U.S.C. Chapter 14a). This notice regards the information collection related to administering the GSA Mentor-Protégé Program. Any changes to the program itself would be handled separately through the rulemaking process.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

C. Annual Reporting Burden

Respondents: 254.

Responses per Respondent: 4.

Total Annual Responses: 1,016.

Hours per Response: 3.

Total Burden Hours: 3,048.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0286, GSA Mentor-Protégé Program, in all correspondence.

Dated: July 30, 2015.

Jeffrey A. Koses,

Director, Office of Acquisition Policy & Senior Procurement Executive.

[FR Doc. 2015–19224 Filed 8–4–15; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252; Docket 2015–0001; Sequence 15]

General Services Administration Acquisition Regulation; Submission for OMB Review; Preparation, Submission, and Negotiation of Subcontracting Plans

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

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding preparation, submission, and negotiation of subcontracting plans.

This information collection will ensure that small and small, disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in negotiated procurements. The Preparation, Submission, and Negotiation of the Subcontracting Plans provision requires for all negotiated solicitations, having an anticipated award value over $650,000 ($1,500,000 for construction), the submission of a subcontracting plan with an offeror's proposal. A notice was published in the **Federal Register** at 80 FR 27308 on May 13, 2015. No Comments were received.

DATES: Submit comments on or before: September 4, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, Procurement Analyst, General Services Acquisition Policy Division, GSA, 202–969–4066 or email *christina.mullins@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans.

Instructions: Please submit comments only and cite Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSAR provision at 552.219–72 requires all offerors, other than small business concerns, responding to a negotiated solicitation to submit a subcontracting plan with their respective offers so that a plan can be negotiated concurrently with other parts of the proposal, including price and any technical and management proposals. The respondents are potential GSA contractors. The provision may be used when the contracting officer believes that the potential contract provides significant opportunities for small businesses as subcontractors.

The contracting officer will use the information to evaluate whether GSA's expectation that subcontracting opportunities exist for small businesses is reasonable under the circumstances; negotiate goals consistent with statutory requirements and acquisition objectives; and expedite the award process. The provision is not applicable if an offeror submits a previously-approved commercial subcontracting plan.

B. Annual Reporting Burden

Respondents: 1,440.
Responses per Respondent: 1.
Total Annual Responses: 1,440.
Hours per Response: 12.
Total Burden Hours: 17,280.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

Dated: July 30, 2015.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2015–19222 Filed 8–4–15; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–15DA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Improving the Impact of Laboratory Practice Guidelines (LPGs): A New Paradigm for Metrics- American Society for Microbiology—NEW—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention is funding three 5-year projects collectively entitled ''Improving the Impact of Laboratory Practice Guidelines: A New Paradigm for Metrics''. An ''LPG'' is defined as written recommendations for voluntary, standardized approaches for medical laboratory testing that takes into account processes for test selection, sample procurement and processing, analytical methods, and results reporting for effective diagnosis and management of disease and health conditions. LPGs may be disseminated to, and used by, laboratorians and clinicians to assist with test selection and test result interpretation. The overall purpose of these cooperative agreements is to increase the effectiveness of LPGs by defining measures and collecting information to inform better LPG creation, revision, dissemination, promotion, uptake and impact on clinical testing and public health.

The project will explore how these processes and their impediments and facilitators differ among various intended users of LPGs. Through this demonstration project, CDC seeks to understand how to customize LPG creation and promotion to better serve these intended users of LPGs. An important goal is to help organizations that sponsor the development of LPGs create a sustainable approach for continuous quality improvement to evaluate and improve an LPG's impact through better collection of information.

The CDC selected three organizations that currently create and disseminate LPGs to support activities under a cooperative agreement funding mechanism to improve the impact of their LPGs. The American Society for Microbiology (ASM), the Clinical and Laboratory Standards Institute, and the College of American Pathologists, will each use their LPGs as models to better understand how to improve uptake and impact of these and future LPGs. Only the ASM submission will be described in this notice.

The ASM project will address four LPGs that are important to clinical testing and have a high public health impact: reducing blood culture contamination (BCC), rapid diagnosis of blood stream infections (BSI), proper collection and transport of urine (UT), and microbiological practices to improve the diagnosis and management of patients with *Clostridium difficile* (*C. difficile*) infection (CDI). The BCC LPG was published and it includes recommendations for the use of: 1) venipuncture over catheters as the preferred technique for sample collection in a clinical setting, and 2) phlebotomy teams over non-phlebotomist staff for collecting blood for culture. The BSI report examines the effectiveness of rapid diagnostic tests to promote more accurate and timely administration of targeted antibiotic therapy for patients with bloodstream infections. This report will be published and recommendations will be developed based on additional information collected. Practices related to the collection, storage and preservation of urine for microbiological culture that improve the diagnosis and management of patients with urinary tract infections were analyzed and approved recommendations will be published. Microbiological practices related to improving diagnosis and management of patients with *C. difficile* infection will be collected and analyzed, and recommendations will also be developed and published.

The intended respondents of ASM's surveys will include microbiology supervisors, laboratory directors, laboratory managers, and medical technologists. For this request for OMB approval of a new information collection, we will be requesting approval to collect baseline and post-dissemination information for the BCC LPG. Because the BSI, UT and CDI reports are not yet published, ASM will conduct a baseline survey to determine current practices prior to dissemination of the LPGs.

On behalf of the ASM and the CDC, the Laboratory Response Network (LRN), which was founded by the CDC, will recruit laboratories that perform the kinds of testing affected by these LPGs to take the surveys. Messages regarding ASM surveys will be worded as an invitation, not as a coercive request. Some states may opt not to recruit LRN laboratory participation, but because the

issues are important to clinical and public health, we expect good participation by most states. This mechanism will assure the best response rate of all the options we considered.

The CDC LRN Coordinator will email a letter to the Laboratory Director of the LRN Reference Laboratories, (*i.e.,* 50 State Public Health Laboratories, the New York City Public Health Laboratory and the Los Angeles County Public Health Laboratory). These 52 LRN Reference Laboratory Directors will be asked to then email the sentinel laboratories, which include hospital and independent laboratories, in their states, and provide a hyperlink to access the survey tool on-line. SurveyMonkey® will host the online survey and be used as the information collection instrument and responses will be collected and maintained by ASM.

We anticipate that approximately 4,200 sentinel laboratories will be contacted and asked to complete the survey on-line. ASM anticipates achieving an 80% response rate with their information collections, or 3,360 out of approximately 4,200 aggregate responses for each of the five different surveys.

In addition, the ASM will also recruit, by emailing a letter containing the SurveyMonkey® hyperlinks for the five surveys to each of their ClinMicroNet and DivCNet listervs inviting ~828 and ~1470 subscribers (comprised of laboratory directors as well as medical technologists in a 99%:1% and 60%:40%), respectively, to take each of the five SurveyMonkey® surveys. Moreover, the ASM will email the same letter containing the SurveyMonkey® hyperlinks for the 5 surveys to ~1453 *ASM Clinical Microbiology Issues Update* newsletter subscribers, which include microbiology supervisors, laboratory directors, laboratory managers, and medical technologists in a 25 percent:25 percent: 25 percent: 25 percent ratio, to invite them to participate.

For burden calculations, respondents will include microbiology supervisors, laboratory directors, laboratory managers, and medical technologists. According to ASM, the burden hours per respondent who will be invited to participate in each of the BCC baseline and post-dissemination surveys will not exceed 35 minutes and each of the BSI, UT and CDI baseline surveys will be 20 minutes. This time frame was specified based on ASM's previous experiences conducting laboratory surveys. Each survey was pilot tested with 9 or fewer respondents before dissemination.

The total estimated annualized burden hours for this collection is 17,225. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Microbiology Supervisors	BCC-baseline	2,463	1	35/60
	BCC-post	2,463	1	35/60
	BSI-baseline	2,463	1	20/60
	UT-baseline	2,463	1	20/60
	CDI-baseline	2,463	1	20/60
Laboratory Directors	BCC-baseline	3,115	1	35/60
	BCC-post	3,115	1	20/60
	BSI-baseline	3,115	1	20/60
	UT-baseline	3,115	1	20/60
	CDI-baseline	3,115	1	20/60
Laboratory Managers	BCC-baseline	1,413	1	35/60
	BCC-post	1,413	1	35/60
	BSI-baseline	1,413	1	20/60
	UT-baseline	1,413	1	20/60
	CDI-baseline	1,413	1	20/60
Medical Technologists	BCC-baseline	960	1	35/60
	BCC-post	960	1	20/60
	BSI-baseline	960	1	20/60
	UT-baseline	960	1	20/60
	CDI-baseline	960	1	20/60

LeRoy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–19114 Filed 8–4–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Small Business Innovation Research Program—Phase II

AGENCY: National Institute on Disability, Independent Living and Rehabilitation, Administration for Community Living (ACL), HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL), National Institute on Disability, Independent Living, and Rehabilitation Research (NIDLRR) is announcing an opportunity for public comment on the proposed collection of certain information. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on

the information collection requirements relating to the Small Business Innovation Research Program (SBIR)—Phase II.

DATES: Submit written or electronic comments on the collection of information by October 5, 2015.

ADDRESSES: Submit electronic comments on the collection of information to: *Brian.Bard@acl.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Bard at 202–254–7345 or *Brian.Bard@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL/NIDILRR is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL/NIDILRR invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL/NIDILRR's functions, including whether the information will have practical utility; (2) the accuracy of ACL/NIDILRR's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. ACL/NIDILRR proposes to use this set of data collection tools to be used as a grant application package for the information used to apply for new grants under the SBIR program (Phase II).

Public Law 106–554, the ''Small Business Reauthorization Act of 2000, H.R. 5567'' (the ''Act'') was enacted on December 21, 2000. The Act requires certain agencies, including the Department of Health and Human Services (HHS) to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or research and development (R/R&D) through a uniform, highly competitive, three-phase process each fiscal year. The Act further requires the Small Business Administration (SBA) to issue policy directives for the general conduct of the SBIR programs within the Federal Government. The purpose of this program is to stimulate technological Innovation in the private sector, strengthen the role of small business in meeting Federal research and research and development needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from Federally-funded research for economic and social benefits to the Nation.

Awards are made on the basis of competitively reviewed applications. The Department is requesting approval of this grant application package for the information used to apply for new grants under the Small Business Innovation Research (SBIR) Phase II program. Phase I is intended to determine, insofar as possible, the scientific or technical merit and feasibility of ideas. Phase II is intended to expand on the results of and to further pursue the development of a Phase I project. Phase II is the principal research and research and development effort. It requires a more comprehensive application, outlining the effort in detail including the commercial potential. Phase II applications must be Phase I grantees with findings that appear sufficiently promising as a result of Phase I. Applications are evaluated based on published criteria by panels of experts.

ACL/NIDILRR estimates the burden of this collection of information as 240 hours for project staff, 320 for reviewers, and 1,080 hours for individuals. Total burden is 1,640 hours per year.

Dated: July 31, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–19237 Filed 8–4–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1009]

Use of Nanomaterials in Food for Animals; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of guidance for industry #220 entitled ''Use of Nanomaterials in Food for Animals.'' The guidance describes FDA's current thinking regarding the use of nanomaterials or the application of nanotechnology in food for animals. It is intended to assist industry and other stakeholders in identifying potential issues related to the safety or regulatory status of food for animals containing nanomaterials or otherwise involving the application of nanotechnology.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dragan Momcilovic, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6856, *dragan.momcilovic@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 27, 2014 (79 FR 36530), FDA published the notice of availability for a draft guidance #220 entitled ''Use of Nanomaterials in Food for Animals'' giving interested persons until September 10, 2014, to comment on the draft guidance. FDA received several comments on the draft guidance and those comments were

considered as the guidance was finalized. The guidance announced in this notice finalizes the draft guidance dated June 2014.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of the Food and Drug Administration (FDA or Agency) on the use of nanomaterials in food for animals. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 571.1 and 21 CFR 571.6 have been approved under 0910–0546.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov*.

Dated: July 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–19179 Filed 8–4–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1473]

Over-the-Counter Pediatric Oral Liquid Drug Products Containing Acetaminophen; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a guidance for industry entitled ''Over-the-Counter Pediatric Oral Liquid Drug Products Containing Acetaminophen.'' The guidance is intended to help drug manufacturers, packagers, and labelers minimize the risk to consumers of acetaminophen-related liver damage associated with the use of nonprescription, also known as over-the-counter or OTC, pediatric oral liquid acetaminophen drug products. This guidance provides recommendations regarding acetaminophen concentration, container labels, carton labeling, and packaging of such products, as well as for any associated delivery devices. FDA's recommendations are designed to encourage safer use of these products by minimizing the potential for acetaminophen overdosing due to medication errors or accidental ingestion.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Alice Tu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4325, Silver Spring, MD 20993–0002, 301–796–7586.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Over-the-Counter Pediatric Oral Liquid Drug Products Containing Acetaminophen.'' Acetaminophen is marketed in many OTC drug products as a pain reliever and fever reducer. Most OTC acetaminophen products are marketed under FDA's ongoing rulemaking to establish a final monograph for OTC internal analgesic, antipyretic, and antirheumatic (IAAA) drug products. These products must conform to the conditions described in FDA's Tentative Final Monograph for Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter (OTC) Human Use (the IAAA TFM) [1] and FDA's general regulations for OTC drug marketing (21 CFR 330.1) and labeling (21 CFR 330.10 and part 201). They also must be labeled with acetaminophen-related warnings and other information as specified in 21 CFR 201.326. However, OTC pediatric oral liquid drug products containing acetaminophen have been associated with overdoses due to medication errors that resulted in serious adverse events, including severe liver damage and death. In particular, there have been reports of overdose attributed to confusion between concentrated acetaminophen drops (80 milligrams (mg)/0.8 milliliters (mL) and 80 mg/mL) and acetaminophen oral liquid (160 mg/5 mL).

This guidance document is part of FDA's ongoing initiative to reduce the risk of acetaminophen-related liver injury associated with all OTC and prescription acetaminophen-containing products. As part of that initiative, in June 2009, three FDA committees, the Drug Safety and Risk Management Advisory Committee, the Nonprescription Drugs Advisory Committee, and the Anesthetic and Life Support Drugs Advisory Committee, met jointly to consider a range of risk reduction measures. Among other measures, these Advisory Committees recommended moving to a single, standardized acetaminophen concentration for OTC pediatric oral liquid drug products because the availability of multiple concentrations causes confusion and errors among both consumers and health care

[1] ''Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph,'' 53 FR 46204 (November 16, 1988). Available at *http://www.fda.gov/downloads/Drugs/DevelopmentApprovalProcess/DevelopmentResources/Over-the-CounterOTCDrugs/StatusofOTCRulemakings/UCM078460.pdf.*

professionals. In May 2011, FDA convened a joint meeting of the Nonprescription Drugs Advisory Committee and the Pediatric Advisory Committee to discuss the use of acetaminophen in children. Shortly before the meeting, the Consumer Healthcare Products Association (CHPA) proposed to voluntarily phase out all of the existing single-ingredient concentrated drop formulations of the OTC, pediatric, oral, liquid acetaminophen drug products and market only the 160 mg/5 mL. At the Advisory Committee meeting, FDA took note of CHPA's voluntary transition to a single concentration of pediatric oral liquid acetaminophen.

In response to CHPA's voluntary transition to a single concentration of OTC oral liquid acetaminophen products, FDA published a Drug Safety Communication on December 22, 2011, to inform the public of the 160 mg/5 mL concentration now marketed for children ages 2 to 3 years and to recommend that end users of the product read the Drug Facts label to identify the concentration of the oral liquid acetaminophen, dosage, and directions for use.

FDA issued the draft guidance on October 8, 2014 (79 FR 60854), to address ongoing concerns about the potential for acetaminophen overdose associated with these products and to encourage safer use. Comments on the draft guidance were considered while finalizing this guidance, which has been revised and clarified in some respects.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on addressing safety achieved through drug product design and labeling to minimize medication errors. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Paperwork Reduction Act of 1995

This guidance refers to a previously approved collection of information found in FDA regulations. The collection of information is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collection of information referenced in this guidance that pertain to the format and content requirements for OTC drug product labeling (§ 201.66) have been approved under OMB control number 0910–0340. The labeling requirements in § 201.326 are not subject to review by OMB because they do not constitute a ''collection of information'' under the PRA. Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: July 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–19178 Filed 8–4–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Open Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov/*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 4, 2015.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm, where an agenda and any additional information for the meeting will be posted when available.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 31, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–19193 Filed 8–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30 Day Comment Request; Post-Award Reporting Requirements Including Research Performance Progress Report Collection (OD/OPERA)

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection

listed below. This proposed information collection was previously published in the **Federal Register** on March 16, 2015, Volume 80, No. 50, pages 13568–13569 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia Currie, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 3505, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0941, or Email your request, including your address to: *ProjectClearanceBranch@mail.nih.gov.*

Proposed Collection: Public Health Service (PHS) Post-award Reporting Requirements. Revision, OMB 0925–0002, Expiration Date 8/31/2015. Form numbers: PHS 2590, PHS 416–7, PHS 2271, PHS 3734, PHS 6031–1, and HHS 568.

Need and Use of Information Collection: The RPPR is now required to be used by all NIH, Food and Drug Administration, Centers for Disease Control and Prevention, and Agency for Healthcare Research and Quality (AHRQ) grantees. Interim progress reports are required to continue support of a PHS grant for each budget year within a competitive segment. The phased transition to the RPPR required the maintenance of dual reporting processes for a period of time. Continued use of the PHS Non-competing Continuation Progress Report (PHS 2590), exists for a small group of grantees. This collection also includes other PHS post-award reporting requirements: PHS 416–7 NRSA Termination Notice, PHS 2271 Statement of Appointment, 6031–1 NRSA Annual Payback Activities Certification, HHS 568 Final Invention Statement and Certification, Final Progress Report instructions, iEdison, and PHS 3734 Statement Relinquishing Interests and Rights in a PHS Research Grant. The PHS 416–7, 2271, and 6031–1 are used by NRSA recipients to activate, terminate, and provide for payback of a NRSA. Closeout of an award requires a Final Invention Statement (HHS 568) and Final Progress Report. iEdison allows grantees and federal agencies to meet statutory requirements for reporting inventions and patents. The PHS 3734 serves as the official record of grantee relinquishment of a PHS award when an award is transferred from one grantee institution to another. The SBIR/STTR Life Cycle Certifications are completed by small business grantees once certain milestones are reached during the project period. Pre-award reporting requirements are simultaneously consolidated under 0925–0001.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 531,802.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Reporting				
PHS 416–7	12,580	1	30/60	6,290
PHS 6031–1	1,778	1	20/60	593
PHS 568	11,180	1	5/60	932
iEdison	5,697	1	15/60	1,424
PHS 2271	22,035	1	15/60	5,509
PHS 2590	243	1	15	3,645
RPPR	32,098	1	15	481,470
Biosketch	2,544	1	2	5,088
Data Tables	758	1	4	3,032
PHS Inclusion Enrollment Report	2,544	1	1	2,544
Trainee Diversity Report	480	1	15/60	120
Publication Reporting	32,341	3	5/60	8,085
PHS 3734	479	1	30/60	240
Final Progress Report	11,125	1	1	11,125
SBIR/STTR Phase II Final Progress Report	1,330	1	1	1,330
Reporting Burden Total	.....	.....	.....	531,427
Recordkeeping				
SBIR/STTR Life Cycle Certification	1,500	1	15/60	375
Grand Total	.....	.....	.....	531,802

Dated: July 29, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–19253 Filed 8–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Advisory Council for Complementary and Integrative Health.

Date: August 26, 2015.

Open: 1:00 p.m. to 1:15 p.m.

Agenda: Concept Review—Mechanistic Studies of Complementary and Integrative Mind and Body and Body Interventions Supported by NCCIH.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Closed: 1:20 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin H. Goldrosen, Ph.D., Director, Division of Extramural Activities, National Center for Complementary and Integrative Health, NIH, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–2014, *goldrosm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 30, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–19174 Filed 8–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Albert Einstein Aging Study.

Date: September 17, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carmen Moten, MPH, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 31, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–19192 Filed 8–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30 Day Comment Request; PHS Applications and Pre-Award Reporting Requirements (OD/OPERA)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act (PRA) of 1995, the Office of the Director (OD), Office of Extramural Research (OER), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 16, 2015, Volume 80, No. 50, pages 13567–13568 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be sent via email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Mikia Currie,

Project Clearance Branch, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Suite 350, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0941, or Email your request, including your address to: *ProjectClearanceBranch@mail.nih.gov.*

Proposed Collection: Public Health Service (PHS) Applications and Pre-award Reporting Requirements. Revision, OMB 0925–0001, Expiration Date 08/31/2015. Form numbers: PHS 398, PHS416–1, 416–5, and PHS 6031.

Need and Use of Information Collection: This collection includes PHS applications and pre-award reporting requirements: PHS 398 [paper] Public Health Service Grant Application forms and instructions; PHS 398 [electronic] PHS Grant Application component forms and agency specific instructions used in combination with the SF424 (R&R); PHS Fellowship Supplemental Form and agency specific instructions used in combination with the SF424 (R&R) forms/instructions for Fellowships [electronic]; PHS 416–1 Ruth L. Kirschstein National Research Service Award Individual Fellowship Application Instructions and Forms used only for a change of sponsoring institution application [paper]; Instructions for a Change of Sponsoring Institution for NRSA Fellowships (F30, F31, F32 and F33) and non-NRSA Fellowships; PHS 416–5 Ruth L. Kirschstein National Research Service Award Individual Fellowship Activation Notice; and PHS 6031 Payback Agreement. The PHS 398 (paper and electronic), PHS 416–1, 416–5, and PHS 6031 are currently approved under 0925–0001. All forms expire 8/31/2015. Post-award reporting requirements are simultaneously consolidated under 0925–0002, and include the Research Performance Progress Report (RPPR). The PHS 398 and SF424 applications are used by applicants to request federal assistance funds for traditional investigator-initiated research projects and to request access to databases and other PHS resources. The PHS 416–1 is used only for a change of sponsoring institution application. PHS Fellowship Supplemental Form and agency specific instructions is used in combination with the SF424 (R&R) forms/instructions for Fellowships and is used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The PHS 416–5 is used by individuals to indicate the start of their NRSA awards. The PHS 6031 Payback Agreement is used by individuals at the time of activation to certify agreement to fulfill the payback provisions. The VCOC Certification and SBIR/STTR Funding Agreement Certifications are used by small business applicants.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,771,550.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PHS 398—Paper	4,247	1	35	148,645
PHS 398/424—Electronic	82,431	1	22	1,813,482
PHS Assignment Request Form	37,120	1	30/60	18,560
PHS 398 Cover Page Supplement	74,239	1	1	74,239
PHS Inclusion Enrollment Report	54,838	1	1	54,838
PHS 398 Modular Budget	56,693	1	1	56,693
PHS 398 Training Budget	1,122	1	2	2,244
PHS 398 Training Subaward Budget Attachment(s) Form	561	1	90/60	842
PHS 398 Research Plan	70,866	1	3	212,598
PHS 398 Research Training Program Plan	1,122	1	3	3,366
Data Tables	1,515	1	4	6,060
PHS 398 Career Development Award Supplemental Form	2,251	1	3	6,753
Biosketch (424 Electronic)	80,946	1	2	161,892
PHS Fellowship—Electronic	6,707	1	16	107,312
PHS Fellowship Supplemental Form (includes F reference letters)	6,707	1	12.5	83,838
PHS Assignment Request Form	3,354	1	30/60	1,677
PHS Inclusion Enrollment Report	3,354	1	1	3,354
Biosketch (Fellowship)	6,707	1	2	13,414
416–1	29	1	10	290
PHS 416–5	6,707	1	5/60	559
PHS 6031	6,217	1	5/60	518
VCOC Certification	6	1	5/60	1
SBIR/STTR Funding Agreement Certification	1,500	1	15/60	375
Total Annual Burden Hours	.....	.....	.....	2,771,550

Dated: July 29, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–19250 Filed 8–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4230–DR] Docket ID FEMA–2015–0002

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–4230–DR), dated July 20, 2015, and related determinations.

DATES: *Effective date:* July 20, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 20, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4 to June 21, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Laura S. Hevesi, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Atchison, Barton, Brown, Butler, Chase, Chautauqua, Cherokee, Cheyenne, Clay, Cloud, Coffey, Cowley, Doniphan, Edwards, Elk, Ellsworth, Franklin, Gray, Greenwood, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Lyon, Marion, Marshall, McPherson, Meade, Miami, Morris, Nemaha, Neosho, Osage, Pottawatomie, Republic, Rice, Stevens, Sumner, Wabaunsee, and Washington Counties for Public Assistance.

All areas within the State of Kansas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–19221 Filed 8–4–15; 8:45 am]

BILLING CODE 9112–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4229–DR; Docket ID FEMA–2015–0002]

Colorado; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Colorado (FEMA–4229–DR), dated July 16, 2015, and related determinations.

DATES: Effective date: July 16, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 16, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Colorado resulting from severe storms, tornadoes, flooding, landslides, and mudslides during the period of May 4 to June 16, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Colorado have been designated as adversely affected by this major disaster:

Baca, Elbert, El Paso, Fremont, Logan, Morgan, Pueblo, Saguache, Sedgwick,

Washington, and Yuma Counties for Public Assistance.

All areas within the State of Colorado are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–19251 Filed 8–4–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4216–DR; Docket ID FEMA–2015–0002]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4216–DR), dated April 30, 2015, and related determinations.

DATES: *Effective date:* July 24, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 30, 2015.

Adair, Anderson, Butler, Edmonson, Franklin, Lewis, Lincoln, Magoffin, McCracken, Rockcastle, Union, and Woodford Counties for Public Assistance.

Adair, Anderson, Butler, Edmonson, Franklin, Lewis, Lincoln, Magoffin, McCracken, Rockcastle, Union, and Woodford Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

Clark and Letcher Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–19252 Filed 8–4–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0016; OMB No. 1660–0131]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Threat and Hazard Identification and Risk Assessment (THIRA)—State Preparedness Report (SPR) Unified Reporting Tool

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before September 4, 2015.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This information collection was previously published in the **Federal Register** on May 29, 2015, at 80 FR 30696 with a 60 day public comment period. FEMA received one request for a copy of the proposed information collection which was sent to the requester on May 29, 2015. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Threat and Hazard Identification and Risk Assessment (THIRA)—State Preparedness Report (SPR) Unified Reporting Tool.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0131.

Form Titles and Numbers: FEMA Form 008–0–19, THIRA–SPR Unified Reporting Tool; FEMA Form 008–0–20, THIRA–SPR Unified Reporting Tool; FEMA Form 008–0–23, THIRA/SPR After Action Conference Calls.

Abstract: This package is a revision to the collection originally approved as the State Preparedness Report. The revised name more accurately reflects exactly what information is collected and how. It serves as a report on the current capability levels and a description of targeted capability levels from all states and territories receiving Federal preparedness assistance administered by the Department of Homeland Security.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 123.

Estimated Total Annual Burden Hours: 71,363 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $3,234,884.79. The estimated annual cost to respondents operations and maintenance costs for technical services is $10,833,275. There are no annual start-up or capital costs. The cost to the Federal Government is $2,154,074.

Janice Waller,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–19220 Filed 8–4–15; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4222–DR; Docket ID FEMA–2015–0002]

Oklahoma; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–4222–DR), dated May 26, 2015, and related determinations.

DATES: *Effective date:* July 21, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period is now May 5, 2015, through and including June 22, 2015.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–19218 Filed 8–4–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4222–DR; Docket ID FEMA–2015–0002]

Oklahoma; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4222–DR), dated May 26, 2015, and related determinations.

DATES: *Effective date:* July 24, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 26, 2015.

Cherokee and Lincoln Counties for Individual Assistance.

Adair, Coal, Delaware, Garvin, Hughes, Logan, Love, Murray, Ottawa, and Pontotoc Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–19219 Filed 8–4–15; 8:45 am]

BILLING CODE 9111–23–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: August 10, 2015, 9 a.m.–1 p.m.

PLACE: Inter-American Foundation, 1331 Pennsylvania Ave. NW., Suite 1200 North Building, Washington, DC 20004.

STATUS: Meeting of the Board of Directors, Open to the Public.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the November 10, 2014, Meeting of the Board of Directors & Advisory Council
- Management Report
- 2016 Board Meetings and Trip Dates
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Paul Zimmerman, General Counsel, (202) 683–7118.

Paul Zimmerman,

General Counsel.

[FR Doc. 2015–19317 Filed 8–3–15; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–18366; PPWOCRADN0–PCU00RP15.R50000]

Notice of Intent To Repatriate Cultural Items: Portland Art Museum, Portland, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Portland Art Museum, 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 sacred 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 Portland Art Museum. 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 Portland Art Museum at the address in this notice by September 4, 2015.

ADDRESSES: Deana Dartt, Curator of Native American Art, Portland Art Museum, 1219 SW. Park Ave., Portland, OR 97209, telephone (503) 276–4294, email *deana.dartt@pam.org.*

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 Portland Art Museum that meet the definition of sacred 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

Between 1970 and 1990, 18 medicine bundles were removed from the Crow Indian Reservation in Crow Agency, MT. The bundles were sold over two decades by Native antiquities and arts dealers to collector Elizabeth Cole Butler. Butler donated them to the museum beginning in the 1980s and until her death in 2004. The 18 bundles are all considered sacred objects.

The 18 medicine bundles were first identified as Crow by the dealers that sold them to Butler. In 1994 Crow tribal representative John Pretty-on-Top responded to the NAGPRA summary of Crow objects sent to the Crow Tribe of Montana in 1993. Pretty-on-Top concluded that the bundles would not be of interest to the tribe as a whole since bundles are exclusively owned by individuals. In August 2014 Timothy McCleary was consulted about the bundles. On September 17, 2014, McCleary presented the issue of the 18 bundles held by the Portland Art Museum to the Crow Cultural Committee. The Crow Cultural Committee determined that a claim for the 18 sacred objects should be made by the Crow Tribe of Montana.

Determinations Made by the Portland Art Museum

Officials of the Portland Art Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 18 cultural items described above are specific ceremonial objects 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 objects and the Crow Tribe of Montana.

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 Deana Dartt, Portland Art Museum, 1219 SW. Park Ave., Portland, OR 97205, telephone (503) 276–4294, email *deana.dartt@pam.org,* by September 4, 2015. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to the Crow Tribe of Montana may proceed.

The Portland Art Museum is responsible for notifying the Crow Tribe of Montana that this notice has been published.

Dated: June 29, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–19238 Filed 8–4–15; 8:45 am]

BILLING CODE 4310–12–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–18597; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Oregon State University, Department of Anthropology, Corvallis, OR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Oregon State University Department of Anthropology has corrected an inventory of human remains, published in a Notice of Inventory Completion in the **Federal Register** on June 24, 2014. This notice corrects the minimum number of individuals listed in that notice.

ADDRESSES: Brenda Kellar, Oregon State University, Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97333, telephone (541) 737–4296, email *Brenda.kellar@oregonstate.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 correction of an inventory of human remains under the control of the Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from Casey, Christian, and Scott Counties, KY.

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. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (79 FR 35779–35780, June 24, 2014). Re-inventory for repatriation discovered changes in the number of remains.

Correction

In the **Federal Register** (79 FR 35779–35780, June 24, 2014), paragraph 9, sentence 1 is corrected by substituting the following sentence:

Between 1930 and 1971, human remains representing, at minimum, three individuals were removed from an unknown site in Casey County, KY, by Dr. Neumann.

In the **Federal Register** (79 FR 35779–35780, June 24, 2014), paragraph 11, sentence 1 is corrected by substituting the following sentence:

Between 1930 and 1971, human remains representing, at minimum, two individuals were removed from an unknown site in Scott County, KY, by Dr. Neumann.

In the **Federal Register** (79 FR 35779–35780, June 24, 2014), paragraph 14, sentence 3 is corrected by substituting the following sentence:

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.

The Oregon State University Department of Anthropology is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Shawnee Tribe; and United Keetoowah Band of Cherokee Indians in

Oklahoma that this notice has been published.

Dated: June 29, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–19241 Filed 8–4–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–18496; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of human remains in consultation with the appropriate federally recognized Indian tribes and has determined that there is no cultural affiliation between the human remains and any present-day federally recognized Indian tribes. Representatives of any federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request to TVA. If no additional requestors come forward, transfer of control of the human remains to the federally recognized Indian tribe stated in this notice may proceed.

DATES: Representatives of any federally recognized Indian tribe 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 TVA at the address in this notice by September 4, 2015.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.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 and possession of TVA. The human remains were removed from site 40MI21, in Marion County, TN.

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. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by TVA's professional staff in consultation with representatives of the Absentee Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation of Oklahoma; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

Between 1964 and 1965, human remains representing, at minimum, two individuals were removed from site 40MI21, in Marion County, TN, by amateur archeologists following the building of Nickajack Dam. TVA has under its control and in its physical possession human remains from one adult male and one adult female. No known individuals were identified. No associated funerary objects are present.

Ernest A. Bachman and others removed 20 burials from site 40MI21 between 1964 and 1965 and reported on this in the *Tennessee Archaeologist* (Bachman 1966). Bachman indicated that an erosional trench was being cut through the site as a result of dredging, revealing human burials. Bachman states that some of the non-funerary ceramic artifacts were examined by the University of Tennessee and identified as representing Late Archaic (c. 3000–1000 B.C.) and Woodland (900 B.C.–A.D. 900) components.

Since no funerary objects accompanied the human remains under the control of TVA, it is not known if they were derived from the Late Archaic or the Woodland occupation. The lack of any detailed information on these human remains leads TVA to determine that they are culturally unidentifiable.

Determinations Made by the Tennessee Valley Authority

Officials of TVA have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their presence in prehistoric archeological contexts.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 2 individuals of Native American ancestry.
- 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 any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation, Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1)(ii), TVA has decided to transfer control of the culturally unidentifiable human remains to the Cherokee Nation, Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any federally recognized Indian tribe 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 Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by September 4, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation, Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

TVA is responsible for notifying the Absentee Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation of Oklahoma; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: June 29, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–19267 Filed 8–4–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–18523; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Washington State Parks and Recreation Commission, Olympia, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Washington State Parks and Recreation Commission [hereafter State Parks], in consultation with lineal descendants and 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 State Parks. 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 State Parks at the address in this notice by September 4, 2015.

ADDRESSES: Alicia Woods, Washington State Parks and Recreation Commission, P.O. Box 42650, Olympia, WA 98504–2650, telephone (360) 902.0939, email *Alicia.Woods@parks.wa.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 State Parks, Olympia, WA, 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 1951, 88 cultural items were removed from the archeological site 45–SP–5 in Spokane County, WA, by Louis R. Caywood with the National Park Service and under contract with State Parks. During the archeological excavation of the site, the burial location of Jacques Raphael Finlay (1768–1828, of Saulteaux-Cree (Chippewa)/Eastern Woodland (Ojibwe) and Scottish descent) was discovered and removed along with 88 documented funerary objects. In 1976, the Finlay/Finley family, spanning (at minimum) a tristate region, requested and received permission for the reburial of Mr. Finlay's remains. A detailed inventory of the collection in 2005 revealed the funerary objects had not been reburied with Mr. Finlay's remains. In 1951 at the time of excavation, a Memorandum of Agreement between the Eastern Washington State Historical Society (EWSHS, also now known as the Northwest Museum of Arts and Culture) and State Parks released custody and control of all excavated material to EWSHS. In 1976, the EWSHS deaccessioned Mr. Finlay's remains and released them to Mr. Elwood Ball of Ball and Dodd Funeral Home for reburial. In 1989, the EWSHS deaccessioned the balance of the 1951 excavated material in a transfer to State Parks. The funerary objects listed below were identified in the collection by staff at the Burke Museum of Natural History and Culture (Burke Museum) in 2005. The objects were subsequently transferred to State Parks headquarters in Olympia, WA.

The 88 unassociated funerary objects are 3 brass buttons, 2(+) fragments of cloth, 2 fragments of glass and 9 metal fragments believed to have once been a pair of spectacles, 1 bone comb fragment, 17 nails believed to have been from the burial vessel, 2 pipe bowl fragments, 5 pipe stem fragments, 1 glass bead fragment, 1 porcelain fragment, 20(+) wood fragments believed to be from the burial vessel, 1 charcoal fragment, 1 white clay fragment, 1 complete wood pipe and 20(+) particles of burned tobacco. One (1) ''killed'' knife with wood handle and 1 writing slate are missing from inventory. Efforts to track and recover these two items over the last four years have failed.

The site is that of Spokane House, a fur trade fort, founded and built by Mr. Finlay (an on-again, off-again employee of the North West Company and a free/independent trader) and a colleague under the direction of David Thompson around 1809. The fort changed ownership to the Hudson's Bay Company, who, in 1825, moved their operation from Spokane House (Nisbet, 2003). Mr. Finlay first arrived in what would later become the Spokane, WA, area with a wife and children. Mr. Finlay's wife is believed to have been from a similar or close tribe to that of his mother's. At some point Mr. Finlay took one, possibly two more wives, both believed to have been Native American women, and went on to father more children. In total he appears to have had, at minimum, 15 children, although possibly as many as 19 children. He died in December of 1828, and his wife buried him at the site of Spokane House.

State Parks staff has determined the 88 unassociated funerary objects are reasonably believed to have been placed with or near Mr. Finlay at the time of his death or later as part of the death rite or ceremony. The surviving Finlay family is large (some estimates put their size at over 11,000 living in the 1990s). State Parks performed a lineal descendant search that resulted in 35 descendants that contacted State Parks and 12 lineal descendants that placed formal claims. The claimants are as follows: Dumont, Harold Tommy; Dumont-Friday, Michelle; Dumont, Monte; Childress, JuLee Lain; Childress, Michael L.; Childress, minor child #1; Childress, minor child #2; Finley, Marian; Loper, Donald; Salois, Britton; Samsel, Joan; and Trahan, Albert. State Parks has also determined there is a relationship of shared group identity that can be reasonably traced between Mr. Finlay's funerary objects and modern-day tribes. Based on a preponderance of the following evidence the objects are culturally affiliated to the modern-day tribes of the Coeur d'Alene Tribe of the Coeur d'Alene Reservation, Idaho; Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; Confederated Tribes of the Colville Reservation, Washington; Kalispel Tribe of the Kalispel Reservation, Washington; and Spokane Tribe of the Spokane Reservation, Washington. This determination is based on ethnographic evidence that the Upper and Middle Spokane people predominantly resided in the area and utilized the resources of the site both pre and post-contact. Included in this evidence are tribal members and tribal descents that share kinship connections; shared linguistic heritage, overlapping trade networks, battle alliances, shared

resource protection, cooperative hunting parties, and shared burial practices (Fahey, 1986; Luttrell, 2011; Ruby and Brown, 1970 & 1981; Walker, 1998). Additionally, in consultation with the Spokane Tribe, representatives of the tribe stated the site is a part of their people's traditional territory.

State Parks received a joint claim for repatriation for the funerary objects from the lineal descendant claimants listed above and the Coeur d'Alene Tribe of the Coeur d'Alene Reservation, Idaho; Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; Confederated Tribes of the Colville Reservation, Washington; Kalispel Tribe of the Kalispel Reservation, Washington; and Spokane Tribe of the Spokane Reservation, Washington.

Determinations Made by the Washington State Parks and Recreation Commission

Officials of the Washington State Parks and Recreation Commission have determined that*:*

• Pursuant to 25 U.S.C. 3001(3)(B), the 88 unassociated funerary objects 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. 3005(a)(5)(A), Dumont, Harold Tommy; Dumont-Friday, Michelle; Dumont, Monte; Childress, JuLee Lain; Childress, Michael L.; Childress, minor child #1; Childress, minor child #2; Finley, Marian; Loper, Donald; Salois, Britton; Samsel, Joan; and Trahan, Albert are the direct lineal descendants of the individual who owned these funerary objects.

• 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 Coeur d'Alene Tribe of the Coeur d'Alene Reservation, Idaho; Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; Confederated Tribes of the Colville Reservation, Washington; Kalispel Tribe of the Kalispel Reservation, Washington; and Spokane Tribe of the Spokane Reservation, Washington.

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 Alicia Woods, Washington State Parks and Recreation Commission, P.O. Box 42650, Olympia, WA 98504–2650, telephone (360) 902–0939, email *Alicia.Woods@parks.wa.gov,* by September 4, 2015. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the listed lineal descendants and the Coeur d'Alene Tribe of the Coeur d'Alene Reservation, Idaho; Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; Confederated Tribes of the Colville Reservation, Washington; Kalispel Tribe of the Kalispel Reservation, Washington; and Spokane Tribe of the Spokane Reservation, Washington, may proceed.

The Washington State Parks and Recreation Commission is responsible for notifying the lineal descendants; Coeur d'Alene Tribe of the Coeur d'Alene Reservation, Idaho; Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; Confederated Tribes of the Colville Reservation, Washington; Kalispel Tribe of the Kalispel Reservation, Washington; and Spokane Tribe of the Spokane Reservation, Washington, that this notice has been published.

Dated: June 29, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–19266 Filed 8–4–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–ANIA–CAKR–DENA–GAAR–KOVA–LACL–18851; PPAKAKROR4, PPMPRLE1Y.LS0000]

Request for Nominations for the National Park Service Alaska Region Subsistence Resource Commission Program

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS) is seeking nominations for new members to represent subsistence users on the following Subsistence Resource Commissions (SRC): The Aniakchak National Monument SRC, the Cape Krusenstern National Monument SRC, the Denali National Park SRC, the Gates of the Arctic National Park SRC, the Kobuk Valley National Park SRC, and the Lake Clark National Park SRC.

DATES: Nominations must be postmarked by September 4, 2015.

ADDRESSES: Nominations should be sent to: Clarence Summers, Subsistence Manager, National Park Service, Alaska Regional Office, 240 W. 5th Avenue, Anchorage, AK 99501; or via email at *clarence_summers@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS SRC program is authorized under section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118). The SRCs hold meetings to develop NPS subsistence program recommendations and advise on related regulatory proposals and resource management issues.

Each SRC is composed of nine members: (a) Three members appointed by the Secretary of the Interior; (b) three members appointed by the Governor of the State of Alaska; and (c) three members appointed by a Regional Advisory Council (RAC), established pursuant to 16 U.S.C. 3115, which has jurisdiction within the area in which the park is located. Each of the three members appointed by the RAC must be a member of either the RAC or a local advisory committee within the region who also engages in subsistence uses within the Park or Park Monument.

We are now seeking nominations for those three members of each of the SRCs listed above. These members are to be appointed by the Secretary of the Interior.

Members will be appointed for a term of three years. Members of the SRC receive no pay, allowances, or benefits by reason of their service on the SRC. However, while away from their homes or regular places of business in the performance of services for the SRC, and as approved by the Designated Federal Officer (DFO), members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of title 5 of the United States Code.

SRC meetings will take place at such times as designated by the DFO. Members are expected to make every effort to attend all meetings. Members may not appoint deputies or alternates.

Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather

than being appointed to represent a particular interest.

Seeking Nominations for Members

We are seeking nominations for members to represent subsistence users on each of the six SRCs listed above. All those interested in serving as members, including current members whose terms are expiring, must follow the same nomination process. Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the SRC, and to permit the Department to contact a potential member.

Dated: July 28, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–19262 Filed 8–4–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–18278; PPWOCRADN0–PCU00RP15.R50000]

Notice of Inventory Completion: Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Anthropology at Washington State University 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 the Museum of Anthropology at Washington State University. 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 the Museum of Anthropology at Washington State University at the address in this notice by September 4, 2015.

ADDRESSES: Mary Collins, Director Emeritus, Museum of Anthropology Washington State University, Pullman, WA 99164–4910, telephone (509) 592–6929, email *collinsm@wsu.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 under the control of the Museum of Anthropology at Washington State University Pullman, WA. The human remains were removed from near the mouth of Crab Creek in Grant County, WA.

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. 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 Museum of Anthropology at Washington State University professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Colville Reservation, and the Wanapum Band, a non-federally recognized Indian group.

History and Description of the Remains

In 1957, human remains representing, at minimum, one individual were removed from near the mouth of Crab Creek in Grant County, WA. No information about why or how the human remains were collected has been located. No known individuals were identified. No associated funerary objects are present. The human remains consist of a single lot of sand, ash, charcoal, and fragmentary human remains and are believed to be the remnants of a cremation feature. The human remains were found in a box labeled with the date and location from which the human remains were removed and the names of two students who are presumed to have done the removal. Attempts to locate and communicate with the students were not successful. Although not the most common form of burial, cremation was practiced by a number of Native American groups along the Columbia River from very ancient to relatively recent times.

Determinations Made by the Museum of Anthropology at Washington State University

Officials of the Museum of Anthropology at Washington State University 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 Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Colville Reservation. Additionally, a cultural relationship is determined to exist between the human remains and the Wanapum Band, a non-federally recognized Indian group.

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 Mary Collins, Director Emeritus, Museum of Anthropology at Washington State University, Pullman, WA 99164–4910, telephone (509) 592–6929, email *collinsm@wsu.edu,* by September 4, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Colville Reservation, and, if joined to one or more of the culturally affiliated tribes, the Wanapum Band, a non-federally recognized Indian group, may proceed.

The Museum of Anthropology at Washington State University is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Colville Reservation, and the Wanapum Band, a non-federally recognized Indian group, that this notice has been published.

Dated: May 11, 2015.

Mariah Soriano,

Acting Manager, National NAGPRA Program.

[FR Doc. 2015–19271 Filed 8–4–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–18596; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate a Cultural Item: The University of Iowa Museum of Natural History, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Iowa Museum of Natural History, 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 an object of cultural patrimony. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the University of Iowa Museum of Natural History. If no additional claimants come forward, transfer of control of the cultural item 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 this cultural item should submit a written request with information in support of the claim to the University of Iowa Museum of Natural History at the address in this notice by September 4, 2015.

ADDRESSES: Dr. Trina Roberts, Museum of Natural History, 11 Macbride Hall, The University of Iowa, Iowa City, IA 52242, telephone (319) 335–1313, email *trina-roberts@uiowa.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 a cultural item under the control of the University of Iowa Museum of Natural History, Iowa City, IA, that meets the definition of an object of cultural patrimony 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

In November 1983 Betty S. Webber and Catherine S. Chandler donated one bear claw necklace to the University of Iowa Museum of Natural History along with other cultural items owned by their father, Fred Armstrong Soleman, which were purchased or received as gifts during his career in Tama, IA. The bear claw necklace was accessioned by the University of Iowa Museum of Natural History as SUI 33914. The bear claw necklace was identified as an object of cultural patrimony by Jonathan Buffalo, Historical Preservation Director of the Sac & Fox Tribe of the Mississippi in Iowa, in a letter dated February 3, 2015.

Consultation with the Sac & Fox Tribe of the Mississippi in Iowa confirmed both that this object fits the definition of an object of cultural patrimony under NAGPRA and that it was collected in or around the boundaries of the traditional property of the Sac & Fox Tribe of the Mississippi in Iowa.

Determinations Made by the University of Iowa Museum of Natural History

Officials of the University of Iowa Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the bear claw necklace and the Sac & Fox Tribe of the Mississippi in Iowa.

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 Dr. Trina Roberts, Museum of Natural History, 11 Macbride Hall, The University of Iowa, Iowa City, IA 52242, telephone (319) 335–1313, email *trina-roberts@uiowa.edu,* by September 4, 2015. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to the Sac & Fox Tribe of the Mississippi in Iowa may proceed.

The University of Iowa Museum of Natural History is responsible for notifying the Sac & Fox Tribe of the Mississippi in Iowa that this notice has been published.

Dated: June 29, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–19264 Filed 8–4–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]

Notice of Proposed Information Collection; Request for Comments for 1029–0027

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request approval to continue the collections of information regarding general requirements for surface coal mining and reclamation operations on Federal lands. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0027.

DATES: Comments on the proposed information collection must be received by October 5, 2015, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783, or at the email address listed above.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for approval. This collection is contained in 30 CFR part 740—General requirements for surface coal mining and reclamation

operations on Federal lands (1029–0027). OSMRE will request a 3-year term of approval for this information collection activity. 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. Responses are required to obtain a benefit for this collection.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSMRE's submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029–0027.

Summary: Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits on Federal lands, and State Regulatory Authorities.

Total Annual Responses: 12.

Total Annual Burden Hours for Applicants: 780.

Total Annual Burden Hours for States: 1,425.

Total Annual Burden for All Respondents: 2,205.

Dated: *July 31, 2015.*

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2015–19191 Filed 8–4–15; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]

Notice of Proposed Information Collection; Request for Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request approval to continue the collection of information for our petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0098.

DATES: Comments on the proposed information collection activity must be received by October 5, 2015, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783 or by email at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for renewed approval. This collection is contained in 30 CFR part 769—Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations. OSMRE will request a 3-year term of approval for this information collection activity. 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 number for part 769 is 1029–0098. Responses are required to obtain a benefit.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSMRE's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR part 769—Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations.

OMB Control Number: 1029–0098.

Summary: This Part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve or disapprove a request.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: People who may be adversely affected by surface mining on Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 1,000 hours.

Dated: July 31, 2015.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2015–19195 Filed 8–4–15; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]

Notice of Proposed Information Collection; Request for Comments for 1029–0110

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request approval to continue the collection of information for two technical training program course effectiveness evaluation forms. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0110.

DATES: Comments on the proposed information collection activity must be received by October 5, 2015, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or by email at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for renewed approval. This collection is for OSMRE's Technical Training Program Course Effectiveness Evaluations (1029–0110). OSMRE will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSMRE's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: 1029–0110.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSMRE's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 425.

Total Annual Burden Hours: 71 hours.

Dated: July 31, 2015.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2015–19194 Filed 8–4–15; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–023]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: August 7, 2015 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–1279 (Preliminary) (Hydrofluorocarbon Blends and Components From China). The Commission is currently scheduled to complete and file its determination on August 10, 2015; views of the Commission are currently scheduled to be completed and filed on August 17, 2015.
5. Vote in Inv. No. 731–TA–1092 (Review) (Diamond Sawblades and Parts Thereof From China). The Commission is currently scheduled to complete and file its determination and views of the Commission on September 2, 2015.
6. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 31, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–19282 Filed 8–3–15; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1059 (Second Review)]

Hand Trucks and Certain Parts Thereof From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930, that revocation of the antidumping duty order on hand trucks and certain parts thereof from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

The Commission, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), instituted this review on March 2, 2015 (80 FR 11226) and determined on June 5, 2015 that it would conduct an expedited review (80 FR 37661, July 1, 2015).

The Commission completed and filed its determination in this review on July 30, 2015. The views of the Commission are contained in USITC Publication 4546 (July 2015), entitled *Hand Trucks and Certain Parts Thereof from China: Investigation No. 731–TA–1059 (Second Review).*

By order of the Commission.

Issued: July 30, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–19080 Filed 8–4–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Patheon Pharmaceuticals, Inc.

ACTION: Notice of registration.

SUMMARY: Patheon Pharmaceuticals, Inc. applied to be registered as a manufacturer of a certain basic class of controlled substance. The Drug Enforcement Administration (DEA) grants Patheon Pharmaceuticals, Inc. registration as a manufacturer of this controlled substance.

SUPPLEMENTARY INFORMATION: By notice dated March 9, 2015, and published in the **Federal Register** on March 24, 2015, 80 FR 15632, Patheon Pharmaceuticals, Inc., 2110 E. Galbraith Road, Cincinnati, Ohio 45237 applied to be registered as a manufacturer of a certain basic class of controlled substance. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Patheon Pharmaceuticals, Inc. to manufacture the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of gamma hydroxybutyric acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to manufacturer the listed controlled substance for distribution to its customers.

Dated: July 29, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–19173 Filed 8–4–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) revision titled, ''Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 4, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201505-1235-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration information collection. Migrant and Seasonal Agricultural Worker Protection Act (MSPA) section 101 provides that no individual may perform farm labor contracting activities without a certificate of registration. *See* 29 U.S.C. 1811. Form WH–530 is the application form that provides the DOL with the information necessary to issue certificates specifying the farm labor contracting activities authorized. In addition, certain vehicle and safety standards are required of a farm labor contractor applicant and such data is collected via forms WH–514, WH–514a, and WH–515. This information collection has been classified as a revision, because DOL proposes to implement minor changes to Forms WH–514, WH–514a, WH–515 and WH–530. Most of the alterations are to make the forms clearer for the regulated community and to highlight certain instructions. MSPA sections 102, 105, and 511 authorize this information collection. *See* 29 U.S.C. 1812, 1815, and 1861.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not

display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0016. The current approval is scheduled to expire on August 31, 2015; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 25, 2015 (80 FR 15822).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0016. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration.

OMB Control Number: 1235–0016.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for- profit institutions.

Total Estimated Number of Respondents: 15,026.

Total Estimated Number of Responses: 23,196.

Total Estimated Annual Time Burden: 9,334 hours.

Total Estimated Annual Other Costs Burden: $447,354.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 30, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–19170 Filed 8–4–15; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

ZRIN–1290–ZA02

Guidance for Executive Order 13673, ''Fair Pay and Safe Workplaces''

AGENCY: Department of Labor.

ACTION: Proposed guidance; extension of comment period.

SUMMARY: On May 28, 2015, the Department of Labor (DOL) published proposed guidance to assist federal agencies and the contracting community in implementing Executive Order 13673, ''Fair Pay and Safe Workplaces,'' which is designed to improve contractor compliance with labor laws and increase efficiency and cost savings in Federal contracting. On July 14, 2015, DOL published an extension of the comment period by 15 days from July 27, 2015, to August 11, 2015. The deadline for submitting comments is being further extended by an additional 15 days from August 11, 2015, to August 26, 2015, to provide additional time for interested parties to provide comments on the DOL guidance. The Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA), which on May 28, 2015, jointly published a proposed rule implementing Executive Order 13673, and on July 14, 2015, extended the comment period for their proposed rule by 15 days to August 11, 2015, are similarly extending the comment period for their proposed rule by an additional 15 days to August 26, 2015.

If you have already commented on the proposed guidance you do not need to resubmit your comment. Should you choose to do so, you can submit additional or supplemental comments. DOL will consider all comments received from the date of publication of the proposed guidance through the close of the extended comment period.

DATES: The comment period for the Proposed Guidance published on May 28, 2015, scheduled to close on August 11, 2015, is extended until August 26, 2015.

ADDRESSES: You may submit comments, identified by ZRIN–1290–ZA02, by either of the following methods:

Electronic comments: Comments may be sent via *http://www.regulations.gov,* a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type in ''guidance on fair pay and safe workplaces'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Mail: Address written submissions to Tiffany Jones, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit only one copy of your comments by only one method. All submissions must include the agency name and ZRIN, identified above, for this document. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. Comments that are mailed must be received by the date indicated for consideration.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Franks, Director, Office of Regulatory and Programmatic Policy, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–5959. Copies of the proposed guidance may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959. TTY/TDD callers may dial toll-free [1–877–889–5627] to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: On May 28, 2015, DOL published proposed guidance in the **Federal Register** at 80 FR 30573. DOL was originally to receive comments on this guidance on or before July 27, 2015. On July 14, 2015, DOL published an extension of the comment period by 15 days from July 27, 2015, to August 11, 2015.

DOL has determined that it is appropriate to provide an additional 15-day period for comment on the guidance, after considering requests to extend the comment period further.

To allow the public sufficient time to review and comment on the proposed guidance, DOL is extending the comment period until August 26, 2015.

Signed in Washington, DC, this 30th day of July 2015.

Mary Beth Maxwell,

Principal Deputy Assistant Secretary, Office of the Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2015–19171 Filed 8–4–15; 8:45 am]

BILLING CODE 4510–HX–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–056]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by September 4, 2015. Once NARA completes appraisal of the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR); 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Management Services (ACNR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No agencies may destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after a thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records or that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency), provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction), and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration (DAA–0370–2015–0002, 3 items, 3 temporary items). Aeronautical survey files, including aeronautical field notes, observations, triangulation diagrams, and aerial photographs annotated with geodetic control data.

2. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0025, 1 item, 1 temporary item). Records relating to agency observations of weather conditions.

3. Department of Health and Human Services, Office of the Secretary (DAA–0468–2015–0002, 3 items, 3 temporary items). Master files of an electronic information system used to track and store records of healthcare discrimination complaints, investigations, correspondence, outreach, and working files.

4. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2015–0004, 8 items, 8 temporary items). Applications and supporting documents used to replace permanent resident cards.

5. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2015–0005, 1 item, 1 temporary item). Roster of candidates for naturalization provided to the court that will administer the oath of allegiance.

6. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2015–0006, 1 item, 1 temporary item). Records of non-immigrants passing through the United States before 2002.

7. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2015–0007, 1 item, 1 temporary item). Records of non-immigrants deported before 2002 that were not integrated into the records of an immigrant.

8. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2015–0008, 1 item, 1 temporary item). Records of non-immigrants visiting the United States before 2002 that were not integrated into the records of an immigrant.

9. Department of Justice, United States Marshals Service (DAA–0527–2013–0027, 3 items, 2 temporary items). Records include speeches and testimony by agency personnel. Proposed for permanent retention are speeches and testimony of high-level agency officials.

10. Department of Justice, United States Marshals Service (DAA–0527–2013–0028, 3 items, 2 temporary items). Office of Internal Affairs records to include routine employee misconduct case files and general correspondence. Proposed for permanent retention are significant cases of employee misconduct.

11. Department of the Navy, United States Marine Corps (DAA–0127–2014–0001, 1 item, 1 temporary item). Master files of an electronic information system used for the collection, analysis, and dissemination of intelligence information.

12. Department of State, Bureau of Energy Resources (DAA–0059–2015–0003, 2 items, 2 temporary items). Records of the Office of Energy Programs including routine program and subject files.

13. Department of State, Bureau of International Organization Affairs (DAA–0059–2014–0017, 4 items, 3 temporary items). Records of the Office of International Conferences including routine administrative and operational files. Proposed for permanent retention are conference files including delegation lists, agendas, and staff studies and reports.

14. Department of the Treasury, Internal Revenue Service (DAA–0058–2015–0001, 3 items, 2 temporary items). Email records of non-senior agency employees. Proposed for permanent retention are email records of senior-level agency officials.

15. Denali Commission, Agency-wide (DAA–0591–2013–0001, 8 items, 1 temporary item). Master files of electronic information systems used to track grant projects. Proposed for permanent retention are policy, meeting, and correspondence files; publications and public relations files; Memorandum of Understanding/Agreement files, and historical grant case files.

16. National Archives and Records Administration, Office of the Federal Register (DAA–0064–2015–0002, 1 item, 1 temporary item). Electronic submissions of notices for publication in the **Federal Register**.

17. National Mediation Board, Agency-wide (DAA–0013–2015–0001, 1 item, 1 temporary item). Rail and air carrier labor contracts.

18. Office of the Director of National Intelligence, Mission Support Division (N1–576–12–1, 16 items, 14 temporary items). Records include preliminary drafts and non-substantive working papers, insider threat case files, and records related to administrative functions and activities. Proposed for permanent retention are annual agency reports and substantive working papers and drafts.

Dated: July 28, 2015.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2015–19249 Filed 8–4–15; 8:45 am]

BILLING CODE 7515–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from May 1, 2015, to May 31, 2015.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, (202) 606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during May 2015.

Schedule B

No Schedule B Authorities to report during May 2015.

Schedule C

The following Schedule C appointing authorities were approved during May 2015.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Office of the Assistant Secretary for Congressional Relations.	Senior Legislative Analyst	DA150131	5/1/2015
		Legislative Analyst	DA150141	5/14/2015
	Foreign Agricultural Service	Special Assistant	DA150133	5/1/2015
		Policy Advisor	DA150144	5/14/2015
	Office of the Secretary	White House Liaison	DA150134	5/1/2015
	Office of Under Secretary for Natural Resources and Environment.	Chief of Staff	DA150145	5/14/2015
		Senior Advisor	DA150142	5/14/2015
	Natural Resources Conservation Service.	Special Assistant for Public and Private Partnerships.	DA150142	5/15/2015
Department of Commerce	Office of Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Special Advisor	DC150102	5/12/2015
	Office of the Under Secretary	Special Advisor	DC150095	5/14/2015
		Special Assistant	DC150107	5/15/2015
	Office of the Deputy Secretary	Special Assistant	DC150104	5/14/2015
	Office of White House Liaison	Deputy Director, Office of White House Liaison.	DC150098	5/21/2015

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Chief of Staff	Confidential Assistant	DC150105	5/21/2015
		Deputy Director of Advance and Special Assistant.	DC150106	5/21/2015
	Office of Scheduling and Advance	Advance Specialist	DC150110	5/21/2015
Department of Defense	Office of the Under Secretary of Defense (Comptroller).	Personal and Confidential Assistant (Comptroller).	DD150123	5/11/2015
	Office of Principal Deputy Under Secretary for Policy.	Special Assistant for Strategy, Plans and Forces.	DD150134	5/14/2015
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant for Middle East	DD150126	5/20/2015
			DD150128	5/20/2015
Department of the Air Force	Office of Assistant Secretary Air Force, Installations, Environment, and Logistics.	Special Assistant for Installations, Environment, and Energy.	DF150049	5/14/2015
Department of Education	Office of the General Counsel	Chief of Staff	DB150076	5/1/2015
		Senior Counsel	DB150080	5/15/2015
	Office of the Under Secretary	Deputy Director, White House Initiative on Asian American Pacific Islanders.	DB150078	5/1/2015
	Office of Legislation and Congressional Affairs.	Special Assistant	DB150079	5/1/2015
	Office of the Secretary	Senior Advisor	DB150082	5/14/2015
		Director of Strategic Partnerships, Special Advisor.	DB150083	5/20/2015
	Office for Civil Rights	Senior Counsel	DB150086	5/28/2015
	Office of Communications and Outreach.	Strategic Advisor, Communications	DB150087	5/29/2015
	Office of the Deputy Secretary	Director for Strategic Communications and Scheduling.	DB150088	5/29/2015
Department of Energy	Office of the Chief Information Officer.	Special Assistant	DE150084	5/15/2015
	Office of Assistant Secretary for Fossil Energy.	Chief of Staff	DE150087	5/15/2015
	Office of the Secretary	Special Advisor	DE150079	5/21/2015
Environmental Protection Agency	Office of Public Affairs	Press Secretary	EP150036	5/20/2015
Export-Import Bank	Office of the Chairman	Deputy Chief of Staff	EB150003	5/5/2015
Federal Energy Regulatory Commission.	Office of the Chairman	Confidential Assistant	DR150015	5/18/2015
General Services Administration	Office of the Administrator	Senior Advisor	GS150032	5/6/2015
		Deputy Chief of Staff	GS150033	5/14/2015
	Office of Communications and Marketing.	Press Secretary	GS150034	5/22/2015
Government Printing Office	Office of the Public Printer	Executive Assistant	GP150001	5/19/2015
Department of Health and Human Services.	Office of the Assistant Secretary for Public Affairs.	Deputy Director of Speechwriting	DH150131	5/7/2015
		Confidential Assistant	DH150140	5/14/2015
	Office of the Secretary	Policy Advisor	DH150141	5/29/2015
	Office of the Assistant Secretary for Children and Families.	Senior Policy Advisor	DH150149	5/29/2015
	Office of the Deputy Secretary	Confidential Assistant	DH150150	5/29/2015
Department of Homeland Security	Office of the Chief of Staff	Special Assistant	DM150158	5/13/2015
	Office of the Under Secretary for National Protection and Programs Directorate.	Confidential Assistant	DM150162	5/15/2015
	Office of Privacy Officer	Special Assistant	DM150170	5/28/2015
	Office of the Executive Secretariat	Director of Trips and Advance	DM150171	5/28/2015
	Office of the Assistant Secretary for Policy.	Senior Advisor for Cyber Policy	DM150172	5/28/2015
	Office of the General Counsel	Confidential Assistant	DM150173	5/28/2015
Department of the Interior	Secretary's Immediate Office	Deputy Communications Director	DI150086	5/29/2015
		Senior Advisor and Press Secretary.	DI150092	5/29/2015
		Advance Representative	DI150093	5/29/2015
Department of Justice	Office of Legislative Affairs	Attorney Advisor	DJ150080	5/26/2015
	Office of Justice Programs	Senior Counsel	DJ150084	5/28/2015
Department of Labor	Office of Public Affairs	Press Secretary	DL150057	5/1/2015
	Office of the Deputy Secretary	Senior Policy Advisor	DL150059	5/13/2015
	Office of the Secretary	Special Assistant	DL150060	5/18/2015
	Wage and Hour Division	Special Assistant	DL150061	5/21/2015
National Aeronautics and Space Administration.	Office of Communications	Deputy Press Secretary and Strategic Communications Coordinator.	NN150058	5/20/2015
		Social Media Specialist	NN150059	5/20/2015

Agency name	Organization name	Position title	Authorization No.	Effective date
National Transportation Safety Board.	Office of Board Members	Special Assistant	TB150004	5/1/2015
Office of Management and Budget	Office of the General Counsel	Confidential Assistant	BO150027	5/5/2015
	Office of the Director	Assistant to the Deputy Director for Management.	BO150028	5/5/2015
		Assistant for Management	BO150031	5/20/2015
		Assistant to the Deputy Director for Management.	BO150030	5/20/2015
	Office of Legislative Affairs	Confidential Assistant	BO150029	5/20/2015
Small Business Administration	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator for Congressional and Legislative Affairs.	SB150031	5/1/2015
	Office of the Administrator	Special Advisor	SB150029	5/5/2015
	Office of Communications and Public Liaison.	Associate Administrator for Communications and Public Liaison.	SB150033	5/14/2015
	Office of Entrepreneurial Development.	Senior Advisor	SB150030	5/29/2015
Department of State	Bureau of International Security and Nonproliferation.	Staff Assistant	DS150082	5/14/2015
	Office of the Secretary	Staff Assistant	DS150075	5/20/2015
	Bureau of Legislative Affairs	Deputy Assistant Secretary	DS150081	5/20/2015
	Bureau of Democracy, Human Rights and Labor.	Deputy Assistant Secretary	DS150078	5/26/2015
	Bureau of Economic and Business Affairs.	Deputy Assistant Secretary	DS150084	5/21/2015
Department of Transportation	Office of Assistant Secretary for Transportation Policy.	Policy Advisor	DT150060	5/20/2015
	Office of Public Affairs	Director of Public Affairs	DT150062	5/20/2015
	Office of the Secretary	Director of Advance	DT150065	5/28/2015
	Office of Communications and Legislative Affairs.	Director of Communications	DT150067	5/29/2015
Department of Veterans Affairs	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Special Assistant	DV150037	5/26/2015

The following Schedule C appointing authorities were revoked during May 2015.

Agency name	Organization name	Position title	Authorization No.	Vacate date
Department of Commerce	Office of Legislative and Intergovernmental Affairs.	Confidential Assistant	DC140006	5/2/15
	Office of the Under Secretary	Special Assistant	DC140049	5/16/15
	International Trade Administration	Confidential Assistant	DC140125	5/16/15
	Office of the Deputy Secretary	Special Assistant	DC130094	5/23/15
	Office of the Chief Economist	Special Project Advisor	DC140076	5/29/15
Office of the Secretary of Defense	Office of the Secretary	Advance Officer	DD150021	5/10/15
Farm Credit Administration	Office of the Board	Executive Assistant to Chairman of the Board.	FL130005	5/1/15
General Services Administration	Mid-Atlantic Region	Special Assistant to the Regional Administrator.	GS140005	5/8/15
	Pacific Rim Region	Special Assistant to the Regional Administrator.	GS140009	5/13/15
	Office of Communications and Marketing.	Press Secretary	GS140023	5/15/15
	Office of the Administrator	White House Liaison	GS130011	5/16/15
		Senior Advisor	GS130012	5/16/15
Department of Health and Human Services.	Office of Health Reform	Senior Policy Analyst	DH140065	5/2/15
Department of Housing and Urban Development.	Office of the Secretary	Senior Policy Advisor	DU140052	5/2/15
	Mid-Atlantic (Philadelphia)	Regional Administrator	DU110001	5/16/15
	Rocky Mountain (Denver)	Regional Administrator	DU100050	5/30/15
	Office of Field Policy and Management.	Regional Administrator (Northwest/Alaska).	DU140002	5/30/15
	Great Plains (Kansas City)	Regional Administrator (Great Plains).	DU140006	5/30/15
Department of the Interior	Secretary's Immediate Office	Special Assistant for Scheduling	DI120064	5/1/15
		Deputy Director of Advance	DI140026	5/2/15
		Director of Digital Strategy	DI140066	5/15/15

Agency name	Organization name	Position title	Authorization No.	Vacate date
Department of Justice	Office of Legislative Affairs	Attorney Advisor	DJ130073	5/2/15
Department of Labor	Office of the Secretary	Special Assistant to the Secretary	DL130043	5/2/15
		Special Assistant	DL100020	5/9/15
	Wage and Hour Division	Policy Advisor	DL140007	5/2/15
Small Business Administration	Office of Investment	Special Advisor	SB130025	5/2/15
Department of State	Office of the Deputy Secretary for Management and Resources.	Senior Advisor	DS110135	5/2/15
	Office of the Under Secretary for Management.	Staff Assistant	DS130124	5/2/15
Department of Transportation	Office of the Secretary	White House Liaison	DT130041	5/2/15
		Deputy White House Liaison	DT140050	5/2/15

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2015–19215 Filed 8–4–15; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–115; Order No. 2627]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 6, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On July 29, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–115 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 6, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints John P. Klingenberg to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–115 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, John P. Klingenberg is appointed as the Public Representative in this proceeding.

3. Comments are due no later than August 6, 2015.

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

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 29, 2015 (Notice).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–19117 Filed 8–4–15; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75558; File No. SR–Phlx–2015–67]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Delay of Implementation Related to the Volume-Based and Multi-Trigger Thresholds

July 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 extend the implementation timeframe for adopting two new Phlx Market Maker[3] risk

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Market Maker'' includes Registered Options Traders (''ROTs'') (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (''SQTs'') (*See* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (''RSQTs'') (*See* Rule 1014(b)(ii)(B)). An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule

protections, a volume-based threshold and a multi-trigger threshold.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to extend the implementation of the Exchange's amendments to Phlx Exchange Rule 1095 entitled ''Automated Removal of Market Maker Quotes.'' [4] In its rule change regarding the two new risk protections, the Exchange stated that it proposes to ''. . . implement this rule within thirty (30) days of the operative date. The Exchange will issue an Options Trader Alert in advance to inform market participants of such date.'' [5] At this time, the Exchange desires to extend the implementation of this rule change and request that it implement the rule within (60) days of the operative date. The Exchange will announce the date of implementation by issuing an Options Trader Alert.

By way of background, these risk protections are intended to assist Market Makers to control their trading risks.[6] Specifically, the risk protections establish: (1) A threshold used to calculate each Market Maker's total volume executed in all series of an underlying security within a specified time period and to compare that to a pre-determined threshold (''Volume-Based Threshold''), and (2) a threshold used to measure the number of times the Phlx XL system (''System'') has triggered [7] based on the Risk Monitor Mechanism (''Percentage-Based Threshold'') pursuant to Rule 1093 and Volume-Based Thresholds within a specified time period and to compare that total to a pre-determined threshold (''Multi-Trigger Threshold'').[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] 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 enhancing the risk protections available to Exchange members. The proposal promotes policy goals of the Commission, which has encouraged execution venues, exchange and non-exchange alike, to enhance risk protection tools and other mechanisms to decrease risk and increase stability.

The delay of the implementation of Phlx Rule 1095 will permit the Exchange an additional thirty days within which to implement these risk protections that will be utilized by Phlx Market Makers.

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 the risk protections, the proposal will not impose a burden on intra-market or inter-market competition; rather it provides Market Makers with the opportunity to avail themselves of similar risk tools that are currently available on other exchanges.[11] The proposal does not impose a burden on inter-market competition, because members may choose to become market makers on a number of other options exchanges, which may have similar but not identical features.[12] The proposed rule change is meant to protect Market Makers from inadvertent exposure to excessive risk. Accordingly, the proposed rule change will have no impact on competition.

The delay of the implementation of Phlx Rule 1095 will permit the Exchange additional time to implement these risk protections that will be utilized by Phlx Market Makers.

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)(ii) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] The Exchange has requested that the Commission waive the thirty-day operative delay so that the proposal may become operative immediately. The Exchange states that waiving the thirty-day operative delay will enable it to implement these risk protections within the new timeframe. The Commission believes that waiving the thirty day delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the thirty-

1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. A Market Maker also includes a specialist, an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[4] This rule became immediately effective on June 22, 2015. Securities Exchange Act Release No. 75372 (July 7, 2015), 80 FR 40107 (July 13, 2015) (SR–Phlx–2015–52).

[5] *See* note 4.

[6] *See* Rule 1014 entitled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[7] A trigger is defined as the event which causes the System to automatically remove all quotes in all options series in an underlying issue.

[8] The details of the two risk protections are described in the initial filing. *See* Securities Exchange Act Release No. 75372 (July 7, 2015), 80 FR 40107 (July 13, 2015) (SR–Phlx–2015–52).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Section 8 of Form 19b–4 with respect to this proposed rule change.

[12] *See* BATS Rule 21.16, BOX Rules 8100 and 8110, C2 Rule 8.12, CBOE Rule 8.18, ISE Rule 804(g), MIAX Rule 612, NYSE MKT Rule 928NY and NYSE Arca Rule 6.40.

[13] 15 U.S.C. 78s(b)(3)(a)(ii).

[14] 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.

day operative delay and designates the proposal effective upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–Phlx–2015–67 on the subject line.*

Paper Comments

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

All submissions should refer to File Number *SR–Phlx–2015–67.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2015–67 and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19128 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Wonder International Education and Investment Group Corp.; Order of Suspension of Trading

August 3, 2015.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of Wonder International Education and Investment Group Corp. (CIK No. 0001456137) (''WIEI'') because WIEI has not filed any periodic reports since it filed a Form 10–Q for the quarter ended September 30, 2013 on November 14, 2013. The company has not filed audited financials since July 25, 2013, when it filed its amended Form 10–K for the year ended December 31, 2012. In particular, it appears to the Commission that there is a lack of accurate and reliable information concerning WIEI's financial condition and the current status of its business. WIEI is an Arizona corporation originally based in Scottsdale, Arizona. Its stock is quoted on OTC Link, operated by OTC Markets Group Inc., under the ticker: WIEI. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on August 3, 2015, through 11:59 p.m. EDT on August 14, 2015.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–19311 Filed 8–3–15; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75566; File No. SR–NYSEArca–2015–42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade of Shares of Newfleet Multi-Sector Unconstrained Bond ETF Under NYSE Arca Equities Rule 8.600

July 30, 2015.

I. Introduction

On June 5, 2015, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Newfleet Multi-Sector Unconstrained Bond ETF (''Fund''), a series of the ETFis Series Trust I (''Trust'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. On June 15, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission published notice of the proposed rule change, as modified by Amendment No. 1 thereto, in the **Federal Register** on June 24, 2015.[4] On July 23, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The Commission received no comments on the proposal. This

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to the proposed rule change replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 75247 (June 18, 2015), 80 FR 36372 (''Notice'').

[5] Amendment No. 2 clarified that the Adviser expects that, under normal market conditions, the Fund will seek to invest at least 75% of its corporate bond assets in issuances that have at least $100,000,000 par amount outstanding in developed countries *or* at least $200,000,000 par amount outstanding in emerging market countries. Because it only makes this clarification and does not materially affect the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 to the proposed rule change does not require notice and comment. The text of Amendment No. 2 is available at: *http://www.sec.gov/comments/sr-nysearca-2015-42/nysearca201542-2.pdf.*

order approves the proposed rule change, as modified by Amendments No. 1 and No. 2.

II. The Exchange's Description of the Proposal [6]

NYSE Arca proposes to list and trade Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust, which is registered with the Commission as an investment company.[7] The investment adviser to the Fund will be Etfis Capital LLC (''Adviser''), and the sub-adviser to the Fund will be Newfleet Asset Management LLC (''Sub-Adviser'').[8] ETF Issuer Solutions Inc. will serve as the Fund's operational administrator. ETF Distributors LLC will serve as the distributor, and the Bank of New York Mellon will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

The Fund's investment objective is to provide a high level of current income and, secondarily, capital appreciation. Under normal market conditions,[9] the Sub-Adviser will seek to select securities using a sector rotation approach and seek to adjust the proportion of Fund investments in various sectors and sub-sectors in an effort to obtain higher relative returns.

A. The Fund's Principal Investments

Under normal market conditions, at least 80% of the Fund's net assets will be invested in the fixed income securities identified below and in U.S. Treasury futures. The Fund may invest across the credit-rating spectrum, which includes securities rated below investment grade by a nationally recognized statistical rating organization (''NRSRO''), and in unrated securities. The Fund has no target duration for its investment portfolio.

The Fund may invest in the following fixed income securities:

- Securities issued or guaranteed as to principal and interest by the U.S. Government, or by its agencies, authorities or instrumentalities, including, without limitation, collateralized mortgage obligations (''CMOs''), real estate mortgage investment conduits, and other pass-through securities;
- non-agency [10] commercial mortgage-backed securities (''CMBS''), agency and non-agency residential mortgage-backed securities (''RMBS''), and other asset-backed securities (''ABS''), including equipment trust certificates; [11]
- Yankee bonds; [12]
- loan assignments, including senior and junior bank loans (generally with floating rates); [13]
- corporate bonds; [14] and
- taxable municipal bonds and tax-exempt municipal bonds.

Generally, the portfolio will include a minimum of 13 non-affiliated issuers of debt securities, and the Fund will only purchase performing securities, not distressed debt.[15]

The Fund may invest in U.S. Treasury futures contracts traded on U.S. futures exchanges to attempt to protect the Fund's current or intended investments from broad fluctuations in securities prices.

B. The Fund's Non-Principal Investments

While the Fund, under normal market conditions, will invest at least 80% of its assets in the fixed income securities and financial instruments identified above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may hold the following exchange-traded equity securities: Common stocks, preferred stocks, warrants, convertible securities, unit investment trusts, master limited partnerships, real estate investment trusts (''REITs''), exchange-traded funds (''ETFs''),[16] and exchange-traded notes (''ETNs'').[17] These equity securities will be traded in the U.S. on registered exchanges.

To gain exposure to the performance of foreign issuers, the Fund may also invest in the following types of equity securities: American Depositary Receipts (''ADRs''); ''ordinary shares'' and ''New York shares'' (each of which is issued and traded in the U.S.); and Global Depositary Receipts, European Depositary Receipts, and International Depositary Receipts, which are traded on foreign exchanges.[18]

With respect to its exchange-traded equity securities, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group (''ISG'')

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[6] The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of net asset value (''NAV''), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. *See* Notice, *supra* note 3, and Registration Statement, *infra* note 7.

[7] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). The Exchange states that on January 26, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and under the 1940 Act relating to the Fund (File Nos. 333–187668 and 811–22819) (''Registration Statement'').

[8] The Adviser and Sub-Adviser are not registered as broker-dealers, but each is affiliated with one or more broker-dealers and has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio. In the event (a) the Adviser or Sub-Adviser become registered broker-dealers or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio, and it will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[9] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In the absence of normal market conditions, the Fund may invest 100% of its total assets, without limitation, in cash or cash equivalents. The Fund may be invested in this manner for extended periods depending on the Sub-Adviser's assessment of market conditions.

[10] ''Non-agency'' securities are financial instruments that have been issued by an entity that is not a government-sponsored agency such as the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Home Loan Banks, or the Government National Mortgage Association.

[11] The Fund may invest up to 20% of its net assets in the aggregate in non-agency CMBS, RMBS, and ABS.

[12] Yankee bonds are denominated in U.S. dollars, registered in accordance with the Securities Act and publicly issued in the U.S. by foreign banks and corporations.

[13] The Fund may invest in loan assignments, including senior and junior bank loans, rated C or higher by an NRSRO or unrated but considered to be of comparable quality by the Adviser or Sub-Adviser. The Fund will not invest in loan assignments that are in default at time of purchase. The Fund will only invest in U.S. dollar-denominated loan assignments. In addition, for investment purposes, a bank loan must have a par amount outstanding of U.S. $150 million or greater at the time it is originally issued. The Fund may invest up to 20% of its net assets in junior bank loans. The Adviser generally will invest in loan assignments, including bank loans, that it deems highly liquid, with readily available prices.

[14] The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its corporate bond assets in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries. *See* Amendment No. 2, *supra* note 5.

[15] Distressed debt is debt that is currently in default and is not expected to pay the current coupon.

[16] The Fund may invest in inverse ETFs, leveraged ETFs and inverse leveraged ETFs (*e.g.,* 2X or 3X).

[17] The Fund will not invest in leveraged ETNs and inverse leveraged ETNs (*e.g.,* 2X or 3X).

[18] The Fund may invest in sponsored or unsponsored ADRs; however, non-exchange listed ADRs will not exceed 10% of the Fund's net assets.

or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder,[19] other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies (''closed-end funds''), including other ETFs. The Fund may also invest in the securities of other investment companies in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.[20]

The Fund may invest in exchange-traded securities of pooled vehicles that are not investment companies and, thus, not required to comply with the provisions of the 1940 Act, although such pooled vehicles would be required to comply with the provisions of other federal securities laws, such as the Securities Act. These pooled vehicles typically hold commodities, such as gold or oil; currency; or other property that is itself not a security.[21]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act,[23] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[24] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Quotation and last-sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the Consolidated Tape Association (''CTA'') high-speed line, and from the national securities exchange on which they are listed. In addition, the intraday indicative value or ''IIV'' (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)) will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[25] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's Web site will publish the Disclosed Portfolio[26] that will form the basis for the Fund's calculation of NAV at the end of the business day.[27]

The NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading 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. 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. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Foreign exchange prices are available from major market data vendors. Intra-day and closing price information for Rule 144A fixed income securities and loan assignments will be available from major market data vendors. Price information for investment company securities (other than ETFs and exchange-traded closed end funds) will be available from the investment company's Web site and from market data vendors. Quotation information from brokers and dealers or pricing services will be available for unsponsored ADRs; fixed income securities; bank loans; U.S. Treasury securities; other obligations issued or guaranteed by U.S. government agencies or instrumentalities; bank obligations; short-term securities; money market instruments; ABS; MBS; CMBS; RMBS; CMOs; shares of mutual funds; corporate debt securities; and convertible securities.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. 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 in Shares of the Fund will be halted if the circuit-breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[28] Trading in the Shares also will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Adviser and Sub-Adviser are not registered as broker-dealers but are affiliated with two broker-dealers and have implemented and will maintain a fire wall with respect to each such broker-dealer affiliate.[29]

[19] 15 U.S.C. 80a–12(d)(1).

[20] 15 U.S.C. 80a–12(d)(1)(E),(F) and (G).

[21] Exchange-traded pooled investment vehicles include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[22] 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).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] Currently, it is the Exchange's understanding that several major market data vendors display or make widely available IIVs taken from CTA or other data feeds.

[26] The term ''Disclosed Portfolio'' is defined in NYSE Arca Equities Rule 8.600(c)(2).

[27] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[28] These may include: (1) The extent to which trading is not occurring in the securities or the financial instruments 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.

[29] *See supra* note 7. The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[30]

The Exchange represents that it 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. In support of this proposal, the Exchange has also made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded equity securities and futures contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded equity securities and futures contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded equity securities and futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[31]

(5) Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. The Bulletin will discuss the following: (i) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) the risks involved in trading the Shares during the Opening and Late Trading Sessions (as defined in NYSE Arca Equities 7.34) when an updated IIV or Index value will not be calculated or publicly disseminated; (iv) how information regarding the IIV, the Disclosed Portfolio, and the Index value will be disseminated; (v) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

(6) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[32] as provided by NYSE Arca Equities Rule 5.3.

(7) Not more than 20% of the Fund's net assets in the aggregate will be invested in non-agency CMBS, RMBS, and ABS.

(8) Not more than 20% of the Fund's net assets will be invested in junior bank loans.

(9) The Fund will invest only in U.S. dollar-denominated loan assignments, and for investment purposes, a bank loan must have a par amount outstanding of U.S. $150 million or greater at the time it is originally issued. Furthermore, the Adviser will invest generally in loan assignments, including bank loans, which it deems to be highly liquid, with readily available prices.

(10) 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 fixed income securities and bank loans that are deemed illiquid by the Adviser, consistent with Commission guidance.

(11) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act [33] and Section 11A(a)(1)(C)(iii) of the Exchange Act [34] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[35] that the proposed rule change (SR–NYSEArca–2015–42), as modified by Amendments No. 1 and No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19132 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75567; File No. SR–BATS–2015–54]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay Implementation of SR–BATS–2015–51

July 30, 2015.

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 July 23, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[30] The Exchange states that 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.

[31] 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.

[32] 17 CFR 240.10A–3.

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to delay the implementation date of recent amendments to Rules 21.1(d)(9), (h) and (i) that modified the operation of BATS Post Only Orders[5] subject to the Price Adjust[6] process on the Exchange's options platform (''BATS Options'').[7] 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 is proposing to delay the implementation date of recent amendments to Rules 21.1(d)(9), (h) and (i) that modified the operation of BATS Post Only Orders subject to the Price Adjust process on BATS Options so that they will no longer remove liquidity from the BATS Options Book[8] pursuant to Rule 21.1(d)(9) where the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Options Book and subsequently provided liquidity.[9] The proposed rule change was filed with the Commission on June 30, 2015 for immediate effectiveness pursuant to Rule 19b–4(f)(6)(iii) under the Act,[10] and therefore, is scheduled to become operative 30 days from the date on which it was filed. Accordingly, the proposed rule change is scheduled to become operative on July 30, 2015. The Exchange proposes to delay the implementation of the proposed rule change and will announce the exact date via a publicly disseminated trading notice, which will be issued at least two week prior to the implementation date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed 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. Delaying the implementation date will provide the Exchange with additional time to implement and test the necessary modifications to its System,[13] thereby promoting fair and orderly markets, as well as the protection of investors and the public interest.

(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 delay of the implementation date will not have any impact on competition.

(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. 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 designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of this filing.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] BATS Post Only Orders are orders that are to be ranked and executed on the Exchange pursuant to Rule 21.8 (Order Display and Book Processing) or cancelled, as appropriate, without routing away to another trading center. *See* Exchange Rule 21.1(d)(9).

[6] In sum, under the Price Adjust process, a BATS Post Only order that locks or crosses a Protected Quotation displayed by the Exchange upon entry will continue to be ranked and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers). *See* Exchange Rule 21.1(i).

[7] *See* Securities Exchange Act Release No. 75360 (July 6, 2015), 80 FR 39816 (July 10, 2015) (SR–BATS–2015–51) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Operation of BATS Post Only Orders Subject to the Price Adjust Process on the Exchange's Options Platform).

[8] ''BATS Options Book'' is defined as ''the electronic book of options orders maintained by the Trading System.'' *See* Exchange Rule 16.1(a)(9).

[9] For a complete description of the proposed rule change, *see supra* note 7.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' Rule 1.5(aa).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 240.19b–4(f)(6).

to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that BATS may implement the proposed rule change immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will immediately notify members that the currently scheduled operative date for recent amendments to BATS Post Only Orders has changed from July 30, 2015.[17] Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–BATS–2015–54 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–BATS–2015–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–54, and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19133 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* note 7.

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75568; File No. SR–BX–2015–043]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4703(a)

July 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 20, 2015, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4703(a) to remove the Market Hours Immediate or Cancel Time in Force and to delay implementation of changes to the Good-til-market close Time in Force, which were recently adopted by BX but are not yet implemented.

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 is proposing to amend Rule 4703(a) to remove the Market Hours Immediate or Cancel (''Market Hours IOC'' or ''MIOC'') Time-in-Force and to delay implementation of changes to the Good-til-market close (''GTMC'') Time-in-Force, which were recently adopted by BX but are not yet implemented.[3] Time-in-Force (''TIF'') is

[3] The Exchange notes that the text at issue in this filing concerning the MIOC TIF under Rule 4703(a)(1) is not yet implemented, but was recently inadvertently incorporated into the BX rulebook when the Commission approved certain rules governing the BX equities market in order to provide additional detail and clarity regarding its order type functionality. *See* Securities Exchange Act Release No. 75291 (June 24, 2015), 80 FR 37698 (July 1, 2015) (SR–BX–2015–015). Notwithstanding its inadvertent inclusion in the rulebook, the rule text concerning the MIOC TIF is not yet effective. The Exchange had anticipated implementing the MIOC and GTMC changes in the second quarter of 2015. *See* Securities Exchange Act Release No. 74638 (April 2, 2015), 80 FR 18890 (April 8, 2015) (SR–BX–2015–016).

a characteristic of an order that limits the period of time that the System will hold an order for potential execution. An Order that is designated to deactivate immediately after determining whether the Order is marketable may be referred to as having a TIF of ''Immediate or Cancel'' or ''IOC''.[4] Any Order with a TIF of IOC entered between 9:30 a.m. ET and 4:00 p.m. ET is considered as having a TIF of MIOC.[5] The MIOC TIF is very similar to the SIOC [6] TIF, but MIOC designated orders are limited to entry and potential execution only during Regular Market Hours. An order designated with a TIF of MIOC that is entered outside of Regular Market Hours would be returned to the entering member firm without attempting to execute. The Exchange has determined that, based on a lack of market participant desire for a MIOC TIF and the cost that would be incurred in developing and implementing it on the Exchange, it will not implement the MIOC TIF at this juncture. Accordingly, the Exchange is proposing to delete text concerning the MIOC TIF, which is effective but not yet operative.

The Exchange is also proposing to amend Rule 4703(a)(6) to make it clear that the Exchange will no longer accept GTMC orders for execution after 4:00 p.m. Eastern Time, which are currently accepted and converted to SIOC orders if received after 4:00 p.m. Eastern Time. In April 2015, the Exchange proposed this change to the predecessor rule concerning GTMC orders in a prior filing with the Commission,[7] and had anticipated implementing the change at some point in the second quarter of 2015. During that time, the Commission approved a rule change that renumbered and clarified the rule.[8] Accordingly, the Exchange is now amending the renumbered rule to reflect the changes made in the prior filing. The Exchange is also proposing to delay the change to the operation of GTMC orders after 4:00 p.m. Eastern Time, so that this change will now be implemented the week of August 17, 2015 and will complete the implementation the week of August 31, 2015.

The Exchange is also making a minor technical correction to Rule 4703(a)(6) by inserting hyphenation in the term ''Time-in-Force,'' which will make it consistent with its use in other paragraphs of the rule.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and also in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that, in light of a lack of market participant interest and the costs the Exchange would incur in developing and implementing a MIOC TIF, it would be in the best interest of the market and market participants not to implement the change at this juncture. Implementing a change, which will not be used significantly yet will represent a cost to the Exchange to implement, could ultimately result in increased costs to market participants in the form of increased fees. Accordingly, the Exchange is eliminating the MIOC TIF until such time that the demand for it justifies the expenditure.

The proposed change to Rule 4703(a)(6) is designed 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 because it modifies the rule to reflect a change made to the predecessor rule, which was filed with the Commission as an immediately effective filing to be implemented sometime in the second quarter of 2015. The change, which was subject to the notice and comment process, had not been implemented prior to the rule's renumbering. Accordingly, the proposed change to amend Rule 4703(a)(6) merely modifies the rule text so that it is consistent with the changes made to the predecessor rule.

The proposed delay in implementing the changes to the Good-til-market close TIF is designed 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 because it will provide the Exchange with a brief extension to adequately program and test the proposed changes to the TIF. Moreover, the Exchange is delaying implementation of the changes until after the reconstitution of the Russell indexes, which is a day of significant volume in the market and immediately prior to which the Exchange reduces the number of changes made to the System. Accordingly, the proposed delay will serve to reduce risk in the market during a time of significant volume and provide the Exchange adequate time to program and test the proposed changes, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange notes that there is little interest in MIOC among market participants on BX, and accordingly removing MIOC before it is implemented will not impact the Exchange's competitiveness among exchanges or other execution venues. In addition, the Exchange does not believe that briefly delaying the changes to the Good-til-market close TIF will place any burden on competition whatsoever because the TIF will continue to be available unchanged until the Exchange has adequately programmed and tested the proposed changes.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] 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

[4] *See* Rule 4703(a)(1).

[5] *Id.*

[6] An Order with a TIF of IOC that is entered at any time between 7:00 a.m. ET and 7:00 p.m. ET may be referred to as having a TIF of ''System Hours Immediate or Cancel'' or ''SIOC''. *Id.*

[7] *See* Securities Exchange Act Release No. 74638 (April 2, 2015), 80 FR 18890 (April 8, 2015) (SR–BX–2015–016).

[8] The Exchange also made a clarifying change to the rule, which was incorporated into the renumbered rule. *Supra* note 3.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange represents that market participants have not expressed interest in the MIOC TIF. The Exchange therefore argues that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to remove the MIOC TIF prior its implementation, thereby serving to avoid investor confusion. The Exchange also reasons that waiving the operative delay would allow the Exchange to make the required technical and operational changes to the GTMC TIF after the reconstitution of the Russell Indexes. Based on the foregoing, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–043 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–2015–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–043, and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19134 Filed 8–4–15; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75570; File No. SR–Phlx–2015–49]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend and Correct Rule 1080.07

July 30, 2015.

On June 5, 2015, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''Phlx'') 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 amend and correct several provisions in Phlx Rule 1080.07, which governs the trading of Complex Orders on Phlx XL. The proposed rule change was published for comment in the **Federal Register** on June 23, 2015.[3] The Commission received no comments regarding the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 7, 2015.

The Commission is extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75189 (June 17, 2015), 80 FR 35997.

[4] 15 U.S.C. 78s(b)(2).

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates September 21, 2015, 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 No. SR–Phlx–2015–49).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19136 Filed 8–4–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75554; File No. SR–NSX–2015–04]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 11.21, Short Sales, To Describe the Exchange's Implementation of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934 and Relocate Certain Text From Rule 11.11, Orders and Modifiers; and Amending Rule 13.2 To Incorporate by Reference Rules 200, 203 and 204 of Regulation SHO

July 30, 2015.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2015, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been substantially 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 is proposing to amend Exchange Rule 11.21, Short Sales, in order to describe the manner in which the Exchange's trading system (the ''System'')[3] handles sell short orders under the provisions of Rule 201 of Regulation SHO (''Rule 201'') pursuant to the Act.[4] The Exchange also proposes to relocate to Rule 11.21 certain short sale-related rule text currently in Rule 11.1, Orders and Modifiers, and to amend Rule 13.2, Failure to Deliver and Failure to Receive, to delete the existing text and incorporate by reference Rules 200, 203 and 204 of Regulation SHO.[5] The Exchange has designated this rule proposal as ''non-controversial'' pursuant to Section 19(b)(3)(A) of the Act[6] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[7]

The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange's principal office, and at the Commission's public reference room.

II. Self -Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the rule changes proposed by the Exchange is to provide transparency for Exchange Equity Trading Permit (''ETP'') Holders,[8] their customers, and the investing public into the operation of the System in accordance with Rule 201.[9] The proposed rule amendments will: (i) Consolidate the Exchange's short sale rules into a single rule set and make amendments that will further enhance the transparency of the Exchange's rules; (ii) clarify the System's operation regarding the handling of a ''resting'' sell short Market Peg Zero Display Reserve Order under Rule 201;[10] (iii) specify the obligations of ETP Holders with respect to marking sell short orders entered into the System; and (iv) amend Rule 13.2, Failure to Deliver and Failure to Receive, to delete the existing text and incorporate by reference Rules 200, 203 and 204 of Regulation SHO pursuant to the Act.[11]

Rule 201(b)(1)(i) requires that trading centers such as the Exchange establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from such security's closing price on the listing market at the close of regular trading hours on the prior day (the ''Short Sale Price Test''). Rule 201(b)(1)(ii) requires that trading centers establish, maintain and enforce written policies and procedures reasonably designed to impose the Short Sale Price Test for the remainder of the trading day and the following day, when a national best bid for the security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan (the ''Short Sale Price Test Period'').[12]

Rule 201(b)(1)(iii)(A)[13] provides that a trading center's written policies and procedures must be reasonably designed to permit the execution of a displayed short sale order of a covered security

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5, Definitions, defines the ''System'' as ''. . . the electronic securities communications and trading facility . . . through which orders of Users are consolidated for ranking and execution.''

[4] 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (''Rule 201 Adopting Release'') and Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, January 20, 2011, at *http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm* (''Rule 201 FAQs'').

[5] 17 CFR 242.200, 17 CFR 242.203 and 17 CFR 242.204.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] As defined in Exchange Rule 1.5, the term ''ETP'' refers to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's facilities.

[9] Pursuant to *Interpretations and Policies .01* (Cessation of Trading Operations on NSX) under Exchange Rule 11.1 (Hours of Trading), the Exchange ceased operating its marketplace for the trading of equity securities as of the close of business on May 30, 2014. *See* Securities Exchange Act Release No. 72107 (May 6, 2014), 79 FR 27017 (May 12, 2014) (SR–NSX–2014–14). The Exchange is filing this proposed rule change in anticipation of the resumption of trading activity on the System, after all necessary regulatory approvals have been obtained.

[10] Exchange Rule 11.11(c)(2)(A) defines a Zero Display Reserve Order as a Reserve Order with a Zero Display Quantity and a Market Peg Zero Display Reserve Order as a pegged Zero Display Order that tracks the inside quote on the opposite side of the market.

[11] *See* footnote 5, *supra.*

[12] 17 CFR 242.201(b)(1).

[13] 17 CFR 242.201(b)(1)(iii)(A).

during the Short Sale Price Test Period if, at the time of initial display of the short sale order, the order was at a price above the current national best bid. Further, Rule 201(b)(1)(iii)(B) requires that such policies and procedures must be reasonably designed to permit the execution of a short sale order of a covered security marked ''short exempt'' during the Short Sale Price Test Period without regard to whether the order is at a price that is less than or equal to the current national best bid.

Amendments of Exchange Rule 11.21

The Exchange states that, consistent with its obligations as a trading center under Rule 201, it implemented, maintains and enforces written policies and procedures and System functionality reasonably designed to prevent the execution or display of a sell short order of a covered security subject to the Short Sale Price Test at a price equal to or below the current national best bid. The Exchange's written policies and procedures and the System functionality are also reasonably designed to: (i) Permit the execution of a displayed short sale order in a covered security that would otherwise be subject to the Short Sale Price Test if, at the time of initial display of the short sale order, the order was at a price above the current national best bid; and (ii) permit the execution or display of a short sale order in a covered security marked ''short exempt'' without regard to whether the order is at a price that is less than or equal to the current national best bid.[14]

The Exchange is proposing to amend Rule 11.21 to add provisions regarding the operation of the System in handling short sale orders under Rule 201 in the event the Short Sale Price Test is triggered and such provisions will be part of the written policies and procedures of the Exchange. The Exchange states that it is proposing these amendments to enhance transparency in its rules and to make explicit the obligations of ETP Holders in ensuring that sell short orders entered into the System are properly marked as ''short'' or ''short exempt,'' and the Exchange's expectations in that regard.

In proposed new paragraph (a) of Rule 11.21, the Exchange defines the terms ''covered security,'' ''national best bid,'' and ''listing market'' for purposes of Rule 11.21 as having the same meaning as the corresponding definitional section of Rule 201[15] and applies the definitions with respect to all of the proposed changes to Rule 11.21.

In proposed new paragraph (b) of Rule 11.21, the Exchange explicitly states that ETP Holders are required to mark sell orders entered into the System as ''long,'' ''short,'' or ''short exempt'' as required by Rule 200(g) of Regulation SHO. Additionally, the Exchange makes clear in paragraph (b) that it relies on the marking of an order as ''short exempt'' when it receives such an order and it is the responsibility of the ETP Holder entering the order, and not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to the marking of orders as ''short exempt.'' The Exchange believes that, by explicitly stating these requirements as part of the proposed amendments to Rule 11.21, it will enhance the transparency and comprehensiveness of the Exchange's rules and provide ETP Holders with a clear statement of their order marking responsibilities with respect to sell short orders.

In that regard, *Interpretations and Policies* .01 of Rule 11.21, as proposed, explicitly states that NSX Securities, LLC (''NSXS''), an Exchange-affiliated broker-dealer with the sole function of acting as the outbound routing facility of the Exchange, relies on an ETP Holder's marking of an order as ''long,'' ''short'' or ''short exempt.''[16] NSXS will route an order received by NSX marked ''short exempt'' during the Short Sale Price Test Period without independently evaluating the correctness of the ''short exempt'' marking under Regulation SHO Rules 201(c) and (d).[17]

In proposed new paragraph (c) of Rule 11.21, the Exchange states that, except as provided in subparagraphs (c)(1) and (c)(2) of the rule (which, as discussed below, pertain to the two exceptions permitting execution and display of sell short orders of a covered security during the Short Sale Price Test Period), the System will not execute, display, or route a sell short order in a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10 percent or more from the security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. Proposed new subparagraph (c)(1) states that the System will execute and display a short sale order during the Short Sale Price Test Period without regard to price if, at the time of initial display of the short sale order, the order was at a price above the current national best bid.

The Exchange also proposes to state in new subparagraph (c)(1) that the ''initial display'' of the short sale order includes the initial display through the facilities of a securities information processor (''SIP'') or through the Exchange's proprietary market data feed.[18] The Exchange believes that it is important to define ''initial display'' in Rule 11.21(c)(1) as including both display through the SIP and the Exchanges' proprietary market data feed so as to make explicit that the Exchange will use of both forms of display in determining whether a particular short sale order of a covered security qualifies for the exception under Rule 201(b)(1)(iii)(A).

In proposed Rule 11.21(c)(2), the Exchange states that the System will execute, display and route a short sale order marked ''short exempt'' during the Short Sale Price Test Period without regard to whether the short sale order is at a price above the national best bid.[19] Proposed Rule 11.21(d) provides that a Short Sale Price Test triggered by the listing market will remain in effect for the remainder of the trading day on which it is triggered through the close of regular trading on the next trading day, when a national best bid for the security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[20]

The Exchange further proposes in Rule 11.21(e) to state that, when the Short Sale Price Test is in effect with respect to a covered security, the System will evaluate all incoming sell short orders in that security that are not marked ''short exempt'' to determine whether the order can be executed or displayed at a price above the current national best bid. A sell short order in a covered security ''resting'' on the NSX

[14] 17 CFR 242.201(b)(1)(iii)(B). Rule 200(g)(2), 17 CFR 242.200(g), provides that a sell order may be marked ''short exempt'' only if the provisions of Rules 201(c) or 201(d) are met. With respect to Rule 201(d), in order to mark an order ''short exempt'' a broker or dealer must have a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d)(1) through (d)(7). With respect to Rule 201(c), in order to mark an order ''short exempt'' the order must be entered during the Short Sale Price Test Period and meet the conditions specified in Rule 201(c). 17 CFR 242.201(d); 17 CFR 242.201(c).

[15] *See* 17 CFR 242.201(a).

[16] Under Rule 2.11, NSXS functions solely as the Exchange's outbound routing facility. NSXS is not an execution venue.

[17] *See* Reg. SHO FAQs, Question and Answer 5.3.

[18] The Exchange's proprietary market data feed, called the ''NSX Depth of Book Feed,'' was made available on a uniform basis to all ETP Holders authorized to receive the feed, as well as to any other authorized recipients. The Exchange does not anticipate making any changes to the availability of the NSX Depth of Book Feed upon the resumption of trading on the Exchange.

[19] *See* 17 CFR 242.201(b)(1)(iii)(B).

[20] *See* footnote 12, *supra.*

Book will be evaluated by the System if matched for execution during the Short Sale Price Test Period and, unless the order was initially displayed at a price above the current national best bid, will be canceled if at a price equal to or below the current national best bid. The Exchange believes that including this provision in Rule 11.21 will enhance clarity and transparency regarding the Exchange's policies, procedures, and System controls reasonably designed to comply with Rule 201.

Further to the goal of enhancing transparency in the rules regarding the operation of the System, the Exchange is also proposing in new subparagraphs (f)(1) through (f)(9) of Rule 11.21 to describe the operation of the System during the Short Sale Price Test Period with respect to specific order types that are not marked ''short exempt,'' as follows:

Market and Limit Order. A sell short market or limit order will be matched by the System for execution at a price above the current national best bid and, if a limit order, within the limit price of the sell short order. Any remaining unfilled portion will be canceled unless, in the case of a limit order, the limit price of the remaining shares is above the current national best bid; the unfilled portion of such a limit order will remain on the NSX Book but will not execute unless at a price above the current national best bid in accordance with Rule 201(b)(1) of Regulation SHO.

Odd Lot and Mixed Lot Order. A sell short odd lot order and a mixed lot order, which is an order consisting of one or more round lots combined with a number of shares constituting an odd lot,[21] will be rejected if entered at a price equal to or below the current national best bid. Odd lot orders aggregated to form a round lot and initially displayed at a price above the current national best bid, or a mixed lot order initially displayed at a price above the current national best bid, will be eligible for execution at a price equal to or below the national best bid in accordance with Rule 201(b)(1)(iii)(A) of Regulation SHO.

Immediate or Cancel (''IOC'') Order. As defined in Rule 11.11(b)(1), an IOC order is a limit order that is to be executed in whole or in part as soon as such order is received by the System and any portion not so executed is treated as canceled. A sell short IOC order will, upon entry, be matched by the System for execution at a price above the current national best bid and any remaining unfilled portion will be canceled.

Midpoint-Seeker Order. A Midpoint-Seeker Order, which is an IOC order that executes only against undisplayed orders priced at the midpoint of the protected bid and protected offer,[22] when marked ''sell short'' will, upon entry, be matched by the System for execution at a price above the current national best bid and any remaining unfilled portion will be canceled.

Reserve Order. A Reserve Order is defined in Rule 11.11(c)(2) as ''[a] limit order with a portion of the quantity displayed (''display quantity'') and with a reserve portion of the quantity (''reserve quantity'') that is not displayed.'' A sell short Reserve Order will be rejected by the System if it is entered at a price equal to or below the current national best bid. A sell short Reserve Order that was initially displayed at a price above the current national best bid may execute at a price equal to or below the current national best bid during a Short Sale Price Test Period, up to the full size of the order (including any reserve quantity).[23]

Post Only Order,[24] *NSX Only Order*[25] *and Destination Specific Order.*[26] Sell short orders in these order types will be rejected if entered at a price equal to or below the current national best bid.

Sweep Order, Destination Sweep Order,[27] *Intermarket Sweep (''ISO'') and Post-ISO Order.*[28] A sell short Sweep Order, Destination Sweep Order, ISO and Post-ISO will be rejected by the System if entered at a price equal to or below the current national best bid. If entered at a price above the current national best bid, such sell short orders will be accepted by the System and eligible for execution. If an ISO is marked ''IOC,'' any remaining unfilled portion will be canceled. The unfilled portion of ISO orders not marked ''IOC'' and Post-ISO orders will be entered on the NSX Book if at a price above the national best bid. A Post ISO order that was not initially displayed at a price above the national best bid will be canceled if matched by the System for execution at a price equal to or below the national best bid.

Cancel/Replacement of Orders. As proposed in new paragraph (g) of Rule 11.21, a cancel/replace request will be rejected by the System if: (i) The limit price on the replacement sell short order is equal to or below the current national best bid; or (ii) if the original limit price of the sell short order is equal to or below the current national best bid and the cancel/replace message seeks to increase the order size.[29]

To summarize, the Exchange believes that the proposed amendments to Rule 11.21 to describe with greater particularity the handling of specific order types during the Short Sale Price Test Period will further contribute to clarity and transparency in the Exchange's rules, which will operate to the benefit of ETP Holders and their customers and market participants generally.

Proposed Amendments Regarding Sell Short Market Peg Zero Display Reserve Orders

The Exchange is proposing to amend Rule 11.11, subparagraphs (c)(2)(E)(i)–(iii) regarding the System's handling of a sell short Market Peg Zero Display Reserve Order under Rule 201by relocating the provisions of those subparagraphs to Rule 11.21(f)(8)(i)–(iii), thereby consolidating the Exchange's short sale order handling rules in one rule set; and amending subparagraph (iii) to delete the provision that any unexecuted portion of a resting sell short Market Peg Zero Display order will be canceled if it is matched for execution during the Short

[21] *See* Rule 11.11(c)(3) and (c)(4).

[22] *See* Rule 11.11(c)(13).

[23] Pursuant to Rule 11.14, Priority of Orders, *Interpretations and Policies* .01, the use of a ''Replace Message'' to modify the quantity of a Reserve Order will result in a new timestamp and the order losing time priority on the NSX Book unless (i) both the display size of the Reserve Order is decreased and the total order quantity is decreased or remains the same; or (ii) both the display size of the Reserve Order remains the same and the total order quantity is decreased.

[24] Rule 11.11(c)(5) defines a Post Only Order as ''[a] limit order that is to be posted on the Exchange and not routed away to another trading center.''

[25] Rule 11.11(c)(6) defines an NSX Only Order as ''[a]n order that is to be executed on the Exchange pursuant to Rule 11.15(a) or [canceled], without routing away to another trading center.''

[26] Rule 11.11(c)(9) defines a Destination Specific Order as ''[a] market or limit order that instructs the System to route the order to a specified away trading center, after exposing the order to the NSX Book . . . .''

[27] A Sweep Order is defined in Rule 11.11(c)(7) as ''[a] limit order that instructs the System to 'sweep' the market.'' The rule provides for several types of sweep orders, specifically a ''Protected Sweep Order,'' a ''Full Sweep Order'' and a ''Destination Sweep Order.'' For purposes of System functionality during the Short Sale Price Test Period, all of such Sweep Order types are treated in the same manner.

[28] ISO is defined in Rule 600(b)(30) of Regulation NMS pursuant to the Exchange Act, 17 CFR 242.600(b)(30). Rule 11.11(c)(8)(ii) provides that an ISO order may be designated as a ''Post-ISO'' when entered into the System, and the use of such designation constitutes a representation that the entering ETP Holder has simultaneously routed one or more additional limit orders marked ''ISO'' as necessary to away markets to execute against the full displayed size of any protected quotation with a price that is superior or equal to the price of the Post ISO entered on NSX. If these requirements are met, the Post ISO will be executed by sweeping the NSX Book up to and including the order's limit price, without regard to protected quotations at away markets.

[29] *See* footnote 23, *supra.*

Sale Price Test at a price at or below the current national best bid. As proposed, such an order or portion of an order will remain on the NSX Book, but will not execute in whole or in part at a price equal to or below the current national best bid during the Short Sale Price Test Period. The Exchange is proposing this amendment to align the rule text with the operation of the System in this circumstance.

The Exchange adopted Rule 11.11(c)(2)(E)(iii) in November 2013.[30] The rule provides that a sell short Market Peg Zero Display Reserve Order [31] resting on the NSX Book will track the Protected Best Bid, which is defined in Rule 1.5P.(3) as the higher of the protected national best bid or the best displayed bid on the NSX Book and, if matched by the System for execution during a Short Sale Price Test in the subject security, will be executed only to the extent that the Protected Best Bid is above the current national best bid and the sell short order can be executed, in whole or in part, at a price above the current national best bid in compliance with Rule 201 of Regulation SHO. The rule further provides that ''[a]ny such order or portion of such order will be canceled by the System if at a price equal to or below the current national best bid.''

As proposed, the Exchange seeks to amend subparagraph (iii) to remove the provision that specifies that a resting Market Peg Zero Display Reserve Order or portion of such an order will be canceled by the System if matched for execution during the Short Sale Price Test at a price equal to or below the current national best bid. As a result of System testing, the Exchange determined that a resting sell short Market Peg Zero Display Reserve Order, if matched by the System for execution during a Short Sale Price Test in the subject security, will be executed only to the extent that the Protected Best Bid is above the current national best bid and the sell short order can be executed, in whole or in part, at a price above the current national best bid.

However, System testing also indicated that, instead of canceling any remaining unexecuted portion of such an order, the System would leave the remaining unexecuted portion of the order on the NSX Book. The Exchange notes that the behavior of the System in this circumstance would not result in an execution of an order at a price equal to or below the national best bid during the Short Sale Price Test since the sell short Market Peg Zero Display Reserve Order would not execute unless the national best bid moved and the unfilled order or portion of the order could be executed at a price above the national best bid. The Exchange also notes that it did not detect an instance where this System behavior occurred with respect to an actual sell short Market Peg Zero Display Reserve Order entered by an ETP Holder and resting on the NSX Book during a Short Sale Price Test.

Since the Exchange's testing disclosed that the behavior of the System did not align with subparagraph (iii) and further confirmed that no execution would occur at a price equal to or below the current national best bid in violation of Regulation SHO, the Exchange determined to amend the rule to remove the statement regarding cancellation of any unexecuted portion of a sell short Market Peg Zero Display Reserve Order if matched for execution during the Short Sale Price Test. Additionally, the Exchange is proposing to make non-substantive changes to the text of subparagraph (iii) to align with the language and form used in other sections of Rule 11.21 as proposed to be amended.

Amendment of Rule 13.2, Failure To Deliver and Failure To Receive

The Exchange is proposing to amend Rule 13.2 to delete the existing text and incorporate by reference Rules 200, Definition of ''Short Sale'' and Marking Requirements, 203, Borrowing and Delivery Requirements and 204, Close-Out Requirement, of Regulation SHO pursuant to the Act.[32] Currently, Rule 13.2(a) states that ''[n]o ETP Holder shall sell a security for his own account, or buy a security as an ETP Holder for a customer (except exempt securities), if he has a fail to deliver in that security 60 days old or older.'' Rule 13.2(b) states that ''[f]or good cause shown and in exceptional circumstances, an ETP Holder may request and receive exemption from the provisions of the Rule by written request to the Secretary of the Exchange.''

The Exchange proposes to amend Rule 13.2 to delete the current text of the rule and, in its place, adopt text stating that ''[b]orrowing and deliveries shall be effected in accordance with Rule 203 of Regulation SHO under the Exchange Act. The Exchange incorporates by reference Rules 200, 203 and 204 of Regulation SHO, to Exchange Rule 13.2, as if they were fully set forth herein.'' [33]

The Exchange is proposing this amendment to remove the text regarding failure to deliver and failure to receive a security since such rule text is obsolete in view of the requirements set forth in Rules 200, 203 and 204 of Regulation SHO. Specifically, Rule 200, Definition of ''short sale'' and marking requirements, defines ownership of a security for short sale purposes and clarifies the requirement to determine a short seller's net aggregate position. Rule 203, Borrowing and delivery requirements, provides *inter alia* that, subject to certain exceptions, a broker-dealer effecting a short sale order in any equity security have reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due.[34] The ''locate'' requirement must be documented prior to the broker-dealer effecting the short sale.[35] Rule 203(b)(3) requires a broker-dealer to take action to close out a failure to deliver in a ''threshold'' security that has remained open for thirteen consecutive settlement days by purchasing securities of a like kind and quantity.[36] Rule 204 of Regulation SHO [37] governs the close-out requirements applicable to both long and short sales of equity securities.

The Exchange believes that these provisions of Regulation SHO, which are intended to apply uniform rules to address the failure to deliver or failure to receive, render the Exchange's rule obsolete.

2. Statutory Basis

The Exchange believes that the proposed rule amendments are consistent with the provisions of Section 6(b) of the Act [38] in general, and further the objectives of Section 6(b)(5) of the Act [39] in particular. The proposed amendments to the Exchange's rules are designed, among other things, to promote just and equitable principles of trade and, in general, protect investors and the public interest. The Exchange's proposal is designed to provide clarity and transparency with respect to written policies and procedures established by

[30] *See* Securities Exchange Act Release No. 70881 (November 14, 2013), 78 FR 69734 (November 20, 2013) (SR–NSX–2013–20).

[31] Exchange Rule 11.11(c)(2)(A) defines a Market Peg Zero Display Reserve Order as a Zero Display Reserve Order with a price set, or ''pegged,'' to track the inside quote on the opposite side of the market.

[32] 17 CFR 242.200, 17 CFR 242.203 and 17 CFR 242.204.

[33] The Exchange notes that other exchanges have adopted the same approach with respect to their rules regarding failure to deliver and failure to receive. *See, e.g.,* BATS Exchange Inc. Rule 13.2 (Failure to Deliver and Failure to Receive); EDGA Exchange Inc. Rule 13.2 (Short Sale Borrowing and Delivery Requirements).

[34] 17 CFR 242.203(b)(1).

[35] 17 CFR 242.203(b)(1)(iii).

[36] 17 CFR 242.203(b)(3).

[37] 17 CFR 242.204.

[38] 15 U.S.C. 78(f)(b).

[39] 15 U.S.C. 78(f)(b)(5).

the Exchange, and the System controls it implemented, to enforce the provisions of Rule 201. To this extent, the Exchange believes that its proposal furthers the requirements of Rule 201 that trading centers establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price restrictions contained in Rule 201. The proposed amendments enhance the Exchange's written policies and procedures regarding the execution and display of permissible orders and the execution of orders marked ''short exempt'' during the Short Sale Price Test.

The Exchange further submits that proposed paragraph (b) of Rule 11.21, which describes the responsibilities of ETP Holders with respect to marking orders ''short exempt,'' and *Interpretations and Policies* .01 of Rule 11.21, which states that NSXS, as the Exchange's outbound order routing facility, relies on the ETP Holder's correct marking of an order as ''short exempt'' without independently verifying the accuracy of such marking, are consistent with Section 6(b)(5) of the Act. The Exchange believes that these amendments promote just and equitable principles of trade and further the public interest by clearly stating the ETP Holder's responsibility for correct order marking and providing transparency as to those responsibilities in the Exchange's rules.

The Exchange submits that the proposed amendment to reposition Rule 11.11(c)(2)(E)(i)–(iii) to Rule 11.21, and delete the statement that a ''resting'' sell short Market Peg Zero Display Reserve Order or portion of such an order will be canceled by the System if at a price at or below the current national best bid, is consistent with Section 6(b)(5) of the Act in that it will assure that the rule text is logically organized and correctly describes with the operation of the System, thereby enhancing clarity and transparency in the Exchange's rules and promoting just and equitable principles of trade and the public interest.

The Exchange further submits that the proposed amendment to Rule 13.2 to incorporate by reference Rules 200, 203 and 204 of Regulation SHO is consistent with Section 6(b)(5) of the Act in that it is designed to impart uniformity in the regulatory requirements governing the failure to deliver and failure to receive securities and close-out requirements, thereby promoting cooperation and coordination in the regulation of securities transactions and enhancing investor protection and the public interest.

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 for the furtherance of the Act. All trading centers are obligated to comply with the provisions of Regulation SHO. The proposed rule amendments provide additional clarity and transparency into the Exchange's written policies and procedures for handling sell short orders in compliance with Regulation SHO. The Exchange submits that the proposed amendments impose no unnecessary or inappropriate burden on competition and, in fact, operate to promote competition by providing ETP Holders, their customers, and the investing public with enhanced information regarding the Exchange's written policies and procedures and the System functionality for handling sell short orders in compliance with Regulation SHO.

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 comments on the proposed rule change from market participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

it has become effective pursuant to Section 19(b)(3)(A)[40] of the Exchange Act and Rule 19b–4(f)(6)[41] thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)(iii)[42] of the Act and Rule 19b–4(f)(6) thereunder. In support of its request, the Exchange stated that, because the rule amendments are designed to provide greater transparency and clarity into the Exchange's written policies and procedures for the execution and display of permissible orders during the Short Sale Price Test and the execution of orders marked ''short exempt.'' The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the protection of investors and the public interest will be enhanced by making the proposed amendments publicly available to market participants and the investing public as soon as practicable, and prior to the resumption of trading on the Exchange. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal as effective and operative upon filing.[43]

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–NSX–2015–04 on the subject line.

Paper Comments

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

[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change, or such other time as designated by the Commission. The Exchange provided the Commission with the required notice.

[42] 15 U.S.C. 78s(b)(3)(A)(iii).

[43] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File No. SR–NSX–2015–04. This file number should be included in the subject line if email is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings 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–NSX–2015–04 and should be submitted on or before August 26, 2015.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.[44]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19124 Filed 8–4–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75561; File No. SR–Phlx–2015–66]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 3301B(a)

July 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 Rule 3301B(a) to remove the Market Hours Immediate or Cancel Time in Force and to delay implementation of changes to the Good-til-market close Time in Force, which were recently adopted by Phlx but are not yet implemented.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 3301B(a) to remove the Market Hours Immediate or Cancel (''Market Hours IOC'' or ''MIOC'') Time-in-Force and to delay implementation of changes to the Good-til-market close (''GTMC'') Time-in-Force, which were recently adopted by Phlx but are not yet implemented in the NASDAQ OMX PSX System (''System'' or ''PSX'').[3] Time-in-Force (''TIF'') is a characteristic of an order that limits the period of time that the System will hold an order for potential execution. An Order that is designated to deactivate immediately after determining whether the Order is marketable may be referred to as having a TIF of ''Immediate or Cancel'' or ''IOC''.[4] Any Order with a TIF of IOC entered between 9:30 a.m. ET and 4:00 p.m. ET is considered as having a TIF of MIOC.[5] The MIOC TIF is very similar to the SIOC[6] TIF, but MIOC designated orders are limited to entry and potential execution only during Regular Market Hours. An order designated with a TIF of MIOC that is entered outside of Regular Market Hours would be returned to the entering member firm without attempting to execute. The Exchange has determined that, based on a lack of market participant desire for a MIOC TIF and the cost that would be incurred in developing and implementing it on the Exchange, it will not implement the MIOC TIF at this juncture. Accordingly, the Exchange is proposing to delete text under Rule 3301B(a)(1) concerning the MIOC TIF, which is effective but not yet operative.

The Exchange is also proposing to amend Rule 3301B(a)(6) to make it clear that the Exchange will no longer accept GTMC orders for execution after 4:00 p.m. Eastern Time, which are currently accepted and converted to SIOC orders if received after 4:00 p.m. Eastern Time. In April 2015, the Exchange proposed this change to the predecessor rule concerning GTMC orders in a prior filing with the Commission,[7] and had anticipated implementing the change at some point in the second quarter of 2015. During that time, the Commission approved a rule change that renumbered and clarified the rule.[8] Accordingly, the Exchange is now amending the renumbered rule to reflect the changes made in the prior filing. The Exchange

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that the text at issue in this filing concerning the MIOC TIF under Rule 3301B(a)(1) is not yet implemented, but was recently inadvertently incorporated into the PSX rulebook when the Commission approved certain rules governing the PSX equities market in order to provide additional detail and clarity regarding its order type functionality. *See* Securities Exchange Act Release No. 75293 (June 24, 2015), 80 FR 37327 (June 30, 2015) (SR–Phlx–2015–29). Notwithstanding its inadvertent inclusion in the rulebook, the rule text concerning the MIOC TIF is not yet effective. The Exchange had anticipated implementing the MIOC and GTMC changes in the second quarter of 2015. *See* Securities Exchange Act Release No. 74628 (April 1, 2015), 80 FR 18662 (April 7, 2015) (SR–Phlx–2015–32).

[4] *See* Rule 3301B(a)(1).

[5] *Id.*

[6] An Order with a Time-in-Force of IOC that is entered at any time between 8:00 a.m. ET and 5:00 p.m. ET may be referred to as having a Time-in-Force of ''System Hours Immediate or Cancel'' or ''SIOC''. *Id.*

[7] *See* Securities Exchange Act Release No. 74628 (April 1, 2015), 80 FR 18662 (April 7, 2015) (SR–Phlx–2015–32).

[8] The Exchange also made a clarifying change to the rule, which was incorporated into the renumbered rule. *Supra* note 3.

is also proposing to delay the change to the operation of GTMC orders after 4:00 p.m. Eastern Time, so that this change will now be implemented the week of August 17, 2015 and will complete the implementation the week of August 31, 2015.

The Exchange is also making a minor technical correction to Rule 3301B(a)(6) by inserting hyphenation in the term ''Time-in-Force'', which will make it consistent with its use in other paragraphs of the rule.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and also in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that, in light of a lack of market participant interest and the costs the Exchange would incur in developing and implementing a MIOC TIF, it would be in the best interest of the market and market participants not to implement the change at this juncture. Implementing a change, which will not be used significantly yet will represent a cost to the Exchange to implement, could ultimately result in increased costs to market participants in the form of increased fees. Accordingly, the Exchange is eliminating the MIOC TIF until such time that the demand for it justifies the expenditure.

The proposed change to Rule 3301B(a)(6) is designed 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 because it modifies the rule to reflect a change made to the predecessor rule, which was filed with the Commission as an immediately effective filing to be implemented sometime in the second quarter of 2015. The change, which was subject to the notice and comment process, had not been implemented prior to the rule's renumbering. Accordingly, the proposed change to amend Rule 3301B(a)(6) merely modifies the rule text so that it is consistent with the changes made to the predecessor rule.

The proposed delay in implementing the changes to the Good-til-market close TIF is designed 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 because it will provide the Exchange with a brief extension to adequately program and test the proposed changes to the TIF. Moreover, the Exchange is delaying implementation of the changes until after the reconstitution of the Russell indexes, which is a day of significant volume in the market and immediately prior to which the Exchange reduces the number of changes made to the System. Accordingly, the proposed delay will serve to reduce risk in the market during a time of significant volume and provide the Exchange adequate time to program and test the proposed changes, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange notes that there is little interest in MIOC among market participants on PSX, and accordingly removing MIOC before it is implemented will not impact the Exchange's competitiveness among exchanges or other execution venues. In addition, the Exchange does not believe that briefly delaying the changes to the Good-til-market close TIF will place any burden on competition whatsoever because the TIF will continue to be available unchanged until the Exchange has adequately programmed and tested the proposed changes.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange represents that market participants have not expressed interest in the MIOC TIF. The Exchange therefore argues that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to remove the MIOC TIF prior its implementation, thereby serving to avoid investor confusion. The Exchange also reasons that waiving the operative delay would allow the Exchange to make the required technical and operational changes to the GTMC TIF after the reconstitution of the Russell Indexes. Based on the foregoing, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2015–66 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2015–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–66, and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19131 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75460; File No. SR–NYSEMKT–2015–48]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to the Customer Best Execution Auction per Rule 971.1NY Until July 18, 2016

July 15, 2015.

Correction

In notice document 2015–17759, appearing on pages 43141 through 43143 in the issue of Tuesday, July 21, 2015, make the following correction:

On page 43143, in the first column, in the last paragraph before the signature block, on the 38th line, ''August 10, 2015.'' should read ''August 11, 2015.''

[FR Doc. 2015–17759 Filed 8–4–15; 8:45 am]

BILLING CODE 1505–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75569; File No. SR–NYSEArca–2015–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 Relating to Listing of Investment Company Units Based on Municipal Bond Indexes

July 30, 2015.

On January 16, 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 amend NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 relating to the listing of Investment Company Units based on municipal bond indexes. The proposed rule change was published for comment in the **Federal Register** on February 4, 2015.[3] On March 19, 2015, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 4, 2015, the Commission published an order instituting proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for that determination. The proposed rule change was published for notice and comment in the **Federal Register** on February 4, 2015.[9] The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is August 3, 2015, and the 240th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is October 2, 2015.

[18] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74175 (Jan. 29, 2015), 80 FR 6150.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 74534, 80 FR 15834 (Mar. 25, 2015). The Commission designated a longer period within which to take action on the proposed rule change and designated May 5, 2015, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 74863 (May 4, 2015), 80 FR 26591 (May 8, 2015) (''Order Instituting Proceedings''). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, 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,'' and ''to protect investors and the public interest.'' *See id.*

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving 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,[10] designates October 2, 2015 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2015–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19135 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75556; File No. SR–NYSE–2015–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the NYSE Trades Market Data Product Offering

July 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2015, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

The Exchange proposes to amend the NYSE Trades market data product offering. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Trades market data feed product offering.

NYSE Trades is an NYSE-only last-sale market data feed. NYSE Trades currently allows vendors, broker-dealers and others to make available on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams. Specifically, the NYSE Trades feed includes, for each security traded on the Exchange, the real-time last sale price, time and size information and bid/ask quotations and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.[3]

The Exchange has determined to modify the data content of NYSE Trades to remove the bid/ask data and to provide the individual orders that make up each reported trade.

First, as noted above, the NYSE Trades data feed currently includes related bid/ask information at the time of each reported trade. The Exchange proposes to remove this limited bid/ask information from the NYSE Trades feed, thereby focusing the NYSE Trades feed on NYSE last sale information. This change would streamline the NYSE Trades content, as well as align NYSE Trades content with that of last sale data feeds offered by other exchanges.[4] The NYSE BBO data feed includes, and would continue to include, the best bids and offers for all securities that are traded on the Exchange for which NYSE reports quotes under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream.[5]

Second, the Exchange currently reports to the CTA and distributes on a real-time basis via NYSE Trades the real-time NYSE last sale price information based on the completed trade of an arriving order. For example, if an arriving order of 1000 shares trades with five resting orders of 200 shares each, the Exchange reports a completed trade of 1000 shares. The Exchange proposes to distribute NYSE last sale information in NYSE Trades in a format that would be based on the individual resting orders that comprise the completed trade. In the example above, the Exchange would distribute via NYSE Trades the real-time NYSE last sale information of five executions of 200 shares each, with the same time stamp for each individual component of the trade. These five transactions would have the same time stamp and would comprise the same information that is being provided to the CTA regarding the completed trade, which would not change. The Exchange would continue to make NYSE last sale information available through NYSE Trades immediately after it provides last sale information to the processor under the CTA Plan.

The Exchange expects to offer both the current NYSE Trades data product and the proposed NYSE Trades data product for a limited transition period. After the transition period, the Exchange would stop offering the current NYSE Trades data product and offer only the NYSE Trades data product proposed in this filing. The Exchange would announce the transition dates in advance. There would be no change to the fees for NYSE Trades in connection with the proposed changes.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5)[7] 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

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35), 70065 (July 30, 2013), 78 FR 47450 (Aug. 5, 2013) (SR–NYSEMKT–2013–64) and 69273 (April 2, 2013), 78 FR 20969 (April 8, 2013) (SR–NYSEMKT–2013–30).

[4] *See* NASDAQ Rule 7039 (Nasdaq Last Sale) and BATS Rule 11.22(g) (BATS Last Sale).

[5] *See* Securities Exchange Act Release No. 72326 (June 5, 2014), 79 FR 33605 (June 11, 2014) (SR–NYSEMKT–2014–49).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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.

The Exchange believes that modifying the NYSE Trades product to remove the bid/ask information it currently includes and to provide only NYSE last sale information would streamline the product and clarify the purpose and use for each of the NYSE proprietary market data products. The amended feed would also align NYSE Trades' content with that of last sale data feeds offered by other exchanges, which similarly offer last sale market data products that do not include bid and offer information.[8]

The Exchange believes that modifying the NYSE Trades product to report last-sale information based on trades of individual resting orders, rather than based on the completed trade of an arriving order at a price, would remove impediments to and perfect the mechanism of a free and open market by providing vendors and subscribers who desire it with more granular trade information, thus promoting competition and innovation. The Exchange would continue to report to the CTA the last sale prices that reflect a completed trade [9] and the NYSE Trades product would report the same volume and prices, but with more granularity regarding individual components of each completed trade. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to 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 data product modifications proposed herein, by focusing the NYSE Trades feed on last sale data by removing the bid/ask data, and by reporting last-sale information based on trades of resting orders, is precisely the sort of market data product enhancement that the Commission envisioned when it adopted Regulation NMS. The proposed changes are consistent with the requirements of the CTA Plan to provide the last sale prices reflecting completed transactions and with the principles embodied in Regulation NMS regarding the provision of market data by self-regulatory organizations to consumers of such data. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency 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.[10]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange's products, including 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. In addition, the proposal would not permit unfair discrimination because the modified product would be available to all of the Exchange's vendors and customers on an equivalent basis.

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 market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–NYSE–2015–31 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2015–31. 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

[8] *See supra* note 4.

[9] Pursuant to the CTA Plan, available here, *https://www.ctaplan.com/publicdocs/ctaplan/notifications/plans/trader-update/5929.pdf,* Participants to the CTA Plan are required to report ''Last sale price information,'' which means ''(i) the last sale prices reflecting completed transaction in Eligible Securities, (ii) the volume and other information related to those transactions, (iii) the identifier of the Participant furnishing the prices and (iv) other related information.''

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–31 and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19126 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75560; File No. SR–FINRA–2015–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update Rule Cross-References and Make Non-Substantive Technical Changes to Certain FINRA Rules

July 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to update cross-references and make other non-substantive changes within FINRA rules, primarily as the result of approval of new consolidated FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA is in the process of developing a consolidated rulebook (''Consolidated FINRA Rulebook'').[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive changes in the Consolidated FINRA Rulebook.

The proposed rule change would make such changes, as well as other non-substantive changes unrelated to the adoption of rules in the Consolidated FINRA Rulebook.

First, the proposed rule change would update rule cross-references to reflect the adoption of new consolidated rules regarding payments to unregistered persons. On December 30, 2014, the SEC approved a proposed rule change to adopt new FINRA Rules 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) and 2040 (Payments to Unregistered Persons). As part of that proposed rule change, FINRA adopted the requirements of NASD IM–2420–1(a) (Non-members of the Association), as FINRA Rule 0190. FINRA also deleted in their entirety NASD Rule 1060(b), NASD Rule 2410, NASD Rule 2420, NASD IM–2420–1, NASD IM–2420–2, Incorporated NYSE Rule 353, and Incorporated NYSE Rule Interpretations 345(a)(i)/01 through/03.[5] The new rules will be implemented on August 24, 2015. As such, the proposed rule change would update references to new Rule 0190 in FINRA Rule 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities).

Second, the proposed rule change would make technical changes to FINRA Rules 6282.03, 6380A.03, 6380B.03, and 6720(c)(1) (Alternative Trading Systems) to reflect FINRA Manual style convention changes.

Finally, FINRA is proposing to make non-substantive changes to FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) to update cross-references resulting from previous amendments to the Municipal Securities Rulemaking Board (''MSRB'') Rules A–12, A–14, G–3, G–38, and G–40.[6] FINRA also is proposing to update the cross-

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 73954 (December 30, 2014, 80 FR 553 (January 6, 2015) (Order Approving File No. SR–FINRA–2014–037).

[6] *See* Securities Exchange Act Release No. 52278 (August 17, 2005), 70 FR 49342 (August 23, 2005) (Order Approving File No. SR–MSRB–2005–04) (Deleted MSRB Rule G–38); Securities Exchange Act Release No. 71616 (February 26, 2014), 79 FR 12254 (March 4, 2014) (Order Approving File No. SR–MSRB–2013–09) (Deleted MSRB Rules A–14 and G–40, and incorporated the provisions of these rules into Rule A–12); and Securities Exchange Act Release No. 74384 (February 26, 2015), 80 FR 11706 (March 4, 2015) (Order Approving File No. SR–MSRB–2014–08) (Renumbeed MSRB Rule G–3(h) as G–3(i)).

references in Sections 4 (Fees) and 12 (Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals) of Schedule A to the FINRA By-Laws to reflect the renumbering of the Rule 9640 Series as the 9520 Series pursuant to SR–NASD–97–28.[7]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be August 24, 2015, to coincide with the implementation date of FINRA Rule 0190.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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[9] and Rule 19b–4(f)(6) thereunder.[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–FINRA–2015–027 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–FINRA–2015–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of FINRA. 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–FINRA–2015–027, and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19130 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (Order Approving File No. SR–NASD–97–28).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75555; File No. SR–NASDAQ–2015–085]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the PowerShares High Income Downside Hedged Portfolio a series of the PowerShares Actively Managed Exchange-Traded Fund Trust

July 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in 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 common shares of beneficial interest of the PowerShares High Income Downside Hedged Portfolio (the ''Fund''), a series of the PowerShares Actively Managed Exchange-Traded Fund Trust (the ''Trust''), under Nasdaq Rule 5735 (''Rule 5735''). The common shares of beneficial interest of the Fund are referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

[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, 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 Rule 5735, which rule governs the listing and trading of Managed Fund Shares [3] on the Exchange.[4] The Shares will be offered by the Fund, which will be an actively managed exchange-traded fund (''ETF'') and a series of the Trust. The Trust was established as a Delaware statutory trust on November 6, 2007. The Trust is registered with the Commission as an open-end management investment company and has filed a post-effective amendment to its registration statement on Form N–1A (the ''Registration Statement'') with the Commission to register the Fund and its Shares under the 1940 Act and the Securities Act of 1933.[5] Invesco PowerShares Capital Management LLC will serve as the investment adviser (the ''Adviser'') to the Fund. Invesco Distributors, Inc. (the ''Distributor'') will serve as the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon will act as the administrator, accounting agent, custodian (the ''Custodian'') and transfer agent for the Fund.

Paragraph (g) of Rule 5735 provides that, if the investment adviser to an 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's portfolio.[6] In addition, paragraph (g) of Rule 5735 further requires that personnel who make decisions on such investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the investment company's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i), which applies to index-based funds and requires ''fire-walls'' between affiliated broker-dealers and investment advisers regarding the index-based fund's underlying benchmark index. Rule 5735(g), however, applies to the establishment of a ''fire wall'' between affiliated investment advisers and the broker-dealers with respect to the investment company's portfolio and not with respect to an underlying benchmark index, as is the case with index-based funds. The Adviser is itself not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer. The Adviser has therefore implemented a fire wall between itself and the Distributor with respect to the access of information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser becomes newly affiliated with a different broker-dealer (or becomes a registered broker-dealer), or (b) any new adviser or sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

Description of the Fund

The Fund will be an actively managed ETF, and its investment objective will be to seek to achieve high income and positive total returns. The Fund will seek to achieve its investment objective by using a quantitative, rules-based investment methodology designed to provide returns that exceed the performance of the S&P High Income VEQTOR Index (the ''Benchmark'').[7] As

[3] 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.

[4] The Commission approved Nasdaq Rule 5735 (formerly Nasdaq Rule 4420(o)) 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. 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release No. 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR–NYSEArca-2012–139) (order approving listing and trading of First Trust Preferred Securities and Income ETF). Moreover, the Commission previously approved the listing and trading of other actively managed funds within the PowerShares family of ETFs. *See, e.g.,* Securities Exchange Act Release Nos. 68158 (November 5, 2012), 77 FR 67412 (November 9, 2012) (SR–NYSEArca-2012–101) (order approving listing and trading of PowerShares S&P 500 Downside Hedged Portfolio) and 69915 (July 2, 2013), 78 FR 41145 (July 9, 2013) (SR–NYSEArca-2013–56) (order approving listing of PowerShares China A-Share Portfolio). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[5] *See* Registration Statement for the Trust, filed on April 13, 2015 (File Nos. 333–147622 and 811–22148). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812–13386) (''Exemptive Order'').

[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 the Advisers Act and Rule 204A–1 thereunder. 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.

[7] The Fund's Benchmark allocates between equity securities and CBOE Volatility Index futures. The Commission has previously approved listing and trading of exchange traded products with Chicago Board Options Exchange (''CBOE'') volatility index futures as components of benchmarks. *See, e.g.,* Securities Exchange Act Release No. 68158 (November 5, 2012), 77 FR 67412 (November 9, 2012) (SR–NYSEArca-2012–101) (order approving listing and trading of PowerShares S&P 500 Downside Hedged Portfolio); Securities Exchange Act Release Nos. 65134 (August 15, 2011), 76 FR 52034 (August 19, 2011) (SR–NYSEArca-2011–23) (order approving listing of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term

described below, the Fund will seek to gain exposure to the securities contained in the equity component of the Benchmark and CBOE Volatility Index (''VIX Index'') related instruments (''VIX Index Related Instruments,'' as defined below).

The Benchmark, the VIX Index and the S&P 500 VIX Short Term Futures Index

The Benchmark, using strategy allocation rules developed by Standard & Poor's (''S&P''),[8] is composed of two types of components: An equity component, represented by the constituents of the S&P High Income Equity Composite Index (''Equity Component Index''), and a volatility component, represented by the S&P 500 VIX Short Term Futures Index (''VIX Futures Index''). The Benchmark allocates its constituents between the two components in any given amount from time to time based on the level of volatility in the market.

The Equity Component Index is composed of 150 high yield securities that meet certain size, liquidity and listing exchange criteria as determined by S&P. This component is comprised of the following four sub-components: (i) Preferred stocks, (ii) units of master limited partnerships (''MLPs''), (iii) real estate investment trusts (''REITs''), and (iv) a portfolio of global securities engaged in the real estate industry (''global property securities'') and/or global securities that pay high dividends (''global dividend securities'' which, collectively with global property securities, are ''Global Equities'').

The VIX Index is a theoretical calculation and cannot be traded. The VIX Index is a benchmark index designed to measure the market price of volatility in large cap U.S. stocks over 30 days in the future, and is calculated based on the prices of certain put and call options on the S&P 500® Index. The VIX Index measures the premium paid by investors for certain options linked to the S&P 500® Index. During periods of market instability, the implied level of volatility of the S&P 500® Index typically increases and, consequently, the prices of options linked to the S&P 500® Index typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the level of the VIX Index to increase. The VIX Index historically has had negative correlations to the S&P 500® Index. Because the level of the VIX Index may increase in times of uncertainty, the VIX Index is known as the ''fear gauge'' of the broad U.S. equities market.

The VIX Futures Index utilizes the prices of the first and second month futures contracts based on the VIX Index, replicating a position that rolls the nearest month VIX futures contracts to the next month VIX futures contracts on a daily basis in equal fractional amounts. The Benchmark's allocation to its volatility component serves as an implied volatility hedge, as volatility historically tends to correlate negatively to the performance of the equity markets (*i.e.,* rapid declines in the performance of the equity markets generally are associated with particularly high volatility in such markets).

On any Business Day (as defined below), the Benchmark allocates between its equity and volatility components based on a combination of realized volatility and implied volatility trend decision variables. The allocation to the VIX Futures Index generally increases when realized volatility and implied volatility are higher, and decreases when realized volatility and implied volatility are lower. While allocations are reviewed daily, these allocations may change on a less frequent basis.

The U.S. Index Committee (the ''Committee'') of S&P maintains the Benchmark. The Committee meets monthly. At each meeting, the Committee reviews pending corporate actions that may affect Benchmark constituents, statistics comparing the composition of the Benchmark to the market, companies that are being considered as candidates for addition to the Benchmark, and any significant market events. In addition, the Committee may revise the Benchmark's policy covering rules for selecting companies, treatment of dividends, share counts, or other matters.

Principal Investment Strategies of the Fund

The Fund's investment strategy is similar to the rules-based allocation methodology of its Benchmark. Therefore, the allocation among the Fund's investments generally will tend to approximate the allocation between the equity and volatility components of the Benchmark. However, the Fund seeks returns that exceed the returns of the Benchmark; accordingly, the Fund can have a higher or lower exposure to either component (or any respective sub-component) of the Benchmark at any time.[9]

In pursuing its investment objective, under normal market conditions,[10] the Fund will invest substantially all of its assets in (i) an equity sleeve that generally corresponds to the Equity Component Index, represented by a combination of 150 high yield securities that includes preferred stocks, MLPs, REITs, and Global Equities, each of which will be listed either on a U.S. securities exchange or a member exchange of the Intermarket Surveillance Group (''ISG''); [11] and (ii) a volatility sleeve, represented by instruments relating to the VIX Index and consisting of futures contracts on the VIX Index and options on those futures contracts. During periods of low volatility, a greater portion of the Fund's assets will be invested in equity securities, and during periods of increased volatility, a greater portion of the Fund's assets will be invested in VIX Index Related Instruments (as defined below). Any U.S. security invested by the Fund must be listed on a national securities exchange, and any non-U.S. security must be listed on a member exchange of the ISG.

Additionally, the Fund may invest in ETFs and exchange-traded notes (''ETNs'') that are listed on U.S. securities exchanges that provide exposure to the components of the Equity Component Index, as well as ETFs and ETNs that provide exposure to the VIX Index (these instruments, collectively with VIX Index futures contracts and options on those futures contracts, are termed the ''VIX Index Related Instruments'').

Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF); and 63610 (December 27, 2010), 76 FR 199 (January 3, 2011) (SR–NYSEArca-2010–101 [sic]) (order approving listing of ProShares VIX Short-Term Futures ETF and ProShares VIX Mid-Term Futures ETF).

[8] S&P is a division of the McGraw-Hill Companies, Inc. S&P is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Benchmark.

[9] The Fund will be ''non-diversified'' under the 1940 Act and therefore may invest more of its assets in fewer issuers than ''diversified'' funds. The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a–5).

[10] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objective.

[11] 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.

Other Investments of the Fund

The Fund may invest its remaining assets in U.S. government securities, high-quality money market instruments, cash and cash equivalents to provide liquidity and to collateralize its investments in derivative instruments. These instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government;[12] (ii) short-term negotiable obligations of commercial banks, fixed time deposits and bankers' acceptances of U.S. and foreign banks and similar institutions;[13] (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by S&P or, if unrated, of comparable quality, as the Adviser of the Fund determines, and (iv) money market mutual funds, including affiliated money market funds.

In addition, the Fund's investment in securities of other investment companies (including money market funds) may exceed the limits permitted under the 1940 Act, in accordance with certain terms and conditions set forth in a Commission exemptive order issued to the Trust pursuant to Section 12(d)(1)(J) of the 1940 Act.[14]

The Fund may enter into repurchase agreements, which are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

The Fund may enter into reverse repurchase agreements, which 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. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

The Fund may purchase exchange-listed warrants. However, the Fund does not expect to enter into swap agreements, including credit default swaps, but may do so if such investments are in the best interests of the Fund's shareholders.

Investment Restrictions of the Fund

The Fund may not concentrate its investments (*i.e.,* invest more than 25% of the value of its net assets) in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities.[15]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities or other illiquid assets (calculated at the time of investment), including Rule 144A securities. 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 securities or other illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance.[16]

The Fund intends to qualify for and to elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.[17]

As a result of the instruments that the Fund will hold, the Fund will be subject to regulation by the Commodity Futures Trading Commission and the National Futures Association (''NFA'') as a commodity pool, and thus must comply with additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.[18]

The Fund's investments will be consistent with the Fund's investment objective. Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objective. The Fund may utilize instruments or investment techniques that have a leveraging effect on the Fund. This effective leverage occurs when the Fund's market exposure exceeds the amounts actually invested. Any instance of effective leverage will be covered in accordance with guidance promulgated by the Commission and its staff.[19] The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a ''leveraged ETF,'' *i.e.,* it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index. The Fund will not use futures for speculative purposes, nor will the Fund invest in OTC equities or enter into futures contracts that are not traded on a U.S. exchange.

Net Asset Value

The Fund's administrator will calculate the Fund's net asset value (''NAV'') per Share as of the close of regular trading (normally 4:00 p.m., Eastern time (''E.T.'')) on each day the New York Stock Exchange (''NYSE'') is open for business (a ''Business Day''). NAV per Share will be calculated for the Fund by deducting all of the Fund's liabilities from the total value of its assets and dividing the result by the number of Shares outstanding, rounding to the nearest cent. All valuations will be subject to review by the Board of Trustees of the Trust (''Board'') or its delegate.

[12] The Fund may invest in U.S. government obligations. Obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities include bills, notes and bonds issued by the U.S. Treasury, as well as ''stripped'' or ''zero coupon'' U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

[13] Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

[14] Investment Company Act Release No. 30238 (October 23, 2012) (File No. 812–13820).

[15] *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).

[16] 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), FN 34. *See also* Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); and 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 Nos. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[17] 26 U.S.C. 851.

[18] The Exchange represents that the Adviser has previously registered as a commodity pool operator and commodity trading advisor and also is a member of the NFA.

[19] *In re* Securities Trading Practices of Investment Companies, Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979).

In determining NAV, expenses will be accrued and applied daily and securities and other assets for which market quotations are readily available will be valued at market value. Securities listed or traded on an exchange (including high yield Global Equities, preferred stocks, MLPs, REITs and warrants) will be valued at the last sale price or official closing price that day as of the close of the exchange on which such securities primarily trade. Shares of open-end registered investment companies (*i.e.,* mutual funds) will be valued at net asset value; shares of exchange-traded investment companies (*i.e.,* ETFs) and ETNs will be valued at the last sale price or official closing price on the exchange on which they primarily trade. Futures contracts are valued as of the final settlement price on the exchange on which they trade. Options will be valued at the closing price (and, if no closing price is available, at the mean of the last bid/ask quotations) from the exchange where such instruments principally trade. U.S. government securities will be valued at the mean price provided by a third party vendor. Illiquid securities, as well as cash and cash equivalents, money market funds, repurchase agreements (including reverse repurchase agreements) and other short-term obligations (including corporate commercial paper, negotiable short-term obligations of commercial banks, fixed time deposits, bankers acceptances and similar securities) will each be valued in accordance with the Trust's valuation policies and procedures, which have been approved by the Trust's Board.

The NAV for the Fund will be calculated and disseminated daily. If an asset's market price is not readily available, the asset will be valued using pricing provided from independent pricing services or by another method that the Adviser, in its judgment, believes will better reflect the asset's fair value in accordance with the Trust's valuation policies and procedures approved by the Trust's Board and with the 1940 Act. Fair value pricing involves subjective judgments and it is possible that a fair value determination for an asset may be materially different than the value that could be realized upon the sale of the asset.

Creation and Redemption of Shares

The Trust will issue Shares of the Fund at NAV only with authorized participants (''APs'') and only in aggregations of 50,000 shares (each aggregation is called a ''Creation Unit'') or multiples thereof, on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any Business Day, of an order in proper form.

The consideration an AP must provide for purchase of Creation Unit aggregations of the Fund may consist of (i) cash, in lieu of all or a portion of the Deposit Securities, as defined below, in an amount calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit (''Deposit Cash''), plus fixed and variable transaction fees; or (ii) an ''in-kind'' deposit of a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective (the ''Deposit Securities'') per each Creation Unit aggregation and generally an amount of cash (the ''Cash Component'') computed as described below.

Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) will constitute the ''Fund Deposit,'' which will represent the minimum initial and subsequent investment amount for a Creation Unit aggregation of the Fund. The Cash Component is sometimes also referred to as the Balancing Amount. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit aggregation and the Deposit Amount (as defined below). For example, for a creation the Cash Component will be an amount equal to the difference between the NAV of Fund Shares (per Creation Unit aggregation) and the ''Deposit Amount''—an amount equal to the market value of the Deposit Securities and/or cash in lieu of all or a portion of the Deposit Securities. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit aggregation exceeds the Deposit Amount), the AP will deliver the Cash Component. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit aggregation is less than the Deposit Amount), the AP will receive the Cash Component.

Shares may be redeemed only in Creation Unit aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Custodian and only on a Business Day. The Fund will not redeem Shares in amounts less than Creation Unit Aggregations. APs must accumulate enough Shares in the secondary market to constitute a Creation Unit Aggregation in order to have such Shares redeemed by the Trust. The redemption proceeds for a Creation Unit Aggregation generally consist of (i) cash, in lieu of all or a portion of the Fund Securities as defined below, in an amount calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit, less any redemption transaction fees; or (ii) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective per each Creation Unit aggregation (''Fund Securities'')—as announced on the Business Day of the request for redemption received in proper form—plus or minus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less any redemption transaction fees. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating Cash Component payment equal to the difference is required to be made by or through an AP by the redeeming shareholder.

Creation Units of the Fund generally will be sold partially in cash and partially in-kind. However, the Fund also reserves the right to permit or require Creation Units to be issued principally in-kind or principally for cash. At all times, the Trust reserves the right to permit or require the substitution of Deposit Cash—*i.e.,* a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, or that may not be eligible for transfer or which might not be eligible for trading by an AP or the investor for which it is acting or other relevant reason.[20]

To the extent that the Fund permits Creation Units to be issued principally or partially in-kind, the Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each Business Day, prior to the opening of business of the NYSE (currently 9:30 a.m., E.T.), the list of the names and the quantity of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day), plus any estimated Cash Component, for the Fund. Such Fund Deposit will be applicable, subject to any adjustments as described below, to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available. Information on the specific names and holdings in a Fund

[20] Such substitutions of certain Deposit Securities are termed ''custom orders.'' On any given Business Day, if the Fund accepts a custom order, the Adviser represents that the Fund will accept similar custom orders from all other APs on the same basis.

Deposit also will be available at *www.pstrader.net*.

To the extent that the Fund permits Creation Units to be redeemed in-kind, the Custodian, through the NSCC, will make available on each Business Day, prior to the opening of business of NYSE (currently 9:30 a.m., E.T.), the identity of the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit aggregations.

When applicable, during times that the Fund permits in-kind creations, the identity and quantity of the Deposit Securities required for a Fund Deposit for the Shares may change as rebalancing adjustments and corporate action events occur and are reflected within the Fund from time to time by the Adviser, consistent with the investment objective of the Fund.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the continuous net settlement system of the NSCC or (ii) a Depository Trust Company (''DTC'') Participant (a ''DTC Participant''). In addition, each Participating Party or DTC Participant (each, an AP) must execute an agreement that has been agreed to by the Distributor and the Custodian with respect to purchases and redemptions of Creation Units.

All orders to create Creation Unit aggregations must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) in each case on the date such order is placed in order for creations of Creation Unit aggregations 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.

In order to redeem Creation Units of the Fund, an AP must submit an order to redeem for one or more Creation Units. All such orders must be received by the Fund's transfer agent in proper form no later than the close of regular trading on the NYSE (ordinarily 4:00 p.m. E.T.) in order to receive that day's closing NAV per Share.

The right of redemption may be suspended or the date of payment postponed (i) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the Commission.

APs may be required to pay an administrative fee and a variable transaction fee for purchasing or redeeming Creation Units. Creation and redemption transactions for the Fund are subject to a fixed administrative fee of $500, payable to the Custodian, irrespective of the size of the order. In addition to the fixed administrative fee, the Custodian may impose an additional variable transaction fee of up to four times the fixed administrative fee. This additional administrative fee may be incurred for administration and settlement of (i) in-kind creations and redemptions effected outside the normal Clearing Process, and (ii) cash creations and redemptions. Finally, to the extent the Fund permits or requires APs to substitute cash in lieu of Deposit Securities, the Adviser may set additional variable fees separate from the fees already described that are also payable to the Fund up to 2%. These cash-in-lieu fees will be negotiated between the Adviser and the AP and are charged to offset the transaction cost to the Fund of buying (or selling) those particular Deposit Securities, to cover spreads and slippage costs and to protect existing shareholders against sudden movements in the prices of the portfolio investments due to market events. From time to time, the Adviser, in its sole discretion, may adjust the Fund's variable transaction fees or reimburse APs for all or a portion of the creation or redemption transaction fees.

Availability of Information

The Fund's Web site (*www.invescopowershares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include the ticker symbol for the Shares, 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, closing price and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[21] 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 the most recently completed calendar year and each of the four most recently completed calendar quarters since that year (or the life of the Fund if shorter). On each Business Day, before commencement of trading in Shares in the Regular Market Session [22] 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 such term is defined in 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.[23] In addition to disclosing the identities and quantities of the portfolio of securities and other assets in the Disclosed Portfolio, the Fund also will disclose on a daily basis on its Web site the following information, 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, to the extent the Fund permits full or partial creations in-kind, a basket composition file, which will include the security names and share quantities to deliver (along with requisite cash in lieu) in exchange for Shares, together with estimates and actual Cash Components, will be publicly disseminated daily prior to the opening

[21] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[22] *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. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[23] 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''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any Business Day may be booked and reflected in NAV on such Business Day. 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.

of the Exchange via the NSCC and at *www.pstrader.net.* The basket will represent the equity component of the Shares of the Fund.

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 portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service [24] 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 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.

Intra-day, executable price quotations on the securities and other assets held by the Fund, as well as closing price information, will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day and closing price information on the securities and other assets held by the Fund also will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by APs and other investors.

Investors also will be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Trust's Form N–CSR and Form N–SAR, each of which is filed twice a year, except the SAI, which is filed at least annually. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume 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 plans for the Shares. Quotation and last sale information for any U.S. exchange-traded instruments will be available via the quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans. Quotation and last sale information for any non-U.S. exchange-listed securities will be available from the foreign exchanges on which such securities trade as well as from major market data vendors. Pricing information for any futures contracts or options will be available via the quote and trade service of their respective primary exchanges. Pricing information related to U.S. government securities, money market mutual funds, commercial paper, repurchase and reverse repurchase agreements and other short-term investments held by the Fund will be available through publicly available quotation services, such as Bloomberg, Markit and Thomson Reuters.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, will be included in the Registration Statement.

Initial and Continued Listing of the Fund's Shares

The Shares will conform to the initial and continued listing criteria applicable to Managed Fund Shares, as set forth under Rule 5735. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [25] under the Exchange 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 of the Fund's Shares

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 also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments 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. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in 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 the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[26] 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

[24] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX 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 OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[25] *See* 17 CFR 240.10A–3.

[26] 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.

the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund with other markets and other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) 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.

In addition, with regard to the Fund's investments in futures contracts and options, such instruments shall have their principal trading market be a member of ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement.

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 purchasing Shares from the Fund for resale to investors 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 Fund. Members purchasing Shares from the Fund 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 Exchange Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses. The Information Circular will also disclose the trading hours of the Shares of the 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 Exchange Act in general, and Section 6(b)(5) [27] of the Exchange 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 Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws and are adequate to properly monitor trading in the Shares in all trading sessions. The Adviser is affiliated with 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 Fund's portfolio. In addition, paragraph (g) of Rule 5735 further requires that personnel who make decisions on an 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 may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) 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. The Fund will limit its investments in illiquid securities or other illiquid assets to an aggregate amount of 15% of its net assets (calculated at the time of investment). The holdings of the Fund will be comprised primarily of securities included in the Equity Component Index, VIX Index Related Instruments, U.S. government securities, money market instruments, cash and cash equivalents. The Fund will invest in U.S. government securities, money market instruments, cash and cash equivalents to provide liquidity and to collateralize its investments in derivative instruments. The Fund also may invest directly in ETFs and ETNs. The Fund will not invest in OTC equities or enter into futures contracts that are not traded on a U.S. exchange.

The Fund will not use futures for speculative purposes, and its investments will be consistent with the Fund's investment objective. Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objective. In pursuing its investment objective, the Fund may utilize instruments or investment techniques that have a leveraging effect on the Fund. This effective leverage occurs when the Fund's market exposure exceeds the amounts actually invested. Any instance of effective leverage will be covered in accordance with guidance promulgated by the Commission and its staff.[28] The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a ''leveraged ETF,'' *i.e.,* it will not be operated in a manner designed to seek a multiple of

[27] 15 U.S.C. 78(f)(b)(5).

[28] *See* FN 18 [sic], *supra.*

the performance of an underlying reference index. The Fund does not expect to enter into swap agreements, including credit default swaps, but may do so if such investments are in the best interests of the Fund's shareholders.

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 every day that the Fund is traded, 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 at least every 15 seconds during the Exchange's 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 of the Fund 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 Consolidated Tape Association plans for the Shares. Quotation and last sale information for any U.S. exchange-traded instruments also be available via the quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans. Quotation and last sale information for any non-U.S. exchange-listed securities will be available from the foreign exchanges on which such securities trade as well as from major market data vendors. Pricing information for any futures contracts or options will be available via the quote and trade service of their respective primary exchanges. Pricing information related to U.S. government securities, money market mutual funds, commercial paper, repurchase and reverse repurchase agreements and other short-term investments held by the Fund will be available through publicly available quotation services, such as Bloomberg, Markit and Thomson Reuters. Intra-day and closing price information will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by APs and other investors.

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. Moreover, 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. 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 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.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Exchange 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 Exchange Act. The Exchange believes that the proposed rule change 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.

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 will:

(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–2015–085 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2015–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–085 and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19125 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75557; File No. SR–NASDAQ–2015–086]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rule 7015(b) and (g) To Modify Port Fees

July 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2015, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend NASDAQ Rule 7015(b) and (g) to modify the port fees charged to members and non-members for ports used to enter orders into Nasdaq systems, in connection with the use of the FIX and OUCH trading telecommunication protocols. The Exchange will implement the proposed new fees on August 3, 2015.

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7015. Access Services

(a) No change.

(b) Financial Information Exchange (FIX).

Ports	Price
FIX Trading Port	$5*75*[50]/port/month.
FIX Port for Services Other than Trading.	$500/port/month.

(c)–(f) No change.

(g) Other Port Fees.

REMOTE MULTI-CAST ITCH WAVE PORTS

Description	Installation fee	Recurring monthly fee
MITCH Wave Port at Secaucus, NJ	$2,500	$7,500
MITCH Wave Port at Weehawken, NJ	2,500	7,500
MITCH Wave Port at Mahwah, NJ ..	5,000	12,500

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- $5*75*[50] per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1,000 per month for software-based TotalView-ITCH or $2,500 per month for combined software- and hardware-based TotalView-ITCH, and TCP ITCH data feed pairs, for which the fee is $750 per month.
- An additional $200 per month for each port used for entering orders or quotes over the Internet.
- An additional $600 per month for each port used for market data delivery over the Internet.

Dedicated OUCH Port Infrastructure

The Dedicated OUCH Port Infrastructure subscription allows a member firm to assign up to 30 of its OUCH ports to a dedicated server infrastructure for its exclusive use. A Dedicated OUCH Port Infrastructure subscription is available to a member firm for a fee of $5,000 per month, which is in addition to the standard fees assessed for each OUCH port. A one-time installation fee of $5,000 is assessed subscribers for each Dedicated OUCH Port Server subscription.

(h)–(i) 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

NASDAQ is proposing to amend NASDAQ Rules 7015 (b) and (g) to modify the monthly fee it charges for ports used to enter orders in the NASDAQ Market Center for the trading of equities, in connection with the use of FIX and OUCH trading telecommunication protocols.[3]

The enhanced ports will use field-programmable gate array (''FPGA'') technology, which is a hardware-delivery mechanism and an upgrade to the existing software and software-and-hardware based mechanisms. By taking advantage of hardware parallelism, FPGA technology is capable of processing more data packets during peak market conditions without the introduction of variable queuing latency. In other words, the upgrade to FPGA will improve the predictability of the telecommunications ports and thereby add value to the user experience.

The Exchange is offering new technology and pricing in order to keep pace with changes in the industry and

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In April 2015, the Exchange increased the charges assessed under Rules 7015(b) and (g) to the levels proposed herein in light of the FPGA hardware upgrade. *See* Securities Exchange Act Release No. 74829 (April 29, 2015), 80 FR 25745 (May 5, 2015) (SR–NASDAQ–2015–042). The upgrade to FPGA hardware was delayed, however, and the Exchange reverted the fees to their original levels with retroactive application. *See* Securities Exchange Act Release No. 75366 (July 6, 2015), 80 FR 39827 (July 10, 2015) (SR–NASDAQ–2015–067). The Exchange is now confident that the FPGA hardware will be installed by the August 3, 2015 implementation date proposed by this filing.

evolving customer needs as new technologies emerge and products continue to develop and change. The costs associated with the hardware-based delivery system cover creating, shipping, installing and maintaining the new equipment and codebase. From a messaging perspective, the data content and sequencing on the new hardware version of the OUCH ports will be the same as on the legacy software-based versions of NASDAQ's ports that are being replaced.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act[5] in particular, in that the proposal 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 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 Exchange continuously strives to offer members state of the art technology to enhance their trading experience and thereby enhance the national market system. Incremental enhancements such as the advent of FPGA technology has helped make the U.S. markets the deepest, most liquid markets in the world.

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] 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 it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fees are reasonable in that they are based on the costs associated with purchasing hardware (capital expenditures) and supporting and maintaining the infrastructure (operating expenditures) for the FPGA enhancement for member firms. In addition, the FPGA enhancements will provide value to members far exceeding the incremental costs imposed. The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the fees apply equally to all users of the FPGA-enhanced ports. Moreover, the fees apply in direct proportion to the number of ports used by each member.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ believes that the proposed rule change is pro-competitive in that the enhancements improve the competitiveness of the NASDAQ Market Center and the overall quality of the national market system. If, as NASDAQ believes, the FPGA enhancement provides NASDAQ a competitive advantage, other exchanges will quickly respond by enhancing their own markets in the same way. Such innovation and imitation is the very essence of the competition the Exchange Act is designed to promote.[7]

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 change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8]. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–086 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2015–086. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–086, and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19127 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] The Chicago Mercantile Exchange is already using FPGA technology in order entry ports for the trading of futures. *See https://www.cmegroup.com/globex/files/NewiLinkArchitecture2014.pdf.*

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75559; File No. SR–NYSEMKT–2015–56]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the NYSE MKT Trades Market Data Product Offering

July 30, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 24, 2015, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') 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 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

The Exchange proposes to amend the NYSE MKT Trades market data product offering. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE MKT Trades market data feed product offering.

NYSE MKT Trades is an NYSE MKT-only last-sale market data feed. NYSE MKT Trades currently allows vendors, broker-dealers and others to make available on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams. Specifically, the NYSE MKT Trades feed includes, for each security traded on the Exchange, the real-time last sale price, time and size information and bid/ask quotations and a stock summary message. The stock summary message updates every minute and includes NYSE MKT's opening price, high price, low price, closing price, and cumulative volume for the security.[4]

The Exchange has determined to modify the data content of NYSE MKT Trades to remove the bid/ask data and to provide the individual orders that make up each reported trade.

First, as noted above, the NYSE MKT Trades data feed currently includes related bid/ask information at the time of each reported trade. The Exchange proposes to remove this limited bid/ask information from the NYSE MKT Trades feed, thereby focusing the NYSE MKT Trades feed on NYSE MKT last sale information. This change would streamline the NYSE MKT Trades content, as well as align NYSE MKT Trades content with that of last sale data feeds offered by other exchanges.[5] The NYSE [sic] BBO data feed includes, and would continue to include, the best bids and offers for all securities that are traded on the Exchange for which NYSE [sic] reports quotes under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream.[6]

Second, the Exchange currently reports to the CTA and distributes on a real-time basis via NYSE MKT Trades the real-time NYSE MKT last sale price information based on the completed trade of an arriving order. For example, if an arriving order of 1000 shares trades with five resting orders of 200 shares each, the Exchange reports a completed trade of 1000 shares. The Exchange proposes to distribute NYSE MKT last sale information in NYSE MKT Trades in a format that would be based on the individual resting orders that comprise the completed trade. In the example above, the Exchange would distribute via NYSE MKT Trades the real-time NYSE MKT last sale information of five executions of 200 shares each, with the same time stamp for each individual component of the trade. These five transactions would have the same time stamp and would comprise the same information that is being provided to the CTA regarding the completed trade, which would not change. The Exchange would continue to make NYSE MKT last sale information available through NYSE MKT Trades immediately after it provides last sale information to the processor under the CTA Plan.

The Exchange expects to offer both the current NYSE MKT Trades data product and the proposed NYSE MKT Trades data product for a limited transition period. After the transition period, the Exchange would stop offering the current NYSE MKT Trades data product and offer only the NYSE MKT Trades data product proposed in this filing. The Exchange would announce the transition dates in advance. There would be no change to the fees for NYSE MKT Trades in connection with the proposed changes.

2. Statutory Basis

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.

The Exchange believes that modifying the NYSE MKT Trades product to remove the bid/ask information it currently includes and to provide only NYSE MKT last sale information would streamline the product and clarify the purpose and use for each of the NYSE MKT proprietary market data products. The amended feed would also align NYSE MKT Trades' content with that of last sale data feeds offered by other exchanges, which similarly offer last sale market data products that do not include bid and offer information.[9]

The Exchange believes that modifying the NYSE MKT Trades product to report

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex-2010–35), 70065 (July 30, 2013), 78 FR 47450 (Aug. 5, 2013) (SR–NYSEMKT–2013–64) and 69273 (April 2, 2013), 78 FR 20969 (April 8, 2013) (SR–NYSEMKT–2013–30).

[5] *See* NASDAQ Rule 7039 (Nasdaq Last Sale) and BATS Rule 11.22(g) (BATS Last Sale).

[6] *See* Securities Exchange Act Release No. 72326 (June 5, 2014), 79 FR 33605 (June 11, 2014) (SR–NYSEMKT–2014–49).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 5.

last-sale information based on trades of individual resting orders, rather than based on the completed trade of an arriving order at a price, would remove impediments to and perfect the mechanism of a free and open market by providing vendors and subscribers who desire it with more granular trade information, thus promoting competition and innovation. The Exchange would continue to report to the CTA the last sale prices that reflect a completed trade [10] and the NYSE MKT Trades product would report the same volume and prices, but with more granularity regarding individual components of each completed trade. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to 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 data product modifications proposed herein, by focusing the NYSE MKT Trades feed on last sale data by removing the bid/ask data, and by reporting last-sale information based on trades of resting orders, is precisely the sort of market data product enhancement that the Commission envisioned when it adopted Regulation NMS. The proposed changes are consistent with the requirements of the CTA Plan to provide the last sale prices reflecting completed transactions and with the principles embodied in Regulation NMS regarding the provision of market data by self-regulatory organizations to consumers of such data. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency 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.[11]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange's products, including 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. In addition, the proposal would not permit unfair discrimination because the modified product would be available to all of the Exchange's vendors and customers on an equivalent basis.

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 market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

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.

[10] Pursuant to the CTA Plan, available here, *https://www.ctaplan.com/publicdocs/ctaplan/notifications/plans/trader-update/5929.pdf,* Participants to the CTA Plan are required to report ''Last sale price information,'' which means ''(i) the last sale prices reflecting completed transaction in Eligible Securities, (ii) the volume and other information related to those transactions, (iii) the identifier of the Participant furnishing the prices and (iv) other related information.''

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

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–NYSEMKT–2015–56 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEMKT–2015–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–56 and should be submitted on or before August 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19129 Filed 8–4–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on August 20, 2015, from 12:00 Noon to 3:00 p.m., Eastern Daylight Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–422–1931, passcode 2855443940, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: July 29, 2015.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2015–19312 Filed 8–3–15; 11:15 am]

BILLING CODE 4910–EX–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2015–0007–N–21]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking an extension for the following currently approved information collection activities. On July 24, 2015, FRA received Office of Management and Budget (OMB) approval for its Emergency Processing request for the collection of information titled *Positive Train Control (PTC) Implementation Status Update Questionnaire.* The information collection activities associated with the PTC Questionnaire received a six-month emergency approval from OMB and expires on January 31, 2016. FRA seeks a regular clearance (extension of the current approval for three additional years) so that its personnel can continue to monitor affected railroads implementation of Positive Train Control on their mainline systems beyond the statutory and regulatory deadline of December 31, 2015. Additionally, FRA needs to continue to collect this information for compliance purposes and to help inform grant decisions by its Office of Railroad Policy and Development. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 5, 2015.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0612.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law. 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding the following: (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote

its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Positive Train Control (PTC) Implementation Status Update Questionnaire.

OMB Control Number: 2130–0612.

Abstract: The statutory and regulatory deadline for Positive Train Control (PTC) system implementation is December 31, 2015. Congress and FRA are concerned that the railroads will not make the mandated deadline. To date, the vast majority of railroads have not submitted, in accordance with 49 CFR 236.1009 and 236.1015, a PTC Safety Plan (PTCSP) and have not submitted, in accordance with 49 CFR 236.1035, a request for testing approval to support a PTCSP, which is necessary to achieve PTC System Certification and operate in revenue service. So that Congress and FRA may better understand the status of each railroad's implementation efforts and be able to monitor affected railroads progress on a continuing basis until full implementation is achieved, FRA is seeking accurate and up-to-date information under its investigative authority pursuant to 49 U.S.C. 20103, 20107, and 20902, and 49 CFR 236.1009(h). The railroads' responses will also be used for compliance purposes.

Affected Public: Businesses.

Frequency of Submission: Monthly.

Respondent Universe: 38 Railroads.

Reporting Burden:

Positive train control (PTC) implementation status update	Respondent universe (railroads)	Total annual responses (forms)	Average time per response (minutes)	Total annual burden hours
Questionnaire	38	456	10	76

Form Number(s): Form FRA F 6180.162.

Total Estimated Responses: 456.

Total Estimated Annual Burden: 76 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Rebecca Pennington,

Chief Financial Officer.

[FR Doc. 2015–19213 Filed 8–4–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0021, Notice 2]

Decision That Nonconforming Model Year 2000 East Lancashire Coachbuilders Limited Double Decker Tri-Axle Buses (With Volvo B7L Chassis) Are Eligible for Importation

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

ACTION: Grant of petition.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration that certain model year (MY) 2000 East Lancashire Coachbuilders Limited Double Decker Tri-Axle buses (with Volvo B7L Chassis) that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

DATES: This decision became effective on July 30, 2015.

ADDRESSES: For further information contact George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C 30141(a)(1)(B),a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence that NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US Specs, of Havre de Grace, Maryland (''US Specs'') (Registered Importer No. RI–03–321), petitioned NHTSA to decide whether MY 2000 East Lancashire Coachbuilders Limited Double Decker Tri-Axle buses (with Volvo B7L Chassis) are eligible for importation into the United States. NHTSA published a notice of the petition on January 26, 2015 (80 FR 4033) to afford an opportunity for public comment. No comments were received. The reader is referred to that notice for a thorough description of the petition.

NHTSA Conclusions

NHTSA has reviewed the petition and supporting information submitted by US Specs and has concluded that the vehicles covered by the petition have safety features that are capable of being altered to comply with all applicable FMVSS.

NHTSA has also determined that because the subject vehicles were manufactured in two or more stages, any Registered Importer (RI) that imports the subject vehicles must provide separate proof that the chassis and the body of each vehicle are the originals used by East Lancashire Coachbuilders Limited when manufacturing the bus for the subject model year. Such proof shall be provided as part of the statement of

conformity and associated documents (referred to as a ''conformity package'') the RI must submit to NHTSA under 49 CFR 592.6(d) to obtain release of the DOT Conformance bond furnished at the time the vehicle is imported.

Because it is common practice for transit bus bodies to have seating and other interior modifications made during use for the purposes of update and repair, it is expected that after many years in service at least some of the buses eligible for importation under this decision will not have the same interior configuration, controls and displays, etc., as the vehicle(s) described in the petition. Therefore, NHTSA has decided that RIs must also include in each conformity package specific proof to confirm that the vehicle was originally manufactured to conform to, or was successfully altered to conform to, each applicable standard. Any components that differ from the original equipment installed on the vehicle must be fully described, and if the presence of that component could impact the vehicle's compliance with an applicable safety standard, the conformity package must include reports of testing or inspection sufficient to establish the vehicle's compliance with that standard with the component installed. This additional information must also be supplied any time an alteration that requires replacement of a nonconforming system, such as the vehicle driver's seat or accelerator control system, differs from that originally described in the petition.

In addition to the modifications described in the petition as needed to conform the vehicle to all applicable FMVSS, NHTSA has decided that additional or alternative modifications must be performed, and, for some of those modifications, proof of conformance must be provided in the conformity package, as set forth below.

Standard No. 108—*Lamps, Reflective Devices and Associated Equipment:* The conformity package must include documentation from the lighting manufacturer for each lamp mounted on the bus showing that the lamp has been certified as conforming to FMVSS No. 108 for the purpose for which the lamp is used. Specific proof that the headlamps meet the operating voltage requirements of FMVSS No. 108 must also be provided in the conformity package.

Standard No. 121—*Air Brake Systems:* Inspection of each bus to specifically verify that the critical components listed below (by the applicable paragraph in FMVSS No. 121) are present, are significantly similar to those originally installed on the Volvo B7L chassis and function as required for compliance with FMVSS No. 121. Should any part not be present, or prevent compliance with the requirements of the standard as installed, modification of the bus and proof of conformance after modification must be included with each conformity package.

S5.1.1—Data related to reservoir volumes necessary to demonstrate conformance to compressor recharge rate.

S5.1.2.3—Check valves to protect against reservoir air loss.

S5.1.2.4—Manually operated condensate drain valve for reservoirs.

S5.1.4—In-dash pressure gauge.

S5.1.5—Device that gives a low pressure warning in accordance with this section.

S5.1.8(a)—Automatic slack adjusters.

S5.1.6.2—In-dash ABS malfunction indicator lamp/check lamp function.

S5.6.4—Identification of the method of control operation of the parking brake control.

Photographs of all brake system related controls and displays must also be included in each conformity package.

Standard No. 124—*Accelerator Control Systems:* Installation of a specific accelerator control system to meet the requirements of this standard was described in the petition. Documentation showing that, as modified, the vehicle conforms to the standard must be provided in each conformity package.

Standard No. 205—*Glazing Materials:* All glazing replaced to meet the requirements of FMVSS No. 217 must also meet all applicable requirements of FMVSS No. 205. In addition, all glazing must be inspected for compliance with FMVSS No. 205. Any noncompliant glazing must be replaced with compliant glazing and proof of compliance must be included in each conformity package.

Standard No. 217—*Bus Emergency Exits and Window Retention and Release:* The petition states that the vehicles must be modified by installation of an emergency escape hatch and emergency escape windows in a manner consistent with the requirements of this standard. Test reports were submitted in an effort to demonstrate that compliance with the standard can be achieved after these modifications are performed. Photographs (including images of all required labeling) and bus plan view drawings showing the location and operation of all exits, must be provided with each conformity package.

Standard No. 302—*Flammability of Interior Materials:* Documentation showing how the RI has confirmed that all interior components on each bus conform to all applicable requirements of this standard, including any test reports not submitted as part of the petition, must be provided with each conformity package.

Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that MY 2000 East Lancashire Coachbuilders Limited Double Decker Tri-Axle buses (mounted on a Volvo B7L Chassis), that were not originally manufactured to comply with all applicable FMVSS, are capable of being altered to conform to all applicable Federal Motor Vehicle Safety Standards.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–59 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8.

Issued on: July 30, 2015.

John Finneran,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–19210 Filed 8–4–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2015–0153]

Agency Requests for Approval of a New Information Collection(s): Post-Challenge Year Survey—Mayors' Challenge for Safer People and Safer Streets

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection.

DATES: Written comments should be submitted by October 5, 2015.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2015–0153] through one of the following methods:

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

- *Fax:* 1 (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rebecca Higgins, 202–366–7098, Office of Safety, Energy, and Environment, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number:

Title: Post-Challenge Year Survey—Mayors' Challenge for Safer People and Safer Streets.

Form Numbers:

Type of Review: New Information Collection.

Background: Over 220 cities are voluntarily participating in the ''Mayors' Challenge'' and through locally-driven efforts they are improving bike/ped safety policies, infrastructure, and awareness. This survey will collect information on the accomplishments of the Mayors' Challenge, and will be used to identify best practices and to improve future DOT outreach to cities. Each city has already identified a point-of-contact for the Mayors' Challenge. This survey will be distributed electronically to these POCs through an online survey tool.

Respondents: The survey will be completed by points-of-contacts identified in the city agencies participating in the Mayors' Challenge.

Number of Respondents: 230 cities have volunteered to participate in the Mayors' Challenge.

Frequency: Once, upon completion of this challenge.

Number of Annual Responses: 1.

Total Annual Hour Burden: 30 minutes/respondent; Cumulative 115 hours.

Total Annual Cost Burden: $3,388 (Based on an assumption that this would be completed by someone at an equivalent to a GS–12 level of seniority, which is $29.46/hour.).

Synopsis of Information Collection

DOT will survey the cities who have volunteered to participate in the Mayors' Challenge for Safer People and Safer Streets about their activities, successes, and obstacles. This information will be used to establish best practices bicycle and pedestrian safety and will identify gaps in data and resources that DOT can provide. The questions include:

1. Which of the seven goals did you adopt, and what activities did you undertake to meet those goals? For reference, the seven goals are:
(1) Take a Complete Streets approach;
(2) Identify and address barriers;
(3) Gather and track data;
(4) Use context-sensitive designs;
(5) Complete bike-ped networks;
(6) Improve laws and regulations; and
(7) Educate and enforce proper road use.

2. What were the primary challenges and obstacles to bicycle and pedestrian safety in your community, and what if any actions did you take to address these challenges and obstacles?

3. What if any changes have resulted from the challenge activities, including changes to physical infrastructure, decision-making processes, policies or procedures, enforcement, and education and awareness of your community?

4. Please use the following table to indicate whether you have data on the impact of the Mayors' Challenge activities, and what the extent of that impact is.

	Data available? (e.g. yes/no, and if yes, type of data)	Extent of impact (e.g. number of bicyclists, compared to previous years)
event attendance.		
survey results.		
crash data.		
walking and bicycle counts.		
bike lanes, sidewalks, other infrastructure.		
new plans, policies, laws, or campaigns.		
other indications of political and community support.		

5. Which DOT resources, tools, and data were most useful in your challenge?

6. Which non-DOT resources, tools, and data were most useful in your challenge?

7. What resources, tools, and data did you wish were available?

8. What are the most useful formats for receiving information from USDOT, and why (*e.g.* webinars, in-person meetings, conference calls, etc.)?

9. What efforts in your city to improve bicycle and pedestrian safety in your community were already underway at the time of the Mayors' Challenge? How did the Mayors' Challenge add value and/or help to fill any gaps in your city's efforts to improve bicycle and pedestrian safety?

10. In planning and project delivery of pedestrian and/or bicycle infrastructure projects, to what extent has your city coordinated with your Metropolitan Planning Organization (MPO), Regional Planning Organization (RPO), State Department of Transportation (DOT), and Federal Regional/Division office partners? Please note type of outreach and coordination, and outcomes it led to.

11. What were the key benefits and lessons learned as a result of the Mayors' Challenge?

12. Do you think the Mayors' challenge helped make any permanent changes in pedestrian and bike safety and accommodation in your city/town?

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on July 29, 2015.

Barbara McCann,

Director, Office of Safety, Energy, and Environment, Office of Policy, U.S. Department of Transportation.

[FR Doc. 2015–19189 Filed 8–4–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Dynamic Airways, LLC for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2015–7–17); Dockets DOT–OST–2014–0069 and DOT–OST–2014–0071

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Dynamic Airways, LLC d/b/a Dynamic International Airways fit, willing, and able, and awarding it certificates of public convenience and necessity authorizing it to engage in interstate and foreign scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 13, 2015.

ADDRESSES: Objections and answers to objections should be filed in Dockets DOT–OST–2014–0069 and DOT–OST–2014–0071 and addressed to the Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Damon D. Walker, Air Carrier Fitness Division, (X–56, Office W86–469), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Dated: July 30, 2015.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2015–19190 Filed 8–4–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Orders 13224 and 13582

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the name of one individual whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13224 and three individuals whose property and interests in property are blocked pursuant to E.O. 13582, whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective July 21, 2015.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Notice of OFAC Actions

On July 21, 2015, OFAC blocked the property and interests in property of the following individual pursuant to E.O. 13224, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

SHALAN, Abd Al Nur (a.k.a. CHAALAN, Abdul Nur Ali; a.k.a. SHAALAN, Abdul Nur Ali; a.k.a. SHALAN, Abd Al Nur Ali; a.k.a. SHA'LAN, Abdul Nur Ali; a.k.a. SHALAN, Abdul-Nur Ali); DOB 17 May 1964; alt. DOB 1961; POB Baabda, Lebanon (individual) [SDGT] (Linked To: HIZBALLAH).

On June 21, 2015, OFAC blocked the property and interests in property of the following three individuals pursuant to E.O. 13582, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria'':

1. BADR AL DIN, Mustafa (a.k.a. AL FIQAR, Dhu; a.k.a. BADREDDINE, Mustafa Amine; a.k.a. BADREDDINE, Mustafa Youssef; a.k.a. ISSA, Sami; a.k.a. SAAB, Elias Fouad; a.k.a. SA'B, Ilyas), Beirut, Lebanon; DOB 06 Apr 1961; POB Al-Ghobeiry, Beirut, Lebanon (individual) [SDGT] [SYRIA] (Linked To: HIZBALLAH).

2. AQIL, Ibrahim (a.k.a. AKIEL, Ibrahim Mohamed; a.k.a. AKIL, Ibrahim Mohamed); DOB 24 Dec 1962; alt. DOB 01 Jan 1962; POB Bidnayil, Lebanon (individual) [SYRIA] (Linked To: HIZBALLAH).

3. SHUKR, Fu'ad (a.k.a. CHAKAR, Fu'ad; a.k.a. ''CHAKAR, Al-Hajj Mohsin''), Harat Hurayk, Lebanon; Ozai, Lebanon; Al-Firdaws Building, Al-'Arid Street, Haret Hreik, Lebanon; DOB 1962; POB An Nabi Shit, Ba'labakk, Biqa' Valley, Lebanon; alt. POB Beirut, Lebanon (individual) [SYRIA] (Linked To: HIZBALLAH).

Dated: July 21, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–18763 Filed 8–4–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8933

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8933, Carbon Dioxide Sequestration Credit.

DATES: Written comments should be received on or before October 5, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Carbon Dioxide Sequestration Credit.

OMB Number: 1545–2132.

Form Number: Form 8933.

Abstract: Generally, the credit is allowed to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide. The credit can be claimed on Form 8933 for qualified carbon dioxide captured after October 3, 2008, and before the end of the calendar year in which the Secretary, in consultation with the Administrator of the EPA,

certifies that 75,000,000 metric tons of qualified dioxide have been captured and disposed of or used as a tertiary injectant. Authorized under I.R.C. section 45Q.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Individuals or households, and Farms.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours, 9 minutes.

Estimated Total Annual Burden Hours: 215.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 27, 2015.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2015–19247 Filed 8–4–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2015 American $1 Coin and Currency Set

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing a price of $14.95 for the 2015 American $1 Coin and Currency Set.

FOR FURTHER INFORMATION CONTACT: Nanette Evans, Product Management Division Chief for Sales and Marketing; United States Mint; 801 9th Street NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: July 29, 2015.

Richard A. Peterson,

Deputy Director for Manufacturing and Quality, United States Mint.

[FR Doc. 2015–19217 Filed 8–4–15; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 80 Wednesday,
No. 150 August 5, 2015

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2015 (FY 2016); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1627–F]

RIN 0938–AS47

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2015 (FY 2016)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs) (which are freestanding IPFs and psychiatric units of an acute care hospital or critical access hospital). These changes are applicable to IPF discharges occurring during fiscal year (FY) 2016 (October 1, 2015 through September 30, 2016). This final rule also implements: a new 2012-based IPF market basket; an updated IPF labor-related share; a transition to new Core Based Statistical Area (CBSA) designations in the FY 2016 IPF Prospective Payment System (PPS) wage index; a phase-out of the rural adjustment for IPF providers whose status changes from rural to urban as a result of the wage index CBSA changes; and new quality measures and reporting requirements under the IPF quality reporting program. This final rule also reminds IPFs of the October 1, 2015 implementation of the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM), and updates providers on the status of IPF PPS refinements.

DATES: These regulations are effective October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Katherine Lucas or Jana Lindquist, (410) 786–7723, for general information. Hudson Osgood, (410) 786–7897 or Bridget Dickensheets, (410) 786–8670, for information regarding the market basket and labor-related share.

Theresa Bean, (410) 786–2287, for information regarding the regulatory impact analysis. Rebecca Kliman, (410) 786–9723, or Jeffrey Buck, (410) 786–0407, for information regarding the inpatient psychiatric facility quality reporting program.

SUPPLEMENTARY INFORMATION:

Availability of Certain Tables Exclusively Through the Internet on the CMS Web site

In the past, tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas were published in the **Federal Register** as an Addendum to the annual PPS rulemaking (that is, the PPS proposed and final rules or, when applicable, the current update notice). However, beginning in FY 2015, these wage index tables are no longer published in the **Federal Register**. Instead, these tables are available exclusively through the Internet. The wage index tables for this final rule are available exclusively through the Internet on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/WageIndex.html.*

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Table of Contents

Acronyms

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

ADC Average Daily Census
AHA American Hospital Association
AHE Average Hourly Earning
BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113)
BEA Bureau of Economic Analysis
BLS Bureau of Labor Statistics
CAH Critical Access Hospital
CBSA Core-Based Statistical Area
CCR Cost-to-Charge Ratio
CPI Consumer Price Index
CPI–U Consumer Price Index for all Urban Consumers
DRGs Diagnosis-Related Groups
ECI Employment Cost Index
ESRD End State Renal Disease
FR **Federal Register**
FTE Full-time equivalent
FY Federal Fiscal Year (October 1 through September 30)
GDP Gross Domestic Product
GME Graduate Medical Education
HHA Home Health Agency
HBIPS Hospital Based Inpatient Psychiatric Services
ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, 10th Revision, Clinical Modification
ICD–10–PCS International Classification of Diseases, 10th Revision, Procedure Coding System
IGI IHS Global Insight, Inc.
I–O Input—Output
IPFs Inpatient Psychiatric Facilities
IPFQR Inpatient Psychiatric Facilities Quality Reporting
IPPS Inpatient Prospective Payment System
IRFs Inpatient Rehabilitation Facilities
LOS Length of Stay
LTCHs Long-Term Care Hospitals
MAC Medicare Administrative Contractor
MedPAR Medicare Provider Analysis and Review File
MFP Multifactor Productivity
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003
MSA Metropolitan Statistical Area
NAICS North American Industry Classification System
NQF National Quality Forum
OES Occupational Employment Statistics
OMB Office of Management and Budget
OPPS Outpatient Prospective Payment System
PLI Professional Liability Insurance
PPI Producer Price Index
PPS Prospective Payment System
RPL Rehabilitation, Psychiatric, and Long-Term Care
RY Rate Year (July 1 through June 30)
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
SOC Standard Occupational Classification
TEFRA Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)

I. Executive Summary

A. Purpose

This final rule updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs) for discharges occurring during the FY 2016 (October 1, 2015 through September 30, 2016). For the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program, it also changes certain measures collected under the program and modifies reporting requirements for certain program measures.

B. Summary of the Major Provisions

In this final rule, we updated the IPF Prospective Payment System (PPS), as specified in 42 CFR 412.428. The updates include the following:

- Effective for the FY 2016 IPF PPS update, we adopted a 2012-based IPF market basket. However, we revised the proposed 2012-based IPF market basket based on public comments. Specifically, we revised the methodology for calculating the Wages and Salaries and the Employee Benefits cost weights. The final 2012-based IPF market basket resulted in a labor-related share of 75.2 percent for FY 2016.
- We adjusted the 2012-based IPF market basket update (currently estimated to be 2.4 percent) by a reduction for economy-wide productivity (currently estimated to be 0.5 percent) as required by section 1886(s)(2)(A)(i) of the Social Security Act (the Act), and further reduced by 0.2 percentage point as required by section 1886(s)(2)(A)(ii) of the Act, resulting in an estimated market basket update of 1.7 percent.
- We updated the IPF PPS per diem rate from $728.31 to $743.73. Providers that failed to report quality data for FY 2016 payment will receive a final FY 2016 per diem rate of $729.10.
- We updated the electroconvulsive therapy (ECT) payment per treatment from $313.55 to $320.19. Providers that failed to report quality data for FY 2016 payment will receive a FY 2016 ECT payment per treatment of $313.89.
- We adopted new Office of Management and Budget (OMB) Core-Based Statistical Area (CBSA) delineations for the FY 2016 IPF PPS wage index and future IPF PPS wage indices. We implemented these CBSA changes using a 1-year transition with a blended wage index for all providers, consisting of a blend of fifty percent of the FY 2016 IPF wage index using the current OMB delineations and fifty percent of the FY 2016 IPF wage index using the revised OMB delineations.
- We phased out the rural adjustment for the 37 rural IPFs that will be re-designated as urban IPFs due to the OMB CBSA changes. Specifically, we phased out the 17 percent rural adjustment for these 37 providers over 3 years (two-thirds of the adjustment given in FY 2016, one-third of the adjustment given in FY 2017, and no rural adjustment thereafter).
- We used the updated labor-related share of 75.2 percent (based on the final 2012-based IPF market basket) and CBSA rural and urban wage indices for FY 2016, and established a wage index budget-neutrality adjustment of 1.0041.

• We updated the fixed dollar loss threshold amount from $8,755 to $9,580 in order to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF PPS payments.

• We finalized that the national urban and rural cost-to-charge ratio (CCR) ceilings for FY 2016 will be 1.7339 and 1.9041, respectively, and the national median CCR will be 0.4650 for urban IPFs and 0.6220 for rural IPFs. The national median CCR is applied to new IPFs that have not yet submitted their first Medicare cost report, to IPFs for which the CCR calculation data are inaccurate or incomplete, and to IPFs whose overall CCR exceeds 3 standard deviations above the national geometric mean.

• We note that IPF PPS patient-level and facility-level adjustments, other than those mentioned above, remain the same as in FY 2015.

In addition:

• We remind providers that International Classification of Diseases, 10th Revision, Clinical Modification/Procedure Coding System (ICD–10–CM/PCS) will be implemented on October 1, 2015.

• As we continue our analysis for future IPF PPS refinements, we find, from preliminary analysis of 2012 to 2013 data, that over 20 percent of IPF stays reported no ancillary costs, such as laboratory and drug costs, in their cost reports, or laboratory or drug charges on their claims. Because we expect that most patients requiring hospitalization for active psychiatric treatment will need drugs and laboratory services, we remind providers that the IPF PPS per diem payment rate includes the cost of all ancillary services, including drugs and laboratory services. We pay only the IPF for services furnished to a Medicare beneficiary who is an inpatient of that IPF, except for certain professional services, and payments are considered to be payments in full for all inpatient hospital services provided directly or under arrangement (see 42 CFR 412.404(d)), as specified in 42 CFR 409.10.

For the IPFQR Program, we are adopting several new measures and data submission requirements for the IPFQR Program. First, we adopted five new measures beginning with the FY 2018 payment determination:

• TOB–3—Tobacco Use Treatment Provided or Offered at Discharge and the subset measure TOB–3a Tobacco Use Treatment at Discharge (National Quality Forum (NQF) #1656);

• SUB–2—Alcohol Use Brief Intervention Provided or Offered and the subset measure SUB–2a Alcohol Use Brief Intervention (NQF #1663);

• Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) (NQF) #0647);

• Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) (NQF #0648); and

• Screening for Metabolic Disorders.

We removed HBIPS–4 Patients Discharged on Multiple Antipsychotic Medications, beginning with the FY 2017 payment determination. We also removed the Hospital Based Inpatient Psychiatric Services (HBIPS)–6 Post-Discharge Continuing Care Plan (NQF #0557) and HBIPS–7 Post-Discharge Continuing Care Plan Transmitted to the Next Level of Care Provider Upon Discharge (NQF #0558) measures, beginning with the FY 2018 payment determination.

Second, we made several changes regarding how facilities report data for IPFQR Program measures:

• Beginning with the FY 2017 payment determination, we are requiring that measures be reported as a single yearly count rather than by quarter and age.

• Beginning with the FY 2017 payment determination, we are requiring that aggregate population counts be reported as a single yearly number rather than by quarter.

• Beginning with the FY 2018 payment determination, we will allow uniform sampling for certain measures.

C. Summary of Impacts

Provision description	Total transfers
FY 2016 IPF PPS payment rate update	The overall economic impact of this final rule is an estimated $75 million in increased payments to IPFs during FY 2016.

Provision description	Costs
New quality reporting program requirements	The total costs beginning in FY 2016 for IPFs as a result of the final new quality reporting requirements are estimated to be $6.31 million.

II. Background

A. Overview of the Legislative Requirements for the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary of the Department Health and Human Services (the Secretary) develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

Section 3401(f) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to as ''the Affordable Care Act'') added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) of the Act titled ''Reference to Establishment and Implementation of System'' refers to section 124 of the BBRA, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the Rate Year (RY) beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. For the RY beginning in 2015 (that is, FY 2016), the current estimate of the productivity adjustment is equal to 0.5 percent, which we are implementing in this FY 2016 final rule.

Section 1886(s)(2)(A)(ii) of the Act requires the application of an ''other adjustment'' that reduces any update to an IPF PPS base rate by percentages

specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. For the RY beginning in 2015 (that is, FY 2016), section 1886(s)(3)(D) of the Act requires the reduction to be 0.2 percentage point. We are implementing that reduction in this FY 2016 IPF PPS final rule.

Section 1886(s)(4) of the Act requires the establishment of a quality data reporting program for the IPF PPS beginning in RY 2014.

To implement and periodically update these provisions, we have published various proposed and final rules in the **Federal Register**. For more information regarding these rules, see the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html?redirect=/InpatientPsychFacilPPS/.*

B. Overview of the IPF PPS

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as required by section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

The IPF PPS established the federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget-neutrality.

The federal per diem payment under the IPF PPS is comprised of the federal per diem base rate described above and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, Diagnosis-Related Group (DRG) assignment, comorbidities, and variable per diem adjustments to reflect higher per diem costs in the early days of an IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost-of-living adjustment for IPFs located in Alaska and Hawaii, and the presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for: Outlier cases; interrupted stays; and a per treatment adjustment for patients who undergo electroconvulsive therapy (ECT). During the IPF PPS mandatory 3-year transition period, stop-loss payments were also provided; however, since the transition ended in 2008, these payments are no longer available.

A complete discussion of the regression analysis that established the IPF PPS adjustment factors appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of the BBRA did not specify an annual rate update strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final federal per diem base rate to be budget-neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

In RY 2012, we proposed and finalized switching the IPF PPS payment rate update from a rate year that begins on July 1 and ends on June 30 to one that coincides with the federal fiscal year that begins October 1 and ends on September 30. In order to transition from one timeframe to another, the RY 2012 IPF PPS covered a 15-month period from July 1, 2011 through September 30, 2012. Therefore, the update cycle for FY 2016 will be October 1, 2015 through September 30, 2016. For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period to coincide with a FY period, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

C. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the IPF PPS in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Therefore, we indicated that we did not intend to update the regression analysis and the patient- and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041). We have begun the necessary analysis to make refinements to the IPF PPS using more current data to set the adjustment factors; however, we did not make any refinements in this final rule. Rather, as explained in section V.B. of this final rule, we expect that in future rulemaking we will be ready to propose potential refinements.

In the May 6, 2011 IPF PPS final rule (76 FR 26432), we changed the payment rate update period to a RY that coincides with a FY update. Therefore, update notices are now published in the **Federal Register** in the summer to be effective on October 1. When proposing changes in IPF payment policy, a proposed rule would be issued in the spring and the final rule in the summer in order to be effective on October 1. For further discussion on changing the IPF PPS payment rate update period to a RY that coincides with a FY, see the IPF PPS final rule published in the **Federal Register** on May 6, 2011 (76 FR 26434 through 26435). For a detailed list of updates to the IPF PPS, see 42 CFR 412.428.

Our most recent IPF PPS annual update occurred in an August 6, 2014, **Federal Register** final rule (79 FR 45938) (hereinafter referred to as the August 2014 IPF PPS final rule) updated the IPF PPS payment rates for FY 2015. That rule updated the IPF PPS per diem payment rates that were published in the August 2013 IPF PPS notice (78 FR

46734) in accordance with our established policies.

III. Provisions of the Final Rule and Responses to Comments

On May 1, 2015 we published a proposed rule in the **Federal Register** (80 FR 25012) entitled Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2015 (FY 2016). The May 1, 2015 proposed rule (herein referred to as the FY 2016 IPF PPS proposed rule) proposed updates to the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities. In addition to the updates, we proposed to: Adopt a 2012-based IPF market basket and update the labor-related share; adopt new OMB CBSA delineations for the FY 2016 IPF Wage Index; and phase out the rural adjustment for 37 rural providers that would become urban providers as a result of the new CBSA delineations. Additionally, the proposed rule reminded providers of the October 1, 2015 implementation of the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM/PCS) for the IPF PPS, updated providers on the status of IPF PPS refinements, and proposed new quality reporting requirements for the IPFQR Program.

We received a total of 76 comments on these proposals from 51 providers, 12 industry groups or associations, 6 industry consultants, 4 advocacy groups, 1 independent congressional agency, and 2 anonymous sources. Of the 76 comments, 12 focused on payment policies, and 73 focused on the quality reporting proposals. A summary of the proposals, the comments, and our responses follows.

A. Market Basket for the IPF PPS

1. Background

The input price index that was used to develop the IPF PPS was the Excluded Hospital with Capital market basket. This market basket was based on 1997 Medicare cost reports for Medicare participating inpatient rehabilitation facilities (IRFs), IPFs, long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although ''market basket'' technically describes the mix of goods and services used in providing health care at a given point in time, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies) derived from that market basket. Accordingly, the term ''market basket,'' as used in this document, refers to an input price index.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a 2002–based rehabilitation, psychiatric, and long-term care (RPL) market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding IPFs, and LTCHs. Cancer and children's hospitals were excluded from the RPL market basket because their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act and not through a PPS. Also, the 2002 cost structures for cancer and children's hospitals are noticeably different than the cost structures of freestanding IRFs, freestanding IPFs, and LTCHs. See the May 2006 IPF PPS final rule (71 FR 27046 through 27054) for a complete discussion of the 2002–based RPL market basket.

In the May 1, 2009 IPF PPS notice (74 FR 20376), we expressed our interest in exploring the possibility of creating a stand-alone IPF market basket that reflects the cost structures of only IPF providers. One available option was to combine the Medicare cost report data from freestanding IPF providers with Medicare cost report data from hospital-based IPF providers. We indicated that an examination of the Medicare cost report data comparing freestanding IPFs and hospital-based IPFs showed differences between cost levels and cost structures. At that time, we were unable to fully understand these differences even after reviewing explanatory variables such as geographic variation, case mix (including DRG, comorbidity, and age), urban or rural status, teaching status, and presence of a qualifying emergency department. As a result, we continued to research ways to reconcile the differences and solicited public comment for additional information that might help us to better understand the reasons for the variations in costs and cost structures, as indicated by the Medicare cost report data (74 FR 20376). We summarized the public comments we received and our responses in the April 2010 IPF PPS notice (75 FR 23111 through 23113). Despite receiving comments from the public on this issue, we were still unable to sufficiently reconcile the observed differences in costs and cost structures between hospital-based and freestanding IPFs, and, therefore, we did not believe it to be appropriate at that time to incorporate data from hospital-based IPFs with those of freestanding IPFs to create a stand-alone IPF market basket.

Beginning with the RY 2012 IPF PPS final rule (76 FR 26432), IPF PPS payments were updated using a 2008-based RPL market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding IPFs, and LTCHs. The major changes for RY 2012 included: Updating the base year from FY 2002 to FY 2008; using a more specific composite chemical price proxy; breaking the professional fees cost category into two separate categories (Labor-related and Nonlabor-related); and adding two additional cost categories (Administrative and Facilities Support Services and Financial Services), which were previously included in the residual All Other Services cost categories. The RY 2012 IPF PPS proposed rule (76 FR 4998) and RY 2012 final rule (76 FR 26432) contain a complete discussion of the development of the 2008-based RPL market basket.

In the FY 2016 IPF PPS proposed rule, we proposed to create a 2012-based IPF market basket, using Medicare cost report data for both freestanding and hospital-based IPFs.

We received several general comments on the creation of an IPF market basket.

Comment: One commenter supported CMS' use of an IPF-specific market basket, but recommended that CMS develop separate update percentages for freestanding units and hospital-based units. They stated patients treated in hospital-based units have more complex medical conditions and require more resources compared to freestanding facilities. They believe combining these two facilities for the purpose of establishing one market basket rate update could result in underpayments for Medicare patients treated in hospital-based facilities.

Response: We appreciate the commenter's support of an IPF-specific market basket. However, we respectfully disagree with their recommendation to develop two specific market basket update percentages for hospital-based and freestanding units. The regression analysis from which the IPF PPS base rate payment (and related adjustments) was derived reflects data from both freestanding and hospital-based providers. As a result, we believe it is appropriate to update those rates with a market basket based on data from both types of providers. Moreover, we do not believe we have a large enough sample size to create a freestanding-specific IPF market basket. Finally, the IPF PPS already provides patient-level adjustments, including certain principal diagnoses and comorbidities that reflect the higher costs and resources

associated with more medically complex patients.

Comment: One commenter stated their appreciation of the discussion in the proposed rule regarding the progress that CMS has made in the development of an IPF-specific market basket. They support CMS' efforts to ensure that the IPF payment system is updated to reflect current costs and resource use.

Response: We appreciate the commenter's support for the proposed 2012-based IPF market basket.

Comment: One commenter did not support the adoption of the stand-alone IPF market basket. They stated they still have major reservations about its accuracy. They urged CMS to publicly release the detailed data files that support the proposed IPF-specific market basket and to distinguish cost factors in order to ''evaluate the materiality of the consolidation effect on the market basket'' and to allow time for the industry to gain a clearer understanding of the proposal, and the consolidation of the IPF provider types in order to enable commenters' informed response to the proposal.

Response: We appreciate the commenter's concern for the adoption of the 2012-based IPF market basket. However, we disagree with delaying the IPF-specific market basket. We believe we provided a clear description of the proposal and a sufficiently detailed data file to enable informed comment.

All of the data used to develop the proposed IPF-market basket are publically available. The Medicare cost reports used to develop the major cost weights are publically available on the CMS Web site *(http://www.cms.gov/Research-Statistics-Data-and-Systems/Downloadable-Public-Use-Files/Cost-Reports/Cost-Reports-by-Fiscal-Year.html* under facility type ''Hospital-2010''). The Bureau of Labor Statistics (BLS) Occupational Employment Statistics (*http://www.bls.gov/oes/#data*) and BLS price indices (*http://www.bls.gov/cpi/#data, http://www.bls.gov/ppi/#data*, and *http://www.bls.gov/ncs/ect/#data*) are publically available. The last data source used was the Bureau of Economic Analysis 2007 Benchmark Input-Output (I–O) data which is also publically available (*http://www.bea.gov/industry/io_annual.htm* under '' 'Use Tables/Before Redefinitions/Purchaser Value' for North American Industry Classification System (NAICS) 622000 Hospitals'').

In addition, we also provided in the proposed rule a detailed description of the methodologies (including items such as Medicare Cost Report line items or BLS series codes) used to produce the proposed 2012-based IPF market basket using the aforementioned data. We believe these methodology descriptions allowed for informed public comments and evaluation of the materiality of the ''consolidation effect'' (which we interpret to be the inclusion of freestanding and hospital-based IPF Medicare cost report data). We did receive several comments on our detailed methodology, which we used to further evaluate our methodology. In fact, in this final rule, we are adopting changes to the Wages and Salaries and Employee Benefits costs methodologies based on these detailed public comments. A more thorough description of the methodological changes is provided below.

After consideration of the public comments, we are finalizing the creation and adoption of a 2012-based IPF market basket with a modification to the Wages and Salaries and Employee Benefits cost methodologies based on public comments. We believe that the use of the 2012-based IPF market basket to update IPF PPS payments is a technical improvement as it is based on Medicare Cost Report data from both freestanding and hospital-based IPFs. Furthermore, the 2012-based IPF market basket does not include costs from either IRF or LTCH providers, which are included in the current 2008-based RPL market basket.

In the following discussion, we provide an overview of the market basket and describe the methodologies used to determine the operating and capital portions of the 2012-based IPF market basket. For each proposed methodology, we indicate whether we received any public comments. We include responses for each comment. We then provide the methodology we are finalizing for the 2012-based IPF market basket.

2. Overview of the 2012-Based IPF Market Basket

The 2012-based IPF market basket is a fixed-weight, Laspeyres-type price index. A Laspeyres price index measures the change in price, over time, of the same mix of goods and services purchased in the base period. Any changes in the quantity or mix of goods and services (that is, intensity) purchased over time relative to a base period are not measured.

The index itself is constructed in 3 steps. First, a base period is selected (in this final rule, the base period is FY 2012) and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories with the proportion of total costs that each category represents being calculated. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. In nearly every instance, these price proxies are derived from publicly available statistical series that are published on a consistent schedule (preferably at least on a quarterly basis). Finally, the expenditure weight for each cost category is multiplied by the level of its respective price proxy. The sum of these products (that is, the expenditure weights multiplied by their price levels) for all cost categories yields the composite index level of the market basket in a given period. Repeating this step for other periods produces a series of market basket levels over time. Dividing an index level for a given period by an index level for an earlier period produces a rate of growth in the input price index over that timeframe.

As noted above, the market basket is described as a fixed-weight index because it represents the change in price over time of a constant mix (quantity and intensity) of goods and services needed to furnish IPF services. The effects on total expenditures resulting from changes in the mix of goods and services purchased subsequent to the base period are not measured. For example, an IPF hiring more nurses to accommodate the needs of patients will increase the volume of goods and services purchased by the IPF, but would not be factored into the price change measured by a fixed-weight IPF market basket. Only when the index is rebased will changes in the quantity and intensity be captured, with those changes being reflected in the cost weights. Therefore, we rebase the market basket periodically so that the cost weights reflect recent changes in the mix of goods and services that IPFs purchase (facility inputs) to furnish inpatient care between base periods.

3. Creating an IPF-Specific Market Basket

As discussed in section III.A.1. of this final rule, over the last several years we have been exploring the possibility of creating a stand-alone, or IPF-specific, market basket that reflects the cost structures of only IPF providers. The major cost weights for the 2008-based RPL market basket were calculated using Medicare cost report data for freestanding facilities only. We used freestanding facilities due to concerns regarding our ability to incorporate Medicare cost report data for hospital-based providers. In the FY 2015 IPF PPS final rule (79 FR 45941), we presented

several of these concerns (as stated below) but explained that we would continue to research the possibility of creating an IPF-specific market basket to update IPF PPS payments.

Since the FY 2015 IPF PPS final rule, we have performed additional research on the Medicare cost report data available for hospital-based IPFs and evaluated these concerns. We subsequently concluded from this research that Medicare cost report data for both hospital-based IPFs and freestanding IPFs can be used to calculate the major market basket cost weights for a stand-alone IPF market basket. We developed a detailed methodology to derive market basket cost weights that are representative of the universe of IPF providers. We believe the use of this final IPF market basket is a technical improvement over the RPL market basket that is currently used to update IPF PPS payments. As a result, in this FY 2016 IPF PPS final rule, we are finalizing a 2012-based IPF market basket that reflects data for both freestanding and hospital-based IPFs. Below we discuss our prior concerns and provide reasons for why we now feel it is appropriate to create a stand-alone IPF market basket using Medicare cost report data for both hospital-based and freestanding IPFs.

One concern we discussed in the FY 2015 IPF PPS final rule (79 FR 45941) about using the hospital-based IPF Medicare cost report data was the cost level differences for hospital-based IPFs relative to freestanding IPFs were not readily explained by the specific characteristics of the individual providers and the patients that they serve (for example, characteristics related to case mix, urban/rural status, teaching status, or presence of a qualified emergency department). To address this concern, we used regression analysis to evaluate the effect of including hospital-based IPF Medicare cost report data in the calculation of cost distributions. A more detailed description of these regression models can be found in the FY 2015 IPF final rule (79 FR 45941). Based on this analysis, we concluded that the inclusion of those IPF providers with unexplained variability in costs did not significantly impact the cost weights and, therefore, should not be a major cause of concern.

Another concern regarding the incorporation of hospital-based IPF data into the calculation of the market basket cost weights was the complexity of the Medicare cost report data for these providers. The freestanding IPFs independently submit a Medicare cost report for their facilities, making it relatively straightforward to obtain the cost categories necessary to determine the major market basket cost weights. However, Medicare cost report data submitted for a hospital-based IPF are embedded in the Medicare cost report submitted for the entire hospital facility in which the IPF is located. In order to use Medicare cost report data from these providers, we needed to determine the appropriate adjustments to apply to the data to ensure that the cost weights we obtained would represent only the hospital-based IPF (not the hospital as a whole). Over the past year, we worked to develop detailed methodologies to calculate the major cost weights for both freestanding and hospital-based IPFs. We also evaluated the differences in cost weights for hospital-based and freestanding IPFs and found the most significant differences occurred for wages and salaries and pharmaceutical costs. Specifically, the hospital-based IPF wages and salaries cost weights tend to be lower than those of freestanding IPFs while hospital-based IPF pharmaceutical cost weights tend to be higher than those of freestanding IPFs. Our methodology for deriving costs for each of these categories can be found in section III.A.3.a.i. of this final rule. We will continue to monitor these cost shares during our on-going research to ensure that the differences are explainable.

In summary, our research over the past year allowed us to evaluate the appropriateness of including hospital-based IPF data in the calculation of the major cost weights for an IPF market basket. In the proposed rule, we proposed methodologies to create a stand-alone IPF market basket that reflects the cost structure of the universe of IPF providers. We described our methodologies and the resulting cost weights in section III.A.3.a.i. of the FY 2016 IPF proposed rule (80 FR 25017) and solicited public comments on these proposals. In the sections below, we summarize and respond to comments we received on these proposed methodologies.

a. Development of Cost Categories and Weights

i. Medicare Cost Reports

We proposed a 2012-based IPF market basket that consisted of seven major cost categories derived from the FY 2012 Medicare cost reports (CMS Form 2552–10) for freestanding and hospital-based IPFs. These categories were Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, Professional Liability Insurance (PLI), Capital, and a residual. The residual reflects all remaining costs that are not captured in the other six cost categories. The FY 2012 cost reports include providers whose cost report begin date is on or between October 1, 2011, and September 30, 2012. We choose to use FY 2012 as the base year because we believe that the Medicare cost reports for this year represent the most recent, complete set of Medicare cost report data available for IPFs at the time of rulemaking.

Prior Medicare cost report data used to develop the RPL market basket showed large differences between some providers' Medicare length of stay (LOS) and total facility LOS. Since our goal is to measure cost weights that are reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries, we proposed to limit our selection of Medicare cost reports used in the 2012-based IPF market basket to those facilities that had a Medicare LOS that was within a comparable range of their total facility average LOS. For freestanding IPFs, we proposed to use the Medicare days and discharges from line 14, columns 6 and 13, Worksheet S–3, Part I to determine the Medicare LOS and the total facility days and discharges from line 14, columns 8 and 15, to determine the facility LOS (consistent with the RPL market basket method). For hospital-based IPFs, we proposed to use the Medicare days and discharges from line 16, columns 6 and 13, of Worksheet S–3, Part I to determine the Medicare LOS and the total facility days and discharges from line 16, columns 8 and 15, to determine the facility LOS. To derive the 2012-based IPF market basket, for those IPFs with an average facility LOS of greater than or equal to 15 days, we proposed to include IPFs where the Medicare LOS is within 50 percent (higher or lower) of the average facility LOS. For those IPFs whose average facility LOS is less than 15 days, we proposed to include IPFs where the Medicare LOS is within 95 percent (higher or lower) of the facility LOS.

Applying these trims resulted in IPF Medicare cost reports with an average Medicare LOS of 12 days, average facility LOS of 10 days, and Medicare utilization (as measured by Medicare inpatient IPF days as a percentage of total facility days) of 30 percent. Those providers that were excluded from the 2012-based IPF market basket have an average Medicare LOS of 22 days, average facility LOS of 49 days, and a Medicare utilization of 5 percent. Of those Medicare cost reports excluded from the proposed 2012-based IPF market basket, about 70 percent were

freestanding providers whereas freestanding providers represent about 30 percent of all IPFs.

We did not receive any specific comments on our proposed LOS edit methodology.

Final Decision: We are finalizing the LOS edit methodology as proposed.

We applied this LOS trim to first obtain a set of cost reports for facilities that have a Medicare LOS within a comparable range of their total facility LOS. Using the resulting set of FY 2012 Medicare cost reports for freestanding IPFs and hospital-based IPFs, we calculated costs for the six major cost categories (Wages and Salaries, Employee Benefits, Contract Labor, Professional Liability Insurance, Pharmaceuticals, and Capital).

Similar to the 2008-based RPL market basket major cost weights, the 2012-based IPF market basket cost weights reflect Medicare allowable costs (routine, ancillary and capital costs) that are eligible for inclusion under the IPF PPS payments. We proposed to define Medicare allowable costs for freestanding facilities as cost centers (CMS Form 2552–10): 30 through 35, 50 through 76 (excluding 52 and 75), 90 through 91, and 93. We proposed to define Medicare allowable costs for hospital-based facilities as cost centers (CMS Form 2552–10): 40, 50 through 76 (excluding 52 and 75), 90 through 91, and 93. For freestanding IPFs, we proposed that total Medicare allowable costs would be equal to the total costs as reported on Worksheet B, part I, column 26. For hospital-based IPFs, we proposed that total Medicare allowable costs would be equal to total costs for the IPF inpatient unit after the allocation of overhead costs (Worksheet B, part I, column 26, line 40) and a portion of total ancillary costs. We also proposed to calculate the portion of ancillary costs attributable to the hospital-based IPF for a given ancillary cost center by multiplying total facility ancillary costs for the specific cost center (as reported on Worksheet B, Part I, column 26) by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for IPF subproviders) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all relevant PPS (that is, Inpatient Prospective Payment System (IPPS), IRF, IPF and Skilled Nursing Facility (SNF))).

We did not receive any specific comments on our methodology for calculating total costs.

Final Decision: We are finalizing our methodology for calculating total costs as proposed.

Below we provide a description of the methodologies used to derive costs for the six major cost categories.

Wages and Salaries Costs

For freestanding IPFs, we proposed to derive Wages and Salaries costs as the sum of routine inpatient salaries, ancillary salaries, and a proportion of overhead (or general service cost center) salaries as reported on Worksheet A, column 1. Since overhead salary costs are attributable to the entire IPF, we proposed to only include the proportion attributable to the Medicare allowable cost centers. We estimated the proportion of overhead salaries that are attributed to Medicare allowable costs centers by multiplying the ratio of Medicare allowable salaries to total salaries (Worksheet A, column 1, line 200) times total overhead salaries. A similar methodology was used to derive Wages and Salaries costs in the 2008-based RPL market basket.

For hospital-based IPFs, we proposed to derive Wages and Salaries costs as the sum of routine inpatient wages and salaries (Worksheet A, column 1, line 40) and a portion of salary costs attributable to total facility ancillary and overhead cost centers as these cost centers are shared with the entire facility. We proposed to calculate the portion of ancillary salaries attributable to the hospital-based IPF for a given ancillary cost center by multiplying total facility ancillary salary costs for the specific cost center (as reported on Worksheet A, column 1) by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for IPF subproviders) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all relevant PPS units (that is, IPPS, IRF, IPF and SNF)). For example, if hospital-based IPF Medicare laboratory costs represent 10 percent of the total Medicare laboratory costs for the entire facility, then 10 percent of total facility laboratory salaries (as reported in Worksheet A, column 1, line 60) would be attributable to the hospital-based IPF. We believe it is appropriate to use only a portion of the ancillary costs in the market basket cost weight calculations since the hospital-based IPF only utilizes a portion of the facility's ancillary services. We believe the ratio of reported IPF Medicare costs to reported total Medicare costs provides a reasonable estimate of the ancillary services utilized, and costs incurred, by the hospital-based IPF.

We proposed to calculate the portion of overhead salary costs attributable to hospital-based IPFs by multiplying the total overhead costs attributable to the hospital-based IPF (sum of columns 4 through18 on Worksheet B, part I, line 40) by the ratio of total facility overhead salaries (as reported on Worksheet A, column 1, lines 4 through 18) to total facility overhead costs (as reported on Worksheet A, column 7, lines 4 through 18). This methodology assumes the proportion of total costs related to salaries for the overhead cost center is similar for all inpatient units (that is, acute inpatient or inpatient psychiatric). Since the 2008-based RPL market basket did not include hospital-based providers, this proposed methodology cannot be compared to the derivation of Wages and Salaries costs in the 2008-based RPL market basket.

We received several comments on our methodology for deriving Wages and Salaries costs. These comments led to changes to our proposed methodology. We discuss these changes below.

Comment: Several commenters questioned the methodology we used to calculate the Wages and Salaries cost weight stating there was a risk of overstating the labor-related share. They encouraged CMS to utilize a more accurate calculation for the ancillary cost centers in order to mitigate the risk of overstating labor-related share costs.

One commenter stated that our methodology for deriving hospital-based IPF ancillary salary costs for a specific cost center using salary costs from Worksheet A, column 1 multiplied by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for IPF subproviders) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all relevant PPS units (that is, IPPS, IRF, IPF and SNF)) results in an overstatement of ancillary salary costs. Specifically, the commenter stated that the most accurate calculation would be to divide costs on Worksheet D–3, column 3 for the IPF subprovider by total costs on Worksheet C, column 5 for the hospital, and to apply this percentage to salary costs from Worksheet A, column 1. The commenter requested that we clarify how this ancillary salary calculation is used in determining the 74.9 percent labor-related share of the payment, and correct it as needed.

Response: The proposed labor-related share of 74.9 percent is equal to the sum of the relative importance of moving averages of the Wages and Salaries, Employee Benefits, Contract Labor, Labor-Related Services cost categories, and a portion of the relative importance moving average of the Capital-Related cost category. For a detailed description of how these cost categories were

derived, please see the IPF proposed rule (80 FR 25017).

Based on the commenter's request, we reviewed our proposed methodology for calculating Wages and Salaries costs for hospital-based IPFs (including the ancillary wages and salaries costs mentioned by the commenter). As stated in the proposed rule, the Wages and Salaries costs for hospital-based IPFs are derived by summing routine inpatient salary costs for the hospital-based IPF (from Worksheet A, column 1, line 40), ancillary salaries, and overhead salaries. The methodology for calculating ancillary salaries (as the commenter noted) is calculated as ancillary salary costs for a specific cost center using salary costs from Worksheet A, column 1 multiplied by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for IPF subproviders) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all relevant PPS units (that is, IPPS, IRF, IPF and SNF)).

We respectfully disagree with the commenter's suggestion to use total costs on Worksheet C, column 5 as the denominator in the ratio above. We note that Worksheet D–3 represents Medicare IPF costs for ancillary services while Worksheet C, column 5 represents total ancillary costs for all payers. Our methodology for deriving all cost weights (for both freestanding and hospital-based providers) is based on Medicare-allowable costs (that is total costs for all patients for those cost centers that are Medicare-allowable under the IPF PPS). For example, the Contract Labor cost weight is based on contract labor costs reported on Worksheet S3, part V, for all hospital-based IPF patients; it is not specific to Medicare patients as that data is not reported on the Medicare cost report. The commenter's suggestion to use Worksheet C, column 5, would be inappropriate as the numerator would be based on Medicare patients (Worksheet D–3) and the denominator would be for all patients (Worksheet C), which would understate the proportion of ancillary salary costs that are attributable to all hospital-based IPF patients. Since the ancillary salary cost weight, in aggregate, is lower than the hospital-based IPF routine inpatient salary cost weight, this would lead to a higher Wages and Salaries cost weight relative to the proposed rule, and it would be calculated inconsistently with the other market basket cost weights (such as the Contract Labor cost weight). We believe using Medicare costs (Worksheet D–3) to determine the proportion of ancillary wages and salaries (and also total ancillary costs) that are attributable to the hospital-based IPF is a reasonable approach.

Comment: Several commenters stated that they had not conducted their own analysis of the CMS proposed 2012-based IPF market basket, but they were aware of an analysis of the proposed IRF market basket. That analysis, prepared by Dobson DaVanzo,[1] was submitted to CMS as part of the FY 2016 IRF PPS rulemaking record. These commenters encouraged CMS to review Dobson DaVanzo findings to determine if CMS needs to take corrective measures before finalizing the IPF-specific market basket, as the same methodologies in the IRF market basket methodology could exist in the IPF methodology.

Response: We appreciate the commenters' request to review the consultants' report on the methodology used to develop the IRF-specific market basket. As the commenter stated, the methodology used to develop the IPF major cost weights using the Medicare cost report data for the 2012-based IPF market basket is similar to the methodology used in the proposed 2012-based IRF market basket. The only difference is the use of IPF-specific Medicare cost report data to calculate the major cost weights.

Based on these comments, we reviewed the Dobson DaVanzo IRF report submitted by commenters on the IRF proposed rule. This report stated on page four that our proposed methodology for calculating hospital-based IRF wages and salaries was flawed as it disregards overhead wages and salaries associated with the ancillary departments. Our proposed methodology for the 2012-based IRF market basket was identical to our proposed methodology for the 2012-based IPF market basket. Our proposed methodology for the 2012-based IPF market basket included overhead wages and salaries attributable to the hospital-based IPF routine inpatient unit only. Therefore, we are revising our methodology for calculating the Wages and Salaries costs for hospital-based IPFs to account for the omission of the overhead wages and salaries attributable to the ancillary departments.

For this final rule, we calculated the overhead salaries attributable to each ancillary department by first calculating total noncapital overhead costs attributable to the specific ancillary department (Worksheet B, part I, columns 4–18 less Worksheet B, part II, columns 4–18). We then identified the portion of the total noncapital overhead costs for each ancillary cost center that is attributable to the hospital-based IPF by multiplying by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for hospital-based IPFs) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all relevant PPS units (that is, IPPS, IRF, IPF and SNF)). Finally, we identified the portion of these noncapital overhead costs attributable to Wages and Salaries by multiplying these costs by an ''overhead ratio'', which is defined as the ratio of total facility overhead salaries (as reported on Worksheet A, column 1, lines 4–18) to total noncapital overhead costs (as reported on Worksheet A, column 1 & 2, lines 4–18) for all ancillary departments. This methodology is almost identical to the methodology suggested in the Dobson DaVanzo report with slight modifications, which are further discussed below.

Therefore, based on public comment, we are finalizing our methodology for calculating Wages and Salaries costs for hospital-based IPFs as the sum of routine inpatient salary costs for the hospital-based IPF (from Worksheet A, column 1, line 40), ancillary salaries, and overhead salaries attributable to the routine inpatient unit for the hospital-based IPF and ancillary departments.

During our review of the methodology to derive Wages and Salaries costs and the inclusion of overhead wages and salaries attributable to the ancillary department, we also found that the overhead ratios (used in the calculation of overhead wages and salaries attributable to the routine inpatient unit for the hospital-based IPF) (Worksheet A, column 1 divided by Worksheet A, column 7) by cost center showed that many providers reported data for these columns that resulted in a ratio that exceeded 100 percent. One possible explanation for the overhead ratio exceeding 100 percent is that Worksheet A, column 7 reflects reclassifications and adjustments while column 1 does not. However, when we calculated an alternative overhead ratio by defining overhead salaries using Worksheet S–3, part II column 4, which reflects reclassifications, and total facility noncapital overhead costs using Worksheet A, column 7, we also found that many providers still had overhead ratios that exceeded 100 percent. An overhead ratio exceeding 100 percent

[1] ''Analysis of CMS Proposed Inpatient Rehabilitation Facility Specific Market Basket'', submitted to HealthSouth Corporation by Dobson DaVanzo, May 22, 2015. The public reference for this comment letter is: CMS–2015–0053–0004, and can be retrieved from the following link: *http://www.regulations.gov/#!documentDetail;D=CMS-2015-0053-0004.*

would suggest that wages and salaries costs are greater than total costs, which shows that the data we originally proposed to use results in an indisputable error to the allocation of overhead costs to wages and salaries. When we instead used an overhead ratio equal to the ratio of total facility overhead salaries (as reported on Worksheet A, column 1, lines 4–18) to total facility noncapital overhead costs (as reported on Worksheet A, column 1 and 2, lines 4–18), the impacts of any potential misreporting is minimized.

Therefore, based on the comment, and in order to address the error, we are revising the overhead ratio used to determine the proportion of overhead salaries attributable to the hospital-based IPF routine inpatient department. The revised overhead ratio is equal to the ratio of total facility overhead salaries (as reported on Worksheet A, column 1, lines 4–18) to total facility noncapital overhead costs (as reported on Worksheet A, column 1 and 2, lines 4–18). This is now consistent with the overhead ratio we are using to determine overhead wages and salaries attributable to ancillary departments as described above.

In addition, our review of the methodology for Wages and Salaries costs also found that our proposed methodology for calculating overhead wages and salaries attributable to the hospital-based IPF routine inpatient department were calculated using total (operating and capital) overhead costs attributable to the hospital-based IPF (sum of columns 4–18 on Worksheet B, part I, line 40). The proposed methodology resulted in a portion of overhead capital costs to be allocated to wages and salaries costs which is incorrect and inconsistent with the Medicare cost report instructions.

The Medicare cost report instructions define capital-related costs as ''depreciation, leases and rentals for the use of facilities and/or equipment, and interest incurred in acquiring land or depreciable assets used for patient care, insurance on depreciable assets used for patient care and taxes on land or depreciable assets used for patient care.'' [2] The instructions also state that providers should exclude the following from capital-related costs: ''costs incurred for the repair or maintenance of equipment or facilities, amounts included in rentals or lease payments for repair and/or maintenance agreements. * * *'' Based on this definition of capital costs as reported on the Medicare cost report, we concluded that capital costs do not include direct wages and salaries costs and that it would be erroneous to allocate a portion of capital costs to overhead wages and salaries.

Therefore, we are revising the methodology to reflect operating costs (that is the sum of Worksheet B, part I, line 40, columns 4–18 less Worksheet B, part II, line 40, columns 4–18).

We are finalizing our methodology for calculating hospital-based IPF Wages and Salaries costs as described above. We discuss the effect of the changes to the proposed methodology on the market basket cost weight in section III.A.3.i. of this final rule.

We did not receive any comments on our proposed methodology for calculating the freestanding IPF Wages and Salaries costs and therefore, we are finalizing the methodology for calculating the freestanding IPF Wages and Salaries costs as proposed.

Employee Benefits Costs

Effective with our implementation of CMS Form 2552–10, we began collecting Employee Benefits and Contract Labor data on Worksheet S–3, Part V. Previously, with CMS Form 2540–96, Employee Benefits and Contract Labor data were reported on Worksheet S–3, part II, which was applicable to only IPPS providers and, therefore, these data were not available for the derivation of the RPL market basket. Due to the lack of such data, the Employee Benefits cost weight for the 2008-based RPL market basket was derived by multiplying the 2008-based RPL market basket Wages and Salaries cost weight by the ratio of the IPPS hospital market basket Employee Benefits cost weight to the IPPS hospital market basket Wages and Salaries cost weight. Similarly, the Contract Labor cost weight for the 2008-based RPL market basket was derived by multiplying the 2008-based RPL market basket Wages and Salaries cost weight by the ratio of the IPPS hospital market basket Contract Labor cost weight to the IPPS hospital market basket Wages and Salaries cost weight.

For FY 2012 Medicare cost report data, while there were providers that did report data on Worksheet S–3, part V, many providers did not complete this worksheet. However, we believe we had a large enough sample to enable us to produce reasonable Employee Benefits cost weights. We continue to encourage all providers to report these data on the Medicare cost report.

For freestanding IPFs, Employee Benefits costs are equal to the data reported on Worksheet S–3, Part V, line 2, column 2.

For hospital-based IPFs, we calculate total benefits as the sum of benefit costs reported on Worksheet S–3 Part V, line 3, column 2, and a portion of ancillary benefits and overhead benefits for the total facility. We proposed that ancillary benefits attributable to the hospital-based IPF would be calculated by multiplying ancillary wages and salaries for the hospital-based IPF as determined in the derivation of Wages and Salaries for the hospital-based IPF by the ratio of total facility benefits to total facility wages and salaries. Similarly, we proposed that overhead benefits attributable to the hospital-based IPF would be calculated by multiplying overhead wages and salaries for the hospital-based IPF as determined in the derivation of Wages and Salaries for the hospital-based IPF by the ratio of total facility benefits to total facility wages and salaries.

Based on the comment above regarding the omission of overhead Wages and Salaries attributable to the ancillary departments, we are revising our methodology for calculating Employee Benefits costs for hospital-based IPFs to include overhead employee benefits attributable to the ancillary departments. Our proposed methodology included Employee Benefits attributable to hospital-based IPF routine inpatient unit only. We are estimating overhead employee benefits attributable to the ancillary departments using the same general methodology used to calculate routine inpatient overhead benefits and ancillary employee benefits attributable to the hospital-based IPF unit.

Overhead employee benefits attributable to the ancillary departments are calculated by multiplying overhead wages and salaries attributable to the ancillary departments by the ratio of total facility benefits to total facility wages and salaries. Therefore, based on public comments, total employee benefits for hospital-based IPFs are now equal to the sum of benefit costs reported on Worksheet S–3 Part V, line 3, column 2; a portion of ancillary benefits; and a portion of overhead benefits attributable to the routine inpatient unit and ancillary departments.

In addition, our methodology to calculate overhead benefits attributable to the hospital-based IPF is to multiply overhead wages and salaries for the hospital-based IPF routine inpatient unit (as determined in the derivation of Wages and Salaries for the hospital-based IPF) by the ratio of total facility benefits to total facility wages and

[2] See the Medicare cost report instructions at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021935.html*, Chapter, 40, Page 40–259 to 40–260..

salaries. Therefore, our changes to the overhead wages and salaries for the hospital-based IPF routine inpatient unit discussed above would result in changes to the overhead employee benefits attributable to the hospital-based IPF routine inpatient unit. The effect of these methodology changes on the Employee Benefits cost weight are discussed in more detail in section III.A.3.a.ii below.

We received one comment specific to our proposed methodology for calculating Employee Benefits costs.

Comment: Two commenters encouraged CMS to review the Dobson/DaVanzo report (referenced above), which noted our proposal to change the methodology for determining Employee Benefits costs from the methodology used to determine the Employee Benefits cost weight for the 2008-based RPL market basket. As discussed in the proposed rule, under the RPL methodology, we used data from IPPS hospitals as a proxy for determining these costs for RPL facilities. The Dobson DaVanzo report noted the low reporting of data on Worksheet S3, part V, used in the Employee Benefit and Contract Labor cost weight calculations. They stated that CMS should consider using IPPS data as a proxy for these specific data elements as is done for the RPL market basket.

Response: In the proposed rule (80 FR 25019), we noted that many providers did not report Worksheet S–3, part V data but that we believed we had a large enough sample to produce a reasonable Employee Benefits cost weight. Specifically, we found that when we recalculated the cost weight, after weighting to reflect the characteristics of the universe of IPF providers (freestanding and hospital-based), it did not have a material effect on the resulting cost weight. We understand the commenters' concern for the methodology change. However, we believe that the use of employee benefit costs reported by IPFs is a technical improvement from the methodology used for the 2008-based RPL market basket. Specifically, this methodology calculated the Employee Benefit cost weight by multiplying the RPL market basket Wages and Salaries cost weight by the IPPS employee benefit ratio. The IPPS employee benefit ratio was equal to the 2006-based IPPS market basket Employee Benefit cost weight divided by the 2006-based IPPS market basket Wages and Salaries cost weight. Using the rebased and revised 2010- based IPPS market basket, we calculate an employee benefit ratio of 28 percent compared to the 2012-based IPF market basket with 26 percent. Much of this two-percentage-point difference is attributable to the characteristics of the IPF facilities as compared to the IPPS hospitals. Approximately 20 percent of total costs for IPFs are attributable to for-profit facilities (80 percent are attributable to nonprofit and government facilities) while approximately 10 percent of total costs for IPPS hospitals are attributable to for-profit facilities (90 percent are attributable to nonprofit and government facilities). Both the IPF and IPPS hospital data show that the employee benefit ratio for for-profit facilities is lower than the employee benefit ratio for nonprofit/government facilities (in the range of 6–7 percentage points lower), thus IPFs' higher proportion of for-profit facilities compared to IPPS hospitals leads to a lower employee benefit ratio.

Final Decision: In conclusion, we believe the use of Worksheet S–3, part V data for IPFs is a technical improvement from the methodology used for the 2008-based RPL market basket as we believe it better reflects the cost structures of IPFs. We encourage IPF providers to continue to report Worksheet S–3, part V data and we will continue to monitor the data as the reporting improves. Therefore, after consideration of public comments, we are finalizing our proposed methodology for calculating the freestanding Employee benefit costs for the 2012-based IPF market basket using the Worksheet S–3, part V data as proposed.

Also, as discussed above, we are now capturing the proportion of overhead employee benefits attributable to ancillary departments in the hospital-based IPF employee benefit costs, based on public comments. Therefore, total employee benefits for hospital-based IPFs is equal to the sum of benefit costs reported on Worksheet S–3 Part V, line 3, column 2; a portion of ancillary benefits; and a portion of overhead benefits attributable to both the routine inpatient unit and ancillary departments.

Contract Labor Costs

Similar to the RPL and IPPS market baskets, Contract Labor costs are primarily associated with direct patient care services. Contract Labor costs for other services such as accounting, billing, and legal are calculated separately using other government data sources as described in section III.A.3.a.i. of this final rule. As discussed in this final rule in the Employee Benefits section, we now have data reported on Worksheet S–3, Part V that we can use to derive the Contract Labor cost weight for the 2012-based IPF market basket. For freestanding IPFs, we proposed Contract Labor costs would be based on data reported on Worksheet S–3, part V, column 1, line 2, and for hospital-based IPFs Contract Labor costs are based on line 3 of this same worksheet. As previously noted, for FY 2012 Medicare cost report data, while there were providers that did report data on Worksheet S–3, part V, many providers did not complete this worksheet. However, we believe we had a large enough sample to enable us to produce a reasonable Contract Labor cost weight. We continue to encourage all providers to report these data on the Medicare cost report.

We received one comment on our methodology for calculating Contract Labor costs that was similar to the comments we received regarding Employee Benefits.

Comment: Two commenters encouraged CMS to review the Dobson/DaVanzo report (noted above), which noted CMS' proposal to change the methodology for determining Contract Labor cost weight from the methodology used to derive the 2008-based RPL market basket. Under the RPL methodology, CMS used data from IPPS hospitals as a proxy for determining these costs for RPL facilities. The report expressed concern for the low response rate and its potential impact on the contract labor cost weight.

Response: We appreciate and understand the commenters' concern for the methodology change from the RPL market basket. The RPL market basket contract labor costs were calculated by multiplying the RPL market basket Wages and Salaries cost weight by the IPPS contract labor ratio. The IPPS contract labor ratio was equal to the 2006-based IPPS market basket Contract Labor cost weight divided by the 2006-based IPPS market basket Wages and Salaries cost weight. We implemented this methodology as the Medicare cost report available at that time did not capture contract labor costs for IPFs while CMS Form 2552–10, used for the 2012-based IPF market basket, collects contract labor costs data for freestanding and hospital-based IPFs. As stated in the proposed rule (80 FR 25019), we believed we had a large enough sample to produce a reasonable Contract Labor cost weight as we found that when we recalculated the cost weight after weighting to reflect the characteristics (by urban/rural and ownership type) of the universe of IPF providers (freestanding and hospital-based), it did not have a material effect on the resulting cost weight (less than 0.2

percentage point). In addition, we would note that the 2012-based IPF cost report data produces a contract labor ratio that is similar to the contract labor ratio using the 2010-based IPPS market basket with a contract labor ratio of 4 percent.

Final Decision: We are finalizing our methodology for calculating Contract Labor costs as proposed.

Pharmaceuticals Costs

For freestanding IPFs, we proposed to calculate pharmaceuticals costs using non-salary costs reported on Worksheet A, column 7 less Worksheet A, column 1 for the pharmacy cost center (line 15) and drugs charged to patients cost center (line 73).

For hospital-based IPFs, we proposed to calculate pharmaceuticals costs causing a portion of the non-salary pharmacy costs and a portion of the non-salary drugs charged to patient costs reported for the total facility. Non-salary pharmacy costs attributable to the hospital-based IPF are calculated by multiplying total pharmacy costs attributable to the hospital-based IPF (as reported on Worksheet B, column 15, line 40) by the ratio of total non-salary pharmacy costs (Worksheet A, column 2, line 15) to total pharmacy costs (sum of Worksheet A, column 1 and 2 for line 15) for the total facility. Non-salary drugs charged to patient costs attributable to the hospital-based IPF are calculated by multiplying total non-salary drugs charged to patient costs (Worksheet B, part I, column 0, line 73 plus Worksheet B, part I, column 15, line 73 less Worksheet A, column 1, line 73) for the total facility by the ratio of Medicare drugs charged to patient ancillary costs for the IPF unit (as reported on Worksheet D–3 for IPF subproviders, line 73, column 3) to total Medicare drugs charged to patients ancillary costs for the total facility (equal to the sum of Worksheet D–3, line 73, column 3, for all relevant PPS (that is, IPPS, IRF, IPF and SNF)). We did not receive any specific comments on our proposed methodology for calculating Pharmaceuticals costs for freestanding and hospital-based IPFs.

Final Decision: We are finalizing our methodology for calculating Pharmaceuticals costs as proposed.

Professional Liability Insurance (PLI) Costs

For freestanding IPFs, we proposed that PLI costs (often referred to as malpractice costs) are equal to premiums, paid losses and self-insurance costs reported on Worksheet S–2, line 118, columns 1 through 3.

For hospital-based IPFs, we proposed to assume that the PLI weight for the total facility is similar to the hospital-based IPF unit since the only data reported on this worksheet is for the entire facility. Therefore, hospital-based IPF PLI costs are equal to total facility PLI (as reported on Worksheet S–2, line 118, columns 1 through 3) divided by total facility costs (as reported on Worksheet A, line 200) times hospital-based IPF Medicare allowable total costs. We did not receive any specific comments on our proposed methodology for calculating PLI costs for freestanding and hospital-based IPFs.

Final Decision: We are finalizing our methodology for calculating PLI costs as proposed.

Capital Costs

For freestanding IPFs, capital costs are equal to Medicare allowable capital costs as reported on Worksheet B, Part II, column 26.

For hospital-based IPFs, capital costs are equal to IPF routine inpatient capital costs (as reported on Worksheet B, part II, column 26, line 40) and a portion of IPF ancillary capital costs. We calculate the portion of ancillary capital costs attributable to the hospital-based IPF for a given cost center by multiplying total facility ancillary capital costs for the specific ancillary cost center (as reported on Worksheet B, Part II, column 26) by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for IPF subproviders) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all relevant PPS (that is, IPPS, IRF, IPF and SNF)). We did not receive any specific comments on our proposed methodology for calculating Capital-related costs for freestanding and hospital-based IPFs.

Final Decision: We are finalizing our methodology for calculating Capital-related costs as proposed.

ii. Final Major Cost Category Computation

After we derive costs for the six major cost categories for each provider using the Medicare cost report data as described above, we proposed to trim the data for outliers based on the following steps. First, we divide the costs for each of the six categories by total Medicare allowable costs calculated for the provider to obtain cost weights for the universe of IPF providers. Next, we apply a mutually exclusive top and bottom 5 percent trim for each cost weight to remove outliers. After the outliers have been removed, we sum the costs for each category across all remaining providers. We then divide this by the sum of total Medicare allowable costs across all remaining providers to obtain a cost weight for the proposed 2012-based IPF market basket for the given category. Finally, we calculate the residual ''All Other'' cost weight that reflects all remaining costs that are not captured in the six cost categories listed above. See Table 1 for the resulting cost weights for these major cost categories that we obtain from the Medicare cost reports. In Table 1, we provide the proposed cost weights, as well as the final major cost weights after implementing the methodological changes to the calculation of the Wages and Salaries and Employee Benefits costs as described above.

TABLE 1—MAJOR COST CATEGORIES AS DERIVED FROM MEDICARE COST REPORTS

Major cost categories	Proposed 2012-based IPF (percent)	Final 2012-based IPF (percent)	2008-Based RPL (percent)
Wages and Salaries	50.8	51.0	47.4
Employee Benefits [1]	13.0	13.1	12.3
Contract Labor [1]	1.4	1.4	2.6
Professional Liability Insurance (Malpractice)	1.1	1.1	0.8
Pharmaceuticals	4.8	4.8	6.5
Capital	7.0	7.0	8.4
All Other	22.0	21.6	22.0

Note: Total may not sum to 100 due to rounding.

[1] Due to the lack of Medicare cost report data, the Employee Benefits and Contract Labor cost weights in the 2008-based RPL market basket were based on the IPPS market basket.

As discussed in section III.A.3.i of this final rule, we made revisions to our proposed methodology for calculating Wages and Salaries costs for the IPF market basket based on public comments. The total effect of this methodology change on the 2012-based IPF market basket Wages and Salaries aggregate cost weight (which reflects freestanding and hospital-based IPFs) is an increase of 0.2 percentage point from the proposed 2012-based IPF market basket Wages and Salaries cost weight of 51.0 percent. This net overall effect can be broken down into two components including: (1) The inclusion of overhead wages and salaries attributable to the ancillary departments for hospital-based IPFs (resulting in an increase of 2.2 percentage points to the aggregate Wages and Salaries cost weight) and (2) our change in methodology for deriving the overhead wages and salaries attributable to the hospital-based IPF routine inpatient unit (resulting in a decrease of 1.9 percentage points to the Wages and Salaries cost weight). The Wages and Salaries cost weight obtained directly from the Medicare cost reports for the final 2012-based IPF market basket is approximately 3 percentage points higher than the Wages and Salaries cost weight for the 2008-based RPL market basket. This is the result of freestanding IPFs having a larger percentage of costs attributable to labor than freestanding IRF and long-term care hospitals. These latter facilities were included in the 2008-based RPL market basket.

Also as discussed in section III.A.3.a.i. of this final rule, we made revisions to our calculation of Employee Benefits costs based on public comment. The total effect of this methodology change on the 2012-based IPF market basket Employee Benefits aggregate cost weight (which reflects freestanding and hospital-based IPFs) is an increase of about 0.1 percentage point from the proposed 2012-based IPF market basket Employee Benefits cost weight of 13.1 percent. This net overall effect can be broken down into two components including: (1) The inclusion of overhead employee benefits attributable to the ancillary departments (resulting in an increase of 0.8 percentage point to the aggregate Employee Benefits cost weight) and (2) changes to the overhead employee benefits attributable to the hospital-based IPF routine inpatient unit as a result of changes to the routine overhead wages and salaries for the hospital-based IPF (resulting in a decrease of 0.7 percentage point to the Employee Benefits cost weight).

As we did for the 2008-based RPL market basket, we proposed to allocate the Contract Labor cost weight to the Wages and Salaries and Employee Benefits cost weights based on their relative proportions under the assumption that contract labor costs are comprised of both wages and salaries and employee benefits. The Contract Labor allocation proportion for Wages and Salaries is equal to the Wages and Salaries cost weight as a percent of the sum of the Wages and Salaries cost weight and the Employee Benefits cost weight. For the proposed rule, this rounded percentage was 80 percent; therefore, we proposed to allocate 80 percent of the Contract Labor cost weight to the Wages and Salaries cost weight and 20 percent to the Employee Benefits cost weight. Table 2 shows the Wages and Salaries and Employee Benefit cost weights after Contract Labor cost weight allocation for both the proposed 2012-based IPF market basket and 2008-based RPL market basket. We did not receive any public comments on our methodology for allocating Contract Labor to the Wages and Salaries and Employee Benefits cost weights.

Final Decision: We are finalizing our methodology for allocating Contract Labor as proposed. For the final rule, after making changes to the Wages and Salaries and Employee Benefits cost weights, the rounded percentage remains 80 percent. Therefore, we are finalizing our methodology as proposed and allocating 80 percent of the Contract Labor cost weight to the Wages and Salaries cost weight and 20 percent to the Employee Benefits cost weight.

TABLE 2—WAGES AND SALARIES AND EMPLOYEE BENEFITS COST WEIGHTS AFTER CONTRACT LABOR ALLOCATION

Major cost categories	Proposed 2012-based IPF	Final 2012-based IPF	2008-Based RPL
Wages and Salaries	51.9	52.1	49.4
Employee Benefits	13.3	13.4	12.8

iii. Derivation of the Detailed Operating Cost Weights

To further divide the ''All Other'' residual cost weight estimated from the FY 2012 Medicare Cost Report data into more detailed cost categories, we proposed to use the 2007 Benchmark Input-Output (I–O) ''Use Tables/Before Redefinitions/Purchaser Value'' for North American Industry Classification System (NAICS) 622000 Hospitals, published by the Bureau of Economic Analysis (BEA). These data are publicly available at *http://www.bea.gov/industry/io_annual.htm.*

The BEA Benchmark I–O data are scheduled for publication every 5 years with the most recent data available for 2007. The 2007 Benchmark I–O data are derived from the 2007 Economic Census and are the building blocks for BEA's economic accounts. Thus, they represent the most comprehensive and complete set of data on the economic processes or mechanisms by which output is produced and distributed.[3] BEA also produces Annual I–O estimates; however, while based on a similar methodology, these estimates reflect less comprehensive and less detailed data sources and are subject to revision when benchmark data becomes available. Instead of using the less detailed Annual I–O data, we proposed to inflate the 2007 Benchmark I–O data forward to 2012 by applying the annual price changes from the respective price proxies to the appropriate market basket cost categories that are obtained from the 2007 Benchmark I–O data. We repeat this practice for each year. We then calculated the cost shares that each cost category represents of the inflated 2012 data. These resulting 2012 cost shares are applied to the All Other residual cost weight to obtain the detailed cost weights for the 2012-based IPF market basket. For example, the cost for Food: Direct Purchases represents 6.5 percent of the sum of the ''All Other'' 2007 Benchmark I–O Hospital Expenditures inflated to 2012; therefore, the Food: Direct Purchases cost weight represents 6.5 percent of the 2012-based IPF market basket's ''All Other'' cost category (21.6 percent), yielding a ''final'' Food: Direct Purchases cost weight of 1.4 percent in the proposed 2012-based IPF market basket (0.065 * 21.6 percent = 1.4 percent).

Using this methodology, we proposed to derive eighteen detailed IPF market basket cost category weights from the

[3] *http://www.bea.gov/papers/pdf/IOmanual_092906.pdf*

2012-based IPF market basket residual cost weight (21.6 percent). These categories are: (1) Electricity, (2) Fuel, Oil, and Gasoline (3) Water & Sewerage (4) Food: Direct Purchases, (5) Food: Contract Services, (6) Chemicals, (7) Medical Instruments, (8) Rubber & Plastics, (9) Paper and Printing Products, (10) Miscellaneous Products, (11) Professional Fees: Labor-related, (12) Administrative and Facilities Support Services, (13) Installation, Maintenance, and Repair, (14) All Other Labor-related Services, (15) Professional Fees: Nonlabor-related, (16) Financial Services, (17) Telephone Services, and (18) All Other Nonlabor-related Services. We did not receive any specific comments on our proposed methodology of deriving detailed market basket cost category weights using the BEA Benchmark I–O data.

Final Decision: We are finalizing our methodology for deriving the detailed market basket cost weights as proposed. However, since the methodological change to the derivation of Wages and Salaries and Employee Benefits results in a compensation cost weight that is slightly higher than proposed, the residual cost share weight is slightly lower than proposed. Therefore, we are finalizing the residual cost share weight of 21.6 percent rather than the proposed 22.0 percent. We would note that the residual All-Other cost weight was calculated using three decimal places and then rounded to a tenth of a percentage point for presentation purposes. Since this residual is used to calculate the detailed cost category weights using the BEA I–O data, these detailed cost category weights would also have slight revisions. These revisions round to no more than 0.1 percentage point.

iv. Derivation of the Detailed Capital Cost Weights

As described in section III.A.3.a.i. of the proposed rule, we proposed a Capital-Related cost weight of 7.0 percent as obtained from the FY 2012 Medicare cost reports for freestanding and hospital-based IPF providers. We proposed to separate this total Capital-Related cost weight into more detailed cost categories.

Using FY 2012 Medicare cost reports, we are able to group Capital-Related costs into the following categories: Depreciation, Interest, Lease, and Other Capital-Related costs. For each of these categories, we proposed to determine separately for hospital-based IPFs and freestanding IPFs what proportion of total capital-related costs the category represent.

For freestanding IPFs, we proposed to derive the proportions for Depreciation, Interest, Lease, and Other Capital-related costs using the data reported by the IPF on Worksheet A–7, which is similar to the methodology used for the 2008-based RPL market basket.

For hospital-based IPFs, data for these four categories are not reported separately for the subprovider; therefore, we proposed to derive these proportions using data reported on Worksheet A–7 for the total facility. We are assuming the cost shares for the overall hospital are representative for the hospital-based subprovider IPF unit. For example, if depreciation costs make up 60 percent of total capital costs for the entire facility, we believe it is reasonable to assume that the hospital-based IPF will also have a 60 percent proportion because it is a subprovider unit contained within the total facility.

In order to combine each detailed capital cost weight for freestanding and hospital-based IPFs into a single capital cost weight for the 2012-based IPF market basket, we proposed to weight together the shares for each of the categories (Depreciation, Interest, Lease, and Other Capital-related costs) based on the share of total capital costs each provider type represents of the total capital costs for all IPFs for 2012. Applying this methodology results in proportions of total capital-related costs for Depreciation, Interest, Lease and Other Capital-related costs that are representative of the universe of IPF providers.

Next, we proposed to allocate lease costs across each of the remaining detailed capital-related cost categories as was done in the 2008-based RPL market basket. This will result in 3 primary capital-related cost categories in the 2012-based IPF market basket: Depreciation, Interest, and Other Capital-Related costs. Lease costs are unique in that they are not broken out as a separate cost category in the 2012-based IPF market basket, but rather we proposed to proportionally distribute these costs among the cost categories of Depreciation, Interest, and Other Capital-Related, reflecting the assumption that the underlying cost structure of leases is similar to that of capital-related costs in general. As was done under the 2008-based RPL market basket, we proposed to assume that 10 percent of the lease costs as a proportion of total capital-related costs represents overhead and assign those costs to the Other Capital-Related cost category accordingly. We distributed the remaining lease costs proportionally across the 3 cost categories (Depreciation, Interest, and Other Capital-Related) based on the proportion that these categories comprise of the sum of the Depreciation, Interest, and Other Capital-related cost categories (excluding lease expenses). This is the same methodology used for the 2008-based RPL market basket. The allocation of these lease expenses are shown in Table 3 below.

Finally, we proposed to further divide the Depreciation and Interest cost categories. We proposed to separate Depreciation into the following two categories: (1) Building and Fixed Equipment; and (2) Movable Equipment; and proposing to separate Interest into the following two categories: (1) Government/Nonprofit; and (2) For-profit.

To disaggregate the Depreciation cost weight, we need to determine the percent of total Depreciation costs for IPFs that is attributable to Building and Fixed Equipment, which we hereafter refer to as the ''fixed percentage.'' For the 2012-based IPF market basket, we proposed to use slightly different methods to obtain the fixed percentages for hospital-based IPFs compared to freestanding IPFs.

For freestanding IPFs, we proposed to use depreciation data from Worksheet A–7 of the FY 2012 Medicare cost reports, similar to the methodology used for the 2008-based RPL market basket. However, for hospital-based IPFs, we determined that the fixed percentage for the entire facility may not be representative of the IPF subprovider unit due to the entire facility likely employing more sophisticated movable assets that are not utilized by the hospital-based IPF. Therefore, for hospital-based IPFs, we proposed to calculate a fixed percentage using: (1) Building and fixture capital costs allocated to the subprovider unit as reported on Worksheet B, part I line 40; and (2) building and fixture capital costs for the top five ancillary cost centers utilized by hospital-based IPFs. We proposed to then weight these two fixed percentages (routine inpatient and ancillary) using the proportion that each capital cost type represents of total capital costs in the proposed 2012-based IPF market basket. We then proposed to weight the fixed percentages for hospital-based and freestanding IPFs together using the proportion of total capital costs each provider type represents.

To disaggregate the Interest cost weight, we need to determine the percent of total interest costs for IPFs that are attributable to government and nonprofit facilities, which we hereafter refer to as the ''nonprofit percentage.'' For the IPF market basket, we proposed

to use interest costs data from Worksheet A–7 of the FY 2012 Medicare cost reports for both freestanding and hospital-based IPFs, similar to the methodology used for the 2008-based RPL market basket. We determined the percent of total interest costs that are attributed to government and nonprofit IPFs separately for hospital-based and freestanding IPFs. We then proposed to weight the nonprofit percentages for hospital-based and freestanding IPFs together using the proportion of total capital costs each provider type represents.

Table 3 provides the detailed capital cost shares obtained from the Medicare cost reports. Ultimately, these detailed capital cost shares were applied to the total Capital-Related cost weight determined in section III.A.3.a.i. of the proposed rule to split out the total weight of 7.0 percent into more detailed cost categories and weights. We did not receive any specific comments on our proposed methodology for calculating the detailed capital cost weights for the 2012-based IPF market basket.

Final Decision: We are finalizing our methodology for deriving the detailed capital cost weights as proposed.

Therefore, the detailed capital cost weights for the final 2012-based IPF market basket contained in Table 3 are unchanged from the proposed rule.

TABLE 3—DETAILED CAPITAL COST WEIGHTS FOR THE PROPOSED 2012-BASED IPF MARKET BASKET

	Cost shares obtained from Medicare cost reports (percent)	Proposed detailed capital cost shares after allocation of lease expenses (percent)
Depreciation	64	75
Building and Fixed Equipment	46	53
Movable Equipment	19	22
Interest	15	17
Government/Nonprofit	12	14
For Profit	2	3
Lease	15	n/a
Other	6	8

v. 2012-Based IPF Market Basket Cost Categories and Weights

As stated in section III.A.3.i of this final rule, we are revising our methodology for deriving Wages and Salaries and Employee Benefit cost weights based on public comments. The methodological changes results in an increase of the Wages and Salaries and Employee Benefit cost weights of 0.2 percentage point and 0.1 percentage point, respectively. As a result of these methodology changes, the residual All-Other cost category was revised down 0.3 percentage point. Since this residual is used to calculate the detailed cost category weights using the BEA I–O data, these cost category weights would also have slight revisions. These revisions round to no more than 0.1 percentage point.

Table 4 shows the cost categories and weights for the proposed 2012-based IPF market basket, final 2012-based IPF market based on public comments, and the 2008-based RPL market basket.

TABLE 4—2012-BASED IPF COST WEIGHTS COMPARED TO 2008-BASED RPL COST WEIGHTS

Cost category	Proposed 2012-based IPF cost weight	Final 2012-based IPF cost weight	2008-Based RPL cost weight
Total	100.0	100.0	100.0
Compensation	65.2	65.5	62.3
Wages and Salaries	51.9	52.1	49.4
Employee Benefits	13.3	13.4	12.8
Utilities	1.8	1.7	1.6
Electricity	0.8	0.8	1.1
Fuel, Oil, and Gasoline	0.9	0.9	0.4
Water & Sewerage	0.1	0.1	0.1
Professional Liability Insurance	1.1	1.1	0.8
Malpractice	1.1	1.1	0.8
All Other Products and Services	25.0	24.6	27.0
All Other Products	11.7	11.5	15.6
Pharmaceuticals	4.8	4.8	6.5
Food: Direct Purchases	1.4	1.4	3.0
Food: Contract Services	0.9	0.9	0.4
Chemicals	0.6	0.6	1.1
Medical Instruments	1.9	1.9	1.8
Rubber & Plastics	0.5	0.5	1.1
Paper and Printing Products	1.0	0.9	1.0
Apparel	n/a	n/a	0.2
Machinery and Equipment	n/a	n/a	0.1
Miscellaneous Products	0.7	0.6	0.3
All Other Services	13.3	13.1	11.4
Labor-Related Services	6.7	6.6	4.7
Professional Fees: Labor-related	2.9	2.9	2.1
Administrative and Facilities Support Services	0.7	0.7	0.4
Installation, Maintenance, and Repair	1.6	1.6	-

TABLE 4—2012-BASED IPF COST WEIGHTS COMPARED TO 2008-BASED RPL COST WEIGHTS—Continued

Cost category	Proposed 2012-based IPF cost weight	Final 2012-based IPF cost weight	2008-Based RPL cost weight
All Other: Labor-related Services	1.5	1.5	2.1
Nonlabor-Related Services	6.6	6.5	6.7
Professional Fees: Nonlabor-related	2.6	2.6	4.2
Financial services	2.3	2.3	0.9
Telephone Services	0.6	0.6	0.4
Postage	n/a	n/a	0.6
All Other: Nonlabor-related Services	1.1	1.1	0.6
Capital-Related Costs	7.0	7.0	8.4
Depreciation	5.2	5.2	5.5
Fixed Assets	3.7	3.7	3.3
Movable Equipment	1.5	1.5	2.2
Interest Costs	1.2	1.2	2.0
Government/Nonprofit	1.0	1.0	0.7
For Profit	0.2	0.2	1.3
Other Capital-Related Costs	0.6	0.6	0.9
Other Capital-Related Costs	0.6	0.6	0.9

Note: Totals may not sum due to rounding.

We proposed that the 2012-based IPF market basket does not include separate cost categories for Apparel, Machinery & Equipment, and Postage. Due to the small weights associated with these detailed categories and relatively stable price growth in the applicable price proxy, we proposed to include Apparel and Machinery & Equipment in the Miscellaneous Products cost category and Postage in the All-Other Nonlabor-related Services. We note that these Machinery & Equipment expenses are for equipment that is paid for in a given year and not depreciated over the assets' useful life. Depreciation expenses for movable equipment are reflected in the Capital-related costs of the 2012-based IPF market basket. For the 2012-based IPF market basket, we also proposed to include a separate cost category for Installation, Maintenance, and Repair. We did not receive any public comments on our proposed list of detailed cost categories for the 2012-based IPF market basket.

Final Decision: We are finalizing our list of detailed cost categories as proposed.

b. Selection of Price Proxies

After developing the cost weights for the 2012-based IPF market basket, we proposed to select the most appropriate wage and price proxies currently available to represent the rate of price change for each expenditure category. For the majority of the cost weights, we base the price proxies on Bureau of Labor Statistics (BLS) data and grouped them into one of the following BLS categories:

• *Employment Cost Indexes.* Employment Cost Indexes (ECIs) measure the rate of change in employment wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. ECIs are superior to Average Hourly Earnings (AHE) as price proxies for input price indexes because they are not affected by shifts in occupation or industry mix, and because they measure pure price change and are available by both occupational group and by industry. The industry ECIs are based on the North American Classification System (NAICS) and the occupational ECIs are based on the Standard Occupational Classification System (SOC).

• *Producer Price Indexes.* Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs are used when the purchases of goods or services are made at the wholesale level.

• *Consumer Price Indexes.* Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by consumers. CPIs are only used when the purchases are similar to those of retail consumers rather than purchases at the wholesale level, or if no appropriate PPIs are available.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance:

• *Reliability.* Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Widely accepted statistical methods ensure that the data were collected and aggregated in a way that can be replicated. Low sampling variability is desirable because it indicates that the sample reflects the typical members of the population. (Sampling variability is variation that occurs by chance because only a sample was surveyed rather than the entire population.)

• *Timeliness.* Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly and, therefore, it is important for the underlying price proxies to be up-to-date, reflecting the most recent data available. We believe that using proxies that are published regularly (at least quarterly, whenever possible) helps to ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently, because we believe that this is an optimal way to stay abreast of the most current data available.

• *Availability.* Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis.

• *Relevance.* Relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs that we selected meet these criteria. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

Table 6 lists all price proxies that we proposed to use for the 2012-based IPF market basket. Below is a detailed explanation of the price proxies we are finalizing for each cost category weight.

i. Price Proxies for the Operating Portion of the 2012-Based IPF Market Basket

Wages and Salaries

To measure wage price growth in the proposed 2012-based IPF market basket, we proposed to apply a proxy blend based on six occupational subcategories within the Wages and Salaries category, which would reflect the IPF occupational mix. There is not a published wage proxy for IPF workers. The 2008-based RPL market basket uses the ECI for Wages and Salaries for All Civilian workers in Hospitals (BLS series code #CIU1026220000000I) to proxy these expenses.

We proposed to use the National Industry-Specific Occupational Employment and Wage estimates for North American Industrial Classification System (NAICS) 622200, Psychiatric & Substance Abuse Hospitals, published by the BLS Office of Occupational Employment Statistics (OES), as the data source for the wage cost shares in the wage proxy blend. We used OES' May 2012 data. Detailed information on the methodology for the national industry-specific occupational employment and wage estimates survey can be found at*http://www.bls.gov/oes/current/oes_tec.htm.*

Based on the OES data, there are six wage subcategories: Management; NonHealth Professional and Technical; Health Professional and Technical; Health Service; NonHealth Service; and Clerical. Table 5 lists the 2012 occupational assignments for the six wage subcategories.

TABLE 5—2012 OCCUPATIONAL ASSIGNMENTS FOR IPF WAGE BLEND

	2012 Occupational groupings
Group 1	Management.
11–0000	Management Occupations.
Group 2	NonHealth Professional & Technical.
13–0000	Business and Financial Operations Occupations.
15–0000	Computer and Mathematical Science Occupations.
17–0000	Architecture and Engineering Occupations.
19–0000	Life, Physical, and Social Science Occupations.
23–0000	Legal Occupations.
25–0000	Education, Training, and Library Occupations.
27–0000	Arts, Design, Entertainment, Sports, and Media Occupations.
Group 3	Health Professional & Technical.
29–1021	Dentists, General.
29–1031	Dietitians and Nutritionists.
29–1051	Pharmacists.
29–1062	Family and General Practitioners.
29–1063	Internists, General.
29–1069	Physicians and Surgeons, All Other.
29–1071	Physician Assistants.
29–1111	Registered Nurses.
29–1122	Occupational Therapists.
29–1123	Physical Therapists.
29–1125	Recreational Therapists.
29–1126	Respiratory Therapists.
29–1127	Speech-Language Pathologists.
29–1129	Therapists, All Other.
29–1199	Health Diagnosing and Treating Practitioners, All Other.
Group 4	Health Service.
21–0000	Community and Social Services Occupations.
29–2011	Medical and Clinical Laboratory Technologists.
29–2012	Medical and Clinical Laboratory Technicians.
29–2021	Dental Hygienists.
29–2032	Diagnostic Medical Sonographers.
29–2034	Radiologic Technologists and Technicians.
29–2041	Emergency Medical Technicians and Paramedics.
29–2051	Dietetic Technicians.
29–2052	Pharmacy Technicians.
29–2054	Respiratory Therapy Technicians.
29–2061	Licensed Practical and Licensed Vocational Nurses.
29–2071	Medical Records and Health Information Technicians.
29–2099	Health Technologists and Technicians, All Other.
29–9012	Occupational Health and Safety Technicians.
29–9099	Healthcare Practitioner and Technical Workers, All Other.
31–0000	Healthcare Support Occupations.
Group 5	NonHealth Service.
33–0000	Protective Service Occupations.
35–0000	Food Preparation and Serving Related Occupations.
37–0000	Building and Grounds Cleaning and Maintenance Occupations.
39–0000	Personal Care and Service Occupations.
41–0000	Sales and Related Occupations.
47–0000	Construction and Extraction Occupations.
49–0000	Installation, Maintenance, and Repair Occupations.
51–0000	Production Occupations.
53–0000	Transportation and Material Moving Occupations.
Group 6	Clerical.
43–0000	Office and Administrative Support Occupations.

Total expenditures by occupation (that is, occupational assignment) were calculated by taking the OES number of employees multiplied by the OES annual average salary. These expenditures were aggregated based on the six groups in Table 6. We next calculated the proportion of each group's expenditures relative to the total expenditures of all six groups. These proportions, listed in Table 5, represent the weights used in the wage proxy blend. We then proposed to use the published wage proxies in Table 6 for each of the six groups (that is, wage subcategories) as we believe these six price proxies are the most technically appropriate indices available to measure the price growth of the Wages and Salaries cost category in the proposed 2012-based IPF market basket.

TABLE 6—2012-BASED IPF MARKET BASKET WAGE PROXY BLEND

Wage subcategory	Wage blend weight	Price proxy	BLS Series ID
Health Service	36.2	ECI for Wages and Salaries for All Civilian workers in Healthcare and Social Assistance.	CIU10262000000000I
Health Professional and Technical.	33.5	ECI for Wages and Salaries for All Civilian workers in Hospitals	CIU10262200000000I
NonHealth Service	9.2	ECI for Wages and Salaries for Private Industry workers in Service Occupations.	CIU20200003000000I
NonHealth Professional and Technical.	7.3	ECI for Wages and Salaries for Private Industry workers in Professional, Scientific, and Technical Services.	CIU20254000000000I
Management	7.1	ECI for Wages and Salaries for Private Industry workers in Management, Business, and Financial.	CIU20200001100000I
Clerical	6.7	ECI for Wages and Salaries for Private Industry workers in Office and Administrative Support.	CIU20200002200000I
Total	100.0		

A comparison of the yearly changes from FY 2012 to FY 2015 for the 2012-based IPF wage blend and the 2008-based RPL wage proxy is shown in Table 7. The average annual increase in the two price proxies is similar, and in no year is the difference greater than 0.4 percentage point.

TABLE 7—FISCAL YEAR GROWTH IN THE 2012-BASED IPF WAGE PROXY BLEND AND 2008-BASED RPL WAGE PROXY

	2012	2013	2014	2015	Average 2012–2015
2012-based IPF Proposed Wage Proxy Blend	1.6	1.6	1.6	2.1	1.7
2008-based RPL Wage Proxy	1.5	1.5	1.5	1.7	1.6

Source: IHS Global Insight, Inc., 2nd Quarter 2015 forecast with historical data through 4th Quarter 2014.

We did not receive any comments on our proposed Wages and Salaries price proxy methodology.

Final Decision: We are finalizing the use a blended Wages and Salaries price proxy as proposed.

Benefits

For measuring benefits price growth in the 2012-based IPF market basket, we proposed to apply a benefits proxy blend based on the same six subcategories and the same six blend weights used in the wage proxy blend. These subcategories and blend weights are listed in Table 8.

We proposed that the applicable benefit ECIs be identical in industry definition to the wage blend ECIs selected for each of the six subcategories. These benefit ECIs, listed in Table 8, are not publically available. Therefore, we calculated ''ECIs for Total Benefits'' using publically available ''ECIs for Total Compensation'' for each subcategory and the relative importance of wages within that subcategory's total compensation. This is the same benefits ECI methodology we implemented in our IPPS, SNF, HHA, RPL, LTCH, and ESRD market baskets. We believe the six price proxies listed in Table 8 are the most technically appropriate indices to measure the price growth of the Benefits cost category in the 2012-based IPF market basket.

The current 2008-based RPL market basket uses the ECI for Benefits for All Civilian Workers in Hospitals to proxy Benefit expenses.

TABLE 8—2012-BASED IPF MARKET BASKET BENEFITS PROXY BLEND

Wage subcategory	Wage blend weight	Price proxy
Health Service	36.2	ECI for Total Benefits for All Civilian workers in Healthcare and Social Assistance.
Health Professional and Technical	33.5	ECI for Total Benefits for All Civilian workers in Hospitals.
NonHealth Service	9.2	ECI for Total Benefits for Private Industry workers in Service Occupations.
NonHealth Professional and Technical	7.3	ECI for Total Benefits for Private Industry workers in Professional, Scientific, and Technical Services.
Management	7.1	ECI for Total Benefits for Private Industry workers in Management, Business, and Financial.

TABLE 8—2012-BASED IPF MARKET BASKET BENEFITS PROXY BLEND—Continued

Wage subcategory	Wage blend weight	Price proxy
Clerical	6.7	ECI for Total Benefits for Private Industry workers in Office and Administrative Support.
Total	100.0	

A comparison of the yearly changes from FY 2012 to FY 2015 for the 2012-based IPF benefit proxy blend and the 2008-based RPL benefit proxy is shown in Table 9. The average annual increase in the two price proxies is similar, and in no year is the difference greater than 0.4 percentage point.

TABLE 9—FISCAL YEAR GROWTH IN THE 2012-BASED IPF BENEFIT PROXY BLEND AND 2008-BASED RPL BENEFIT PROXY

	2012	2013	2014	2015	Average 2012–2015
2012-based IPF Proposed Benefit Proxy Blend	2.5	1.9	2.0	2.0	2.1
2008-based RPL Benefit Proxy	2.1	1.8	2.1	2.0	2.0

Source: IHS Global Insight, Inc., 2nd Quarter 2015 forecast with historical data through 1st Quarter 2015

We did not receive any comments on our proposed methodology and use of a blended wage proxy index.

Final Decision: We are finalizing our proposal to use a blended wage proxy.

Electricity

We proposed to use the PPI for Commercial Electric Power (BLS series code #WPU0542) to measure the price growth of this cost category. This is the same price proxy used in the 2008-based RPL market basket.

Fuel, Oil, and Gasoline

We proposed to change the proxy used for the Fuel, Oil, and Gasoline cost category. The 2008-based RPL market basket uses the PPI for Petroleum Refineries (BLS series code #PCU32411–32411) to proxy these expenses.

For the 2012-based IPF market basket, we proposed to use a blend of the PPI for Petroleum Refineries and the PPI Commodity for Natural Gas (BLS series code #WPU0531). Our analysis of the Bureau of Economic Analysis' 2007 Benchmark Input-Output data (use table before redefinitions, purchaser's value for NAICS 622000 [Hospitals]), shows that Petroleum Refineries expenses accounts for approximately 70 percent and Natural Gas accounts for approximately 30 percent of the Fuel, Oil, and Gasoline expenses. Therefore, we proposed to blend using 70 percent of the PPI for Petroleum Refineries (BLS series code #PCU32411–32411) and 30 percent of the PPI Commodity for Natural Gas (BLS series code #WPU0531). We believe that these 2 price proxies are the most technically appropriate indices available to measure the price growth of the Fuel, Oil, and Gasoline cost category in the 2012-based IPF market basket.

Water and Sewerage

We proposed to use the CPI for Water and Sewerage Maintenance (BLS series code #CUUR0000SEHG01) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Professional Liability Insurance

We proposed to use the CMS Hospital Professional Liability Index to measure changes in professional liability insurance (PLI) premiums. To generate this index, we collect commercial insurance premiums for a fixed level of coverage while holding non-price factors constant (such as a change in the level of coverage). This is the same proxy used in the 2008-based RPL market basket.

Pharmaceuticals

We proposed to use the PPI for Pharmaceuticals for Human Use, Prescription (BLS series code #WPUSI07003) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Food: Direct Purchases

We proposed to use the PPI for Processed Foods and Feeds (BLS series code #WPU02) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Food: Contract Purchases

We proposed to use the CPI for Food Away From Home (BLS series code #CUUR0000SEFV) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Chemicals

We proposed to use a four part blended PPI composed of the PPI for Industrial Gas Manufacturing (BLS series code PCU325120325120P), the PPI for Other Basic Inorganic Chemical Manufacturing (BLS series code #PCU32518–32518), the PPI for Other Basic Organic Chemical Manufacturing (BLS series code #PCU32519–32519), and the PPI for Soap and Cleaning Compound Manufacturing (BLS series code #PCU32561–32561). We updated the blend weights using 2007 Benchmark I–O data which, compared to 2002 Benchmark I–O data, is weighted more toward organic chemical products and weighted less toward inorganic chemical products.

Table 10 shows the weights for each of the four PPIs used to create the blended PPI. These are the same four proxies used in the 2008-based RPL market basket; however, the blended PPI weights in the 2008-based RPL market baskets were based on 2002 Benchmark I–O data.

TABLE 10—BLENDED CHEMICAL PPI WEIGHTS

Name	Proposed 2012-based IPF weights (percent)	2008-Based RPL weights (percent)	NAICS
PPI for Industrial Gas Manufacturing	32	35	325120
PPI for Other Basic Inorganic Chemical Manufacturing	17	25	325180
PPI for Other Basic Organic Chemical Manufacturing	45	30	325190
PPI for Soap and Cleaning Compound Manufacturing	6	10	325610

Medical Instruments

We proposed to use a blend for the Medical Instruments cost category. The 2007 Benchmark Input-Output data shows an approximate 50/50 split between Surgical and Medical Instruments and Medical and Surgical Appliances and Supplies for this cost category. Therefore, we blended composed of 50 percent of the commodity-based PPI for Surgical and Medical Instruments (BLS code #WPU1562) and 50 percent of the commodity-based PPI for Medical and Surgical Appliances and Supplies (BLS code #WPU1563). The 2008-based RPL market basket uses the single, higher level PPI for Medical, Surgical, and Personal Aid Devices (BLS series code #WPU156).

Rubber and Plastics

We proposed to use the PPI for Rubber and Plastic Products (BLS series code #WPU07) to measure price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Paper and Printing Products

We proposed to use the PPI for Converted Paper and Paperboard Products (BLS series code #WPU0915) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Miscellaneous Products

We proposed to use the PPI for Finished Goods Less Food and Energy (BLS series code #WPUSOP3500) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Professional Fees: Labor-Related

We proposed to use the ECI for Total Compensation for Private Industry workers in Professional and Related (BLS series code #CIU20100001200000I) to measure the price growth of this category. This is the same proxy used in the 2008-based RPL market basket.

Administrative and Facilities Support Services

We proposed to use the ECI for Total Compensation for Private Industry workers in Office and Administrative Support (BLS series code #CIU2010000220000I) to measure the price growth of this category. This is the same proxy used in the 2008-based RPL market basket.

Installation, Maintenance, and Repair

We proposed to use the ECI for Total Compensation for Civilian workers in Installation, Maintenance, and Repair (BLS series code #CIU10100004300000I) to measure the price growth of this new cost category. Previously these costs were included in the All Other: Labor-related Services category and were proxied by the ECI for Total Compensation for Private Industry workers in Service Occupations (BLS series code #CIU2010000300000I). We believe that this index better reflects the price changes of labor associated with maintenance-related services and its incorporation represents a technical improvement to the market basket.

All Other: Labor-Related Services

We proposed to use the ECI for Total Compensation for Private Industry workers in Service Occupations (BLS series code #CIU2010000300000I) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Professional Fees: Nonlabor-Related

We proposed to use the ECI for Total Compensation for Private Industry workers in Professional and Related (BLS series code #CIU20100001200000I) to measure the price growth of this category. This is the same proxy used in the 2008-based RPL market basket.

Financial Services

We proposed to use the ECI for Total Compensation for Private Industry workers in Financial Activities (BLS series code #CIU201520A000000I) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

Telephone Services

We proposed to use the CPI for Telephone Services (BLS series code #CUUR0000SEED) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

All Other: Nonlabor-Related Services

We proposed to use the CPI for All Items Less Food and Energy (BLS series code #CUUR0000SA0L1E) to measure the price growth of this cost category. This is the same proxy used in the 2008-based RPL market basket.

We did not receive any public comments on our proposed selection of price proxies.

Final Decision: We are finalizing our selection of price proxies as proposed.

ii. Price Proxies for the Capital Portion of the 2012-Based IPF Market Basket

Capital Price Proxies Prior to Vintage Weighting

We proposed to apply the same price proxies to the detailed capital-related cost categories as were applied in the 2008-based RPL market basket, which are provided in Table 12 and described below. We also proposed to continue to vintage weight the capital price proxies for Depreciation and Interest in order to capture the long-term consumption of capital. This vintage weighting method is similar to the method used for the 2008-based RPL market basket and is described below.

We proposed to proxy the Depreciation: Building and Fixed Equipment cost category by BEA's Chained Price Index for Nonresidential Construction for Hospitals and Special Care Facilities (BEA Table 5.4.4. Price Indexes for Private Fixed Investment in Structures by Type). We proposed to proxy the Depreciation: Movable Equipment cost category by the PPI for Machinery and Equipment (BLS series code #WPU11). We proposed to proxy the Nonprofit Interest cost category by the average yield on domestic municipal bonds (Bond Buyer 20-bond index). We proposed to proxy for the For-profit Interest cost category by the average yield on Moody's Aaa bonds (Federal

Reserve). We proposed to proxy the Other Capital-Related cost category by the CPI–U for Rent of Primary Residence (BLS series code #CUUS0000SEHA). We believe these are the most appropriate proxies for IPF capital-related costs that meet our selection criteria of relevance, timeliness, availability, and reliability.

We did not receive any public comments on our proposed selection of price proxies for the capital-related portion of the market basket.

Final Decision: We are finalizing our selection of price proxies for the capital-related portion of the market basket as proposed.

Vintage Weights for Price Proxies

Because capital is acquired and paid for over time, capital-related expenses in any given year are determined by both past and present purchases of physical and financial capital. The vintage-weighted capital-related portion of the 2012-based IPF market basket is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the proportion of capital-related purchases attributable to each year of the expected life of building and fixed equipment, movable equipment, and interest. We proposed to use vintage weights to compute vintage-weighted price changes associated with depreciation and interest expenses.

Capital-related costs are inherently complicated and are determined by complex capital-related purchasing decisions, over time, based on such factors as interest rates and debt financing. In addition, capital is depreciated over time instead of being consumed in the same period it is purchased. By accounting for the vintage nature of capital, we are able to provide an accurate and stable annual measure of price changes. Annual non-vintage price changes for capital are unstable due to the volatility of interest rate changes and, therefore, do not reflect the actual annual price changes for IPF capital-related costs. The capital-related component of the 2012-based IPF market basket reflects the underlying stability of the capital-related acquisition process.

To calculate the vintage weights for depreciation and interest expenses, we first need a time series of capital-related purchases for building and fixed equipment and movable equipment. We found no single source that provides an appropriate time series of capital-related purchases by hospitals for all of the above components of capital purchases. The early Medicare cost reports did not have sufficient capital-related data to meet this need. Data we obtained from the American Hospital Association (AHA) do not include annual capital-related purchases. However, the AHA does provide a consistent database of total expenses back to 1963. Consequently, we proposed to use data from the AHA Panel Survey and the AHA Annual Survey to obtain a time series of total expenses for hospitals. We then proposed to use data from the AHA Panel Survey supplemented with the ratio of depreciation to total hospital expenses obtained from the Medicare cost reports to derive a trend of annual depreciation expenses for 1963 through 2012. We proposed to separate these depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation as determined above. From these annual depreciation amounts we derive annual end-of-year book values for building and fixed equipment and movable equipment using the expected life for each type of asset category. While data are not available that are specific to IPFs, we believe this information for all hospitals serves as a reasonable alternative for the pattern of depreciation for IPFs.

To continue to calculate the vintage weights for depreciation and interest expenses, we also need the expected lives for Building and Fixed Equipment, Movable Equipment, and Interest for the 2012-based IPF market basket. We proposed to calculate the expected lives using Medicare cost report data from freestanding and hospital-based IPFs. The expected life of any asset can be determined by dividing the value of the asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated expected life of an asset if the rates of depreciation were to continue at current year levels, assuming straight-line depreciation. We proposed to determine the expected life of building and fixed equipment separately for hospital-based IPFs and freestanding IPFs and weight these expected lives using the percent of total capital costs each provider type represents. We proposed to apply a similar method for movable equipment. Using these methods, we determined the average expected life of building and fixed equipment to be equal to 23 years, and the average expected life of movable equipment to be equal to 11 years. For the expected life of interest, we believe vintage weights for interest should represent the average expected life of building and fixed equipment because, based on previous research described in the FY 1997 IPPS final rule (61 FR 46198), the expected life of hospital debt instruments and the expected life of buildings and fixed equipment are similar. We note that for the 2008-based RPL market basket, we used FY 2008 Medicare cost reports for IPPS hospitals to determine the expected life of building and fixed equipment and movable equipment (76 FR 51763). The 2008-based RPL market basket was based on an expected average life of building and fixed equipment of 26 years and an expected average life of movable equipment of 11 years, which were both calculated using data for IPPS hospitals.

Multiplying these expected lives by the annual depreciation amounts results in annual year-end asset costs for building and fixed equipment and movable equipment. We then calculate a time series, beginning in 1964, of annual capital purchases by subtracting the previous year's asset costs from the current year's asset costs.

For the building and fixed equipment and movable equipment vintage weights, we proposed to use the real annual capital-related purchase amounts for each asset type to capture the actual amount of the physical acquisition, net of the effect of price inflation. These real annual capital-related purchase amounts are produced by deflating the nominal annual purchase amount by the associated price proxy as provided above. For the interest vintage weights, we proposed to use the total nominal annual capital-related purchase amounts to capture the value of the debt instrument (including, but not limited to, mortgages and bonds). Using these capital-related purchase time series specific to each asset type, we proposed to calculate the vintage weights for building and fixed equipment, for movable equipment, and for interest.

The vintage weights for each asset type are deemed to represent the average purchase pattern of the asset over its expected life (in the case of building and fixed equipment and interest, 23 years, and in the case of movable equipment, 11 years). For each asset type, we used the time series of annual capital-related purchase amounts available from 2012 back to 1964. These data allow us to derive twenty-seven 23-year periods of capital-related purchases for building and fixed equipment and interest, and thirty-nine 11-year periods of capital-related purchases for movable equipment. For each 23-year period for building and fixed equipment and interest, or 11-year period for movable equipment, we calculate annual vintage weights by

dividing the capital-related purchase amount in any given year by the total amount of purchases over the entire 23-year or 11-year period. This calculation is done for each year in the 23-year or 11-year period and for each of the periods for which we have data. We then calculate the average vintage weight for a given year of the expected life by taking the average of these vintage weights across the multiple periods of data.

We did not receive any public comments on the proposed methodology for calculating the vintage weights for the 2012-based IPF market basket.

Final Decision: We are finalizing the vintage weights as proposed.

The vintage weights for the capital-related portion of the 2008-based RPL market basket and the 2012-based IPF market basket are presented in Table 11 below.

TABLE 11—2008-BASED RPL MARKET BASKET AND 2012-BASED IPF MARKET BASKET VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment		Movable equipment		Interest	
	2012-Based 23 years	2008-Based 26 years	2012-Based 11 years	2008-Based 11 years	2012-Based 23 years	2008-Based 26 years
1	0.029	0.021	0.069	0.071	0.017	0.010
2	0.031	0.023	0.073	0.075	0.019	0.012
3	0.034	0.025	0.077	0.080	0.022	0.014
4	0.036	0.027	0.083	0.083	0.024	0.016
5	0.037	0.028	0.087	0.085	0.026	0.018
6	0.039	0.030	0.091	0.089	0.028	0.020
7	0.040	0.031	0.096	0.092	0.030	0.021
8	0.041	0.033	0.100	0.098	0.032	0.024
9	0.042	0.035	0.103	0.103	0.035	0.026
10	0.044	0.037	0.107	0.109	0.038	0.029
11	0.045	0.039	0.114	0.116	0.040	0.033
12	0.045	0.041			0.042	0.035
13	0.045	0.042			0.044	0.038
14	0.046	0.043			0.046	0.041
15	0.046	0.044			0.048	0.043
16	0.048	0.045			0.053	0.046
17	0.049	0.046			0.057	0.049
18	0.050	0.047			0.060	0.052
19	0.051	0.047			0.063	0.053
20	0.051	0.045			0.066	0.053
21	0.051	0.045			0.067	0.055
22	0.050	0.045			0.069	0.056
23	0.052	0.046			0.073	0.060
24		0.046				0.063
25		0.045				0.064
26		0.046				0.068
Total	1.000	1.000	1.000	1.000	1.000	1.000

Note: Numbers may not add to total due to rounding.

The process of creating vintage-weighted price proxies requires applying the vintage weights to the price proxy index where the last applied vintage weight in Table 11 is applied to the most recent data point. We have provided on the CMS Web site an example of how the vintage weighting price proxies are calculated, using example vintage weights and example price indices. The example can be found at the following link: *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html* in the zip file titled ''Weight Calculations as described in the IPPS FY 2010 Proposed Rule.''

iii. Summary of Price Proxies of the 2012-Based IPF Market Basket

As stated above, we did not receive any public comments on our proposed list of operating or capital price proxies.

Final Decision: We are finalizing the list of operating and capital price proxies as proposed.

Table 12 shows both the operating and capital price proxies for the 2012-based IPF Market Basket.

TABLE 12—PRICE PROXIES FOR THE 2012-BASED IPF MARKET BASKET

Cost description	Price proxies	Weight (percent)
Total		100.0
Compensation		65.5
Wages and Salaries	Blended Wages and Salaries Price Proxy	52.1
Employee Benefits	Blended Benefits Price Proxy	13.4
Utilities		1.7
Electricity	PPI for Commercial Electric Power	0.8
Fuel, Oil, and Gasoline	Blend of the PPI for Petroleum Refineries and PPI for Natural Gas	0.9

TABLE 12—PRICE PROXIES FOR THE 2012-BASED IPF MARKET BASKET—Continued

Cost description	Price proxies	Weight (percent)
Water & Sewerage	CPI–U for Water and Sewerage Maintenance	0.1
Professional Liability Insurance		1.1
Malpractice	CMS Hospital Professional Liability Insurance Premium Index	1.1
All Other Products and Services		24.6
All Other Products		11.5
Pharmaceuticals	PPI for Pharmaceuticals for human use, prescription	4.8
Food: Direct Purchases	PPI for Processed Foods and Feeds	1.4
Food: Contract Services	CPI–U for Food Away From Home	0.9
Chemicals	Blend of Chemical PPIs	0.6
Medical Instruments	Blend of the PPI for Surgical and medical instruments and PPI for Medical and surgical appliances and supplies.	1.9
Rubber & Plastics	PPI for Rubber and Plastic Products	0.5
Paper and Printing Products	PPI for Converted Paper and Paperboard Products	0.9
Miscellaneous Products	PPI for Finished Goods Less Food and Energy	0.6
All Other Services		13.1
Labor-Related Services		6.6
Professional Fees: Labor-related	ECI for Total compensation for Private industry workers in Professional and related	2.9
Administrative and Facilities Support Services.	ECI for Total compensation for Private industry workers in Office and administrative support.	0.7
Installation, Maintenance, and Repair.	ECI for Total compensation for Civilian workers in Installation, maintenance, and repair.	1.6
All Other: Labor-related Services	ECI for Total compensation for Private industry workers in Service occupations	1.5
Nonlabor-Related Services		6.5
Professional Fees: Nonlabor-related.	ECI for Total compensation for Private industry workers in Professional and related	2.6
Financial services	ECI for Total compensation for Private industry workers in Financial activities	2.3
Telephone Services	CPI–U for Telephone Services	0.6
All Other: Nonlabor-related Services.	CPI–U for All Items Less Food and Energy	1.1
Capital-Related Costs		7.0
Depreciation		5.2
Fixed Assets	BEA chained price index for nonresidential construction for hospitals and special care facilities—vintage weighted (23 years).	3.7
Movable Equipment	PPI for machinery and equipment—vintage weighted (11 years)	1.5
Interest Costs		1.2
Government/Nonprofit	Average yield on domestic municipal bonds (Bond Buyer 20 bonds)—vintage weighted (23 years).	1.0
For Profit	Average yield on Moody's Aaa bonds—vintage weighted (23 years)	0.2
Other Capital-Related Costs	CPI–U for Rent of primary residence	0.6

Note: Totals may not sum to 100.0 percent due to rounding.

4. FY 2016 Market Basket Update

For FY 2016 (that is, beginning October 1, 2015 and ending September 30, 2016), we proposed to use an estimate of the 2012-based IPF market basket increase factor to update the IPF PPS base payment rate. Consistent with historical practice, we estimate the market basket update for the IPF PPS based on IHS Global Insight's forecast. IHS Global Insight (IGI), Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets and multifactor productivity (MFP).

In the FY 2016 proposed rule, using IGI's first quarter 2015 forecast with historical data through the fourth quarter of 2014, the projected proposed 2012-based IPF market basket increase factor for FY 2016 was 2.7 percent. We also proposed that if more recent data are subsequently available (for example, a more recent estimate of the market basket) we would use such data, to determine the FY 2016 update in the final rule.

For this final rule, we are estimating the market basket update for the IPF PPS using the most recent available data. Based on IGI's second quarter 2015 forecast with historical data through the first quarter of 2015, the final 2012-based IPF market basket increase factor for FY 2016 is 2.4 percent. For comparison, the current 2008-based RPL market basket is projected to increase by 2.4 percent in FY 2016 based on IGI's second quarter 2015 forecast and the proposed 2012-based IPF market basket is projected to increase 2.4 percent in FY 2016 based on IGI's second quarter 2015 forecast.

Final Decision: We are finalizing our methodology for determining the market basket increase as proposed. Therefore, consistent with our historical practice of estimating market basket increases based on the best available data, we are finalizing a market basket increase factor of 2.4 percent for FY 2016. Table 13 compares the final 2012-based IPF market basket and the 2008-based RPL market basket percent changes.

TABLE 13—2012-BASED IPF MARKET BASKET AND 2008-BASED RPL MARKET BASKET PERCENT CHANGES, FY 2010 THROUGH FY 2018

Fiscal Year (FY)	Final 2012-based IPF market basket index percent change	2008-Based RPL market basket index percent change
Historical data:		
FY 2010	2.0	2.2
FY 2011	2.2	2.5
FY 2012	1.9	2.2
FY 2013	2.0	2.1
FY 2014	1.9	1.8
Average 2010–2014	2.0	2.2
Forecast:		
FY 2015	1.9	2.0
FY 2016	2.4	2.4
FY 2017	2.9	2.9
FY 2018	3.0	3.1
Average 2015–2018	2.6	2.6

Note: These market basket percent changes do not include any further adjustments as may be statutorily required.
Source: IHS Global Insight, Inc. 2nd quarter 2015 forecast.

For FY 2016, the 2012-based IPF market basket update (2.4 percent) is the same as the 2008-based RPL market basket (2.4 percent).

5. Productivity Adjustment

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the ''MFP adjustment''). The Bureau of Labor Statistics (BLS) publishes the official measure of private non-farm business MFP. We refer readers to the BLS Web site at *http://www.bls.gov/mfp* for the BLS historical published MFP data.

MFP is derived by subtracting the contribution of labor and capital inputs growth from output growth. The projections of the components of MFP are currently produced by IGI, a nationally recognized economic forecasting firm with which CMS contracts to forecast the components of the market baskets and MFP. As described in the FY 2012 IPPS/LTCH final rule (76 FR 51690 through 51692), in order to generate a forecast of MFP, IGI replicated the MFP measure calculated by the BLS using a series of proxy variables derived from IGI's U.S. macroeconomic models. In the FY 2012 rule, we identified each of the major MFP component series employed by the BLS to measure MFP as well as provided the corresponding concepts determined to be the best available proxies for the BLS series.

Beginning with the FY 2016 rulemaking cycle, the MFP adjustment is calculated using a revised series developed by IGI to proxy the aggregate capital inputs. Specifically, IGI has replaced the Real Effective Capital Stock used for Full Employment GDP with a forecast of BLS aggregate capital inputs recently developed by IGI using a regression model. This series provides a better fit to the BLS capital inputs, as measured by the differences between the actual BLS capital input growth rates and the estimated model growth rates over the historical time period. Therefore, we are using IGI's most recent forecast of the BLS capital inputs series in the MFP calculations beginning with the FY 2016 rulemaking cycle. A complete description of the MFP projection methodology is available on our Web site at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html*. Although we discuss the IGI changes to the MFP proxy series in this final rule, in the future, when IGI makes changes to the MFP methodology, we will announce them on our Web site rather than in the annual rulemaking.

In the FY 2016 proposed rule, using IGI's first quarter 2015 forecast, the MFP adjustment for FY 2016 (the 10-year moving average of MFP for the period ending FY 2016) was projected to be 0.6 percent. Furthermore, we also proposed that if more recent data are subsequently available (for example, a more recent estimate of the market basket and MFP adjustment), we would use such data to determine the FY 2016 market basket update and MFP adjustment in the final rule. For this final rule, based on IGI's second quarter 2015 forecast with historical data through the first quarter of 2015, the MFP adjustment for FY 2016 (the 10-year moving average of MFP for the period ending FY 2016) is projected to be 0.5 percent.

Thus, in accordance with section 1886(s)(2)(A)(i) of the Act, we are finalizing our proposal to base the FY 2016 market basket update, which is used to determine the applicable percentage increase for the IPF payments, on the most recent estimate of the final 2012-based IPF market basket (estimated to be 2.4 percent based on IGI's second quarter 2015 forecast). We then reduced this percentage increase by the current estimate of the MFP adjustment for FY 2016 of 0.5 percentage point (the 10-year moving average of MFP for the period ending FY 2016 based on IGI's second quarter 2015 forecast).

Section 1886(s)(2)(A)(ii) of the Act requires the application of an ''other adjustment'' that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. For the RY beginning in 2015 (that is, FY 2016), section 1886(s)(3)(D) of the Act requires the reduction to be 0.2 percentage point. We are implementing the productivity adjustment and ''other adjustment'' in this final rule.

6. Labor-Related Share

Due to variations in geographic wage levels and other labor-related costs, we

believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index, which would apply to the labor-related portion of the Federal per diem base rate (hereafter referred to as the labor-related share). The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market. As stated in the FY 2015 IPF PPS final rule (79 FR 45943), the labor-related share was defined as the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor- Related Services, Administrative and Facilities Support Services, All Other: Labor-related Services, and a portion of the Capital Costs from the 2008-based RPL market basket.

Based on our definition of the labor-related share and the cost categories in the 2012-based IPF market basket, we proposed to include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair, All Other: Labor-related Services, and a portion of the Capital-Related cost weight from the proposed 2012-based IPF market basket.

Comment: Several commenters expressed concerns over the accuracy of the labor-related share using the proposed 2012-based IPF market basket, particularly given the proposed increase in the labor-related share of six percentage points over the FY 2015 labor-related share using the 2008-based RPL market basket. One commenter stated that they anticipated that the IPF labor costs would be higher than possibly rehabilitation or long-term care hospitals; however, a labor share of this magnitude was not anticipated. They further stated that CMS acknowledged in the proposed rule that approximately 69 percent of the IPFs have a wage index value less than 1.00 and would face permanent payment reductions, while the remaining IPFs in high-cost areas will receive payment increases due to the budget neutrality and cost-shifting that will occur if the proposed labor-related share and proposed wage indices are adopted.

Several other commenters stated there is a potential to overstate the labor-related share by multiplying the ancillary salary cost reported on worksheet A ''by the ratio of IPF Medicare ancillary costs for the cost center.'' They urged CMS to utilize a more accurate calculation for the ancillary cost centers in order to mitigate the risk of overstating labor-related share costs.

Response: We appreciate the commenters' concern over the increase in the FY 2016 labor-related share using the proposed 2012-based IPF market basket compared to the FY 2015 labor-related share using the 2008-based RPL market basket. As stated in the FY 2016 proposed rule (80 FR 25032), of the six percentage-point difference in the labor-related shares, three percentage points are attributable to the higher Wages and Salaries and Employee Benefits cost weights in the 2012-based IPF market basket compared to the 2008-based RPL market basket, while two percentage points are attributable to the higher weight associated with the labor-related services cost categories. Further, we stated that the higher Wages and Salaries cost weight in the 2012-based IPF market basket relative to the 2008-based RPL market basket is the result of freestanding IPFs having a larger percentage of costs attributable to labor than freestanding IRFs and long-term care hospitals. These latter facilities were included in the 2008-based RPL market basket.

The freestanding IPF Wages and Salaries cost weight is approximately 10 percentage points higher than the hospital-based IPF Wages and Salaries cost weight. It is also about six percentage points higher than the freestanding IRF Wages and Salaries cost weight, and 13 percentage points higher than the LTCH Wages and Salaries cost weight, all of which were included in the 2008-based RPL market basket. The methodology used to develop the freestanding IPF Wages and Salaries cost weight is similar to that used in the 2008-based RPL market basket, and we did not receive any comments on our proposed methodology outlined in the FY 2016 IPF PPS rule.

As stated in section III.A.3.a.i of this final rule, we evaluated our methodology for Wages and Salaries cost weight, including that of ancillary wages and salaries. Based on the comments received, we are revising our methodology for calculating the Wages and Salaries cost weight and Employee Benefits cost weight, resulting in an increase in the cost weights of 0.2 and 0.1 percentage point, respectively.

Comment: One commenter stated they had major reservations about the new inclusion of the Installation, Maintenance and Repair cost category in the labor-related share, stating that it adds an additional 1.6 percentage points in non-health related labor costs to the IPF labor-related share. They further stated that it is unclear why CMS considers this additional category a technical improvement to the IPF market basket since CMS has never recognized this cost category in its RPL market basket computations in prior years nor has CMS shown how this additional cost category improves the labor-related share computation. They urged CMS not to adopt this change to the labor-related share.

Response: We disagree with the commenter's claim that the Installation, Maintenance and Repair category is a new cost category in the labor-related share. As stated in the proposed rule (80 FR 25027 and 25032), Installation, Maintenance and Repair services costs were previously included in the ''All Other'' Labor-related Services cost category in the 2008-based RPL market basket, along with other services, including but not limited to janitorial, waste management, security, and dry cleaning/laundry services. Also, as stated in the proposed rule (80 FR 20527), we chose to create a separate cost category for Installation, Maintenance and Repair services in order to proxy these costs by the ECI for Total Compensation for Civilian workers in Installation, Maintenance, and Repair services. We believe this price proxy better reflects the price changes of labor associated with maintenance-related services. In the 2008-based RPL market basket, these services are proxied by the ECI for total Compensation for Private Industry in Service Occupations, which reflects price growth associated with general service occupations.

During our development of the 2012-based IPF market basket using 2007 Benchmark I–O data, we decided to aggregate detailed I–O NAICS data to create a cost category specific to Installation, Maintenance and Repair services and to proxy these costs by a more specific price index. A comparison of the average historical growth rate over the last 10 years showed that the ECI for Total Compensation for Civilian workers in Installation, Maintenance, and Repair outpaced the ECI for total Compensation for Private Industry in Service Occupations by approximately 0.4 percentage point. We continue to believe that the inclusion of this cost category is a technical improvement to the 2012-based IPF market basket as we are able to proxy Installation, Maintenance, and Repair services with a price proxy that better reflects the price changes of labor associated with maintenance-related services. Because Installation, Maintenance and Repair services tend to be labor-intensive and

are mostly performed at the facility (and, therefore, unlikely to be purchased in the national market), we continue to believe that they meet our definition of labor-related services and thus, should be included in the labor-related share.

Similar to the 2008-based RPL market basket, the 2012-based IPF market basket includes two cost categories for non-medical professional fees (including but not limited to expenses for legal, accounting, and engineering services). These are Professional Fees: Labor-related and Professional Fees: Nonlabor-related. For the proposed 2012-based IPF market basket, we estimated the labor-related percentage of non-medical professional fees (and assign these expenses to the Professional Fees: Labor-related services cost category) based on the same method that was used to determine the labor-related percentage of professional fees in the 2008-based RPL market basket.

To summarize, the professional services survey found that hospitals purchase the following proportion of these four services outside of their local labor market:

- 34 percent of accounting and auditing services.
- 30 percent of engineering services.
- 33 percent of legal services.
- 42 percent of management consulting services.

We proposed to apply each of these percentages to the respective Benchmark I–O cost category underlying the professional fees cost category to determine the Professional Fees: Nonlabor-related costs. The Professional Fees: Labor-related costs were determined to be the difference between the total costs for each Benchmark I–O category and the Professional Fees: Nonlabor-related costs. This is the same methodology that we used to separate the 2008-based RPL market basket professional fees category into Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories. For more detail regarding this methodology see the FY 2012 IPF final rule (76 FR 26445).

In addition to the professional services listed above, we also proposed to classify expenses under NAICS 55, Management of Companies and Enterprises, into the Professional Fees cost category as was done in the 2008-based RPL market basket. The NAICS 55 data are mostly comprised of corporate, subsidiary, and regional managing offices, or otherwise referred to as home offices. Since many facilities are not located in the same geographic area as their home office, we analyzed data from a variety of sources in order to determine what proportion of these costs should be appropriately included in the labor-related share. For the 2012-based IPF market basket, we derived the home office percentages using data for both freestanding IPF providers and hospital-based IPF providers. In the 2008-based RPL market basket, we used the home office percentages based on the data reported by freestanding IRFs, IPFs, and LTCHs.

Using data primarily from the Medicare cost reports and the Home Office Medicare Records (HOMER) database that provides the address (including city and state) for home offices, we were able to determine that 36 percent of the total number of freestanding and hospital-based IPFs that had home offices had those home offices located in their respective local labor markets—defined as being in the same Metropolitan Statistical Area (MSA).

The Medicare cost report requires hospitals to report their home office provider numbers. Using the HOMER database to determine the home office location for each home office provider number, we compared the location of the provider with the location of the hospital's home office. We then placed providers into one of the following 2 groups:

- Group 1—Provider and home office are located in different MSAs.
- Group 2—Provider and home office are located in the same MSA.

We found that 64 percent of the providers with home offices were classified into Group 1 (that is, different MSA) and, thus, these providers were determined to not be located in the same local labor market as their home office. We found that 36 percent of all providers with home offices were classified into Group 2 (that is, the same MSA). Given these results, we proposed to classify 36 percent of these Professional Fees costs into the Professional Fees: Labor-related cost category and the remaining 64 percent into the Professional Fees: Nonlabor-related Services cost category. This methodology for apportioning the Professional Fee expenses between labor-related and nonlabor-related categories is similar to the method used in the 2008-based RPL market basket (see 76 FR 26445).

We received one comment on our methodology for determining the Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost weights.

Comment: One commenter pointed out that CMS's proposed FY 2016 labor-related share of 74.9 percent is an 8.1 percent increase compared to the FY 2015 labor-related share of 69.294 percent, and disagreed with the logic used to support this increase, stating that CMS disproportionately emphasizes professional fees and home office costs in the calculations of the labor-related share. The commenter stated that of the 1,617 psychiatric hospitals/units, 69.4 percent are IPF units. The commenter then stated that the majority of IPF unit salaries relate to direct patient care (RNs, LPNs, Aides, etc.) and are consistent with salaries in the hospital acute care areas. The commenter noted that the FY 2016 IPPS proposed rule for acute care hospitals indicates no changes to the labor-related share for wage indexes less than 1.000 or wage indexes greater than 1.000 (the labor-related share for IPPS hospitals is 69.6 percent). The commenter stated that yet, in the FY 2016 IPF proposed rule, CMS believes an 8.1 percent increase is justified and indicative of salary changes to almost 70 percent of psychiatric providers. The commenter stated that this change also negatively impacts 64.4 percent of psychiatric providers, all located in CMS' Central/South Atlantic Regions. The commenter disagreed that East and West coast provider costs have increased significantly compared to the Midwest and thus should bear the brunt of this change.

The commenter further proposed that CMS consider calculating labor-related share percentages similar to those calculated for IPPS, where CMS uses a percentage for providers with a wage index less than 1.00 and a percentage for providers with a wage index greater than 1.00.

Response: We respectfully disagree with the commenter's statement that we are disproportionately emphasizing professional fees and home office costs in the calculations of the labor-related share. The components of the labor-related share are identical to those used in the IPPS labor-related share, including the inclusion of professional fees and home office costs in the IPPS labor-related share. (As stated above, we note that the Installation, Maintenance, and Repair services costs are included in the All Other: Labor-related Services in both the FY 2016 IPPS labor-related share and FY 2015 IPF labor-related share using the 2008-based RPL market basket).

The differences in the IPF labor-related share and IPPS labor-related share are primarily attributable to the Wages and Salaries, Employee Benefits, and Contract Labor cost weights (the sum of which is the Compensation cost weight) which are based on IPF PPS and IPPS Medicare cost report data,

respectively. We note that the 2010-based IPPS market basket cost weights are based on costs as a percent of total operating costs while the 2012-based IPF market basket cost weights are based on a percent of total costs (the sum of operating costs and capital costs). The 2012-based IPF Compensation cost weight as a percent of total operating costs (after removing the capital cost weight) is about 10 percentage points higher than the 2010-based IPPS Compensation cost weight whereas the 2012-based IPF market basket Professional Fees: Labor-related share cost weight as a percent of total operating costs (after removing the capital cost weight) is about two percentage points lower than the 2010-based IPPS market basket Professional Fees: Labor-related share cost weight. In addition, the 2012-based IPF Professional Fees: Labor-related share cost weight is about four percent of the 2012-based IPF Compensation cost weight whereas the 2010-based IPPS Professional Fees: Labor-related share cost weight is about nine percent of the 2012-based IPPS Compensation cost weight.

As the commenter stated, the Professional Fees: Labor-related share includes home office costs. As described above, we determine the proportion of the home office costs that are labor-related by comparing the IPF provider's location (that is, MSA) to the location of its home office (also, MSA). This is the same methodology used in the 2008-based RPL market basket and 2010-based IPPS market basket. The 2012 IPF Medicare cost report and Medicare HOMER data found that 36 percent were located in the same MSA (and thus were allocated to the Professional Fees: Labor-related share cost weight) whereas the same analysis using 2010 IPPS Medicare cost report data and Medicare HOMER data found this percentage to be much higher with 62 percent.

We would further note that the approximately three percentage point difference between the IPF labor-related share of 74.9 percent and the IPPS labor-related share of 69.6 percent is attributable to the IPF labor-related share including a portion of capital-related costs. The IPPS labor-related share applies to the operating base payment rate and therefore, does not include a portion of capital-related costs. IPPS has a separate capital base payment rate and geographic adjustment factor. The IPF PPS base payment rate reflects both operating and capital costs (similar to the IRF and SNF PPS); therefore, the labor-related share also reflects both costs.

We acknowledge the commenter's concern regarding an IPPS labor-related share of 62 percent for wage indexes less than 1.000 but there is no such provision for IPFs. The 62 percent rule is mandated by Section 403 of Public Law 108–173, which amended section 1886(d)(3)(E) of the Act and is applicable to IPPS hospitals operating base payment rate only.

We would also note that the FY 2016 IPPS proposed rule did not include a revision to the IPPS labor-related share. The IPPS labor-related share was last revised effective for FY 2014 when CMS finalized their proposal to rebase and revise the IPPS market basket as is now being done for the FY 2016 IPF PPS proposed rule.

Therefore, we disagree with the commenters' claim that we are overemphasizing professional fees and home office costs in the IPF labor-related share and we continue to believe a labor-related share based on the 2012-based IPF market basket is appropriate.

Final Decision: We are finalizing our methodology for determining the IPF labor-related share based on the final 2012-based IPF market basket (reflecting methodological revisions to the Wages and Salaries and Employee Benefit cost weights based on public comments as described in section III.A.3.a.i in this final rule).

Using this method and the IHS Global Insight, Inc. 2nd quarter 2015 forecast for the final 2012-based IPF market basket, the IPF labor-related share for FY 2016 is the sum of the FY 2016 relative importance of each labor-related cost category. The relative importance reflects the different rates of price change for these cost categories between the base year (FY 2012) and FY 2016. Table 14 shows the FY 2016 labor-related share using the final 2012-based IPF market basket relative importance and the FY 2015 labor-related share using the 2008-based RPL market basket.

The sum of the relative importance for FY 2016 operating costs (Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-related Services) is 72.1 percent, as shown in Table 14. We specified the labor-related share to one decimal place, which is consistent with the IPPS labor-related share (currently the Labor-related share from the RPL market basket is specified to 3 decimal places).

The portion of Capital that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage applied to the 2008-based RPL market basket. Since the relative importance for Capital-Related Costs is 6.8 percent of the 2012-based IPF market basket in FY 2016, we took 46 percent of 6.8 percent to determine the labor-related share of Capital for 2016. The result will be 3.1 percent, which we added to 72.1 percent for the operating cost amount to determine the total labor-related share for FY 2016.

The FY 2016 labor-related share using the 2012-based IPF market basket is about five percentage points higher than the FY 2015 labor-related share using the 2008-based RPL market basket. Of the 5 percentage point difference in the labor-related shares, three percentage points are attributable to the higher Wages and Salaries and Employee Benefits cost weights in the 2012-based IPF market basket compared to the 2008-based RPL market basket, while two percentage points are attributable to the higher weight associated with the labor-related services cost categories. Further, we stated that the higher Wages and Salaries cost weight in the 2012-based IPF market basket relative to the 2008-based RPL market basket is the result of freestanding IPFs having a larger percentage of costs attributable to labor than freestanding IRFs and long-term care hospitals both of which were included in the 2008-based RPL market basket.

TABLE 14—2016 IPF LABOR-RELATED SHARE

	FY 2016 Labor-related share based on 2012-based IPF market basket [1]	FY 2015 Final labor-related share [2]
Wages and Salaries	51.9	48.271
Employee Benefits	13.5	12.936

TABLE 14—2016 IPF LABOR-RELATED SHARE—Continued

	FY 2016 Labor-related share based on 2012-based IPF market basket [1]	FY 2015 Final labor-related share [2]
Professional Fees: Labor-related	2.9	2.058
Administrative and Facilities Support Services	0.7	0.415
Installation, Maintenance and Repair	1.6	
All Other: Labor-related Services	1.5	2.061
Subtotal	72.1	65.741
Labor-related portion of capital (46%)	3.1	3.553
Total LRS	75.2	69.294

[1] IHS Global Insight, Inc. 2nd quarter 2015 forecast.
[2] **Federal Register** 79 FR 45943.

In weighing the effects of the change in the LRS, we considered whether to recommend a 2-year transitional implementation of the increase in the LRS. We recognize that IPFs with wage index values of less than one would be adversely affected by an increased LRS, as a larger share of the base rate will be adjusted by the wage index value. About 69 percent of IPFs will have wage index values of less than one using FY2015 CBSA data, and 30 percent of these providers are rural. While the LRS will be updated in a budget neutral manner so that the overall impact on payments is zero, there will still be distributional effects on specific categories of IPFs. We considered the distributional effects of the multiple updates made in this final rule, including the update to the full LRS in FY 2016, and we found that the negative impact of updating the LRS in a single year, without a transition, was relatively small, as shown in Table 28 in section VIII. of this final rule. Additionally, we made two other adjustments to benefit providers: A transitional wage index and a phase-out of the 17 percent rural adjustment for the 37 IPFs that will change from rural to urban status due to the new CBSA delineations. As presented in section III.A.6. of this final rule, we used the 2012-based IPF market basket relative importance's to determine the FY 2016 IPF LRS. We believe this is appropriate as it is based on more recent, provider-specific data for IPFs. For all of these reasons, we implemented the full LRS in FY 2016.

Comment: We received three comments, which asked that we phase in the updated LRS over 2 years rather than implementing it in a single year. Commenters were concerned about the effect of the increase in the LRS on providers.

Response: We thank the commenters for their suggestion, but we are not providing a transition to the updated LRS. The 2012-based IPF market basket improves the accuracy of the IPF PPS, and the updated LRS is a more accurate reflection of the IPF labor-related share. Although in two other instances we are providing a transition that will benefit providers—a 1-year transitional wage index and the 3-year transition of the rural adjustment—in this case, we believe the impact on those providers that will be negatively affected by the updated LRS is relatively small. Furthermore, we have not typically provided a transition in the IPF PPS when the LRS has changed. For example, in the May 6, 2011 IPF PPS final rule, we rebased the RPL market basket, and the LRS changed from 75.400 to 70.317. Although this decrease in the LRS would have benefitted IPFs with wage index values less than one, but would have had a negative payment effect on IPFs with wage index values greater than one, we did not provide a transition to this lower LRS. For all of these reasons, we are implementing the updated IPF-specific LRS of 75.2 in full in FY 2016.

B. Updates to the IPF PPS for FY 2016 (Beginning October 1, 2015)

The IPF PPS is based on a standardized Federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient-level and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget-neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented. A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

Under the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget-neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

Next, we standardized the IPF PPS Federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. Additional information concerning this standardization can be found in the November 2004 IPF PPS final rule (69

FR 66932) and the RY 2006 IPF PPS final rule (71 FR 27045). We then reduced the standardized Federal per diem base rate to account for the outlier policy, the stop loss provision, and anticipated behavioral changes. A complete discussion of how we calculated each component of the budget-neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046). The final standardized budget-neutral Federal per diem base rate established for cost reporting periods beginning on or after January 1, 2005 was calculated to be $575.95.

The Federal per diem base rate has been updated in accordance with applicable statutory requirements and § 412.428 through publication of annual notices or proposed and final rules. A detailed discussion on the standardized budget-neutral Federal per diem base rate and the electroconvulsive therapy (ECT) payment per treatment appears in the August 2013 IPF PPS update notice (78 FR 46738 through 46739). These documents are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html.*

2. FY 2016 Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy (ECT) Payment Per Treatment

The current (that is, FY 2015) Federal per diem base rate is $728.31 and the ECT payment per treatment is $313.55. For FY 2016, we applied an update of 1.7 percent (that is, the 2012-based IPF market basket increase for FY 2016 of 2.4 percent less the productivity adjustment of 0.5 percentage point, and further reduced by the 0.2 percentage point required under section1886(s)(3)(D) of the Act), and the wage index budget-neutrality factor of 1.0041 (as discussed in section III.D.1.e. of this final rule) to the FY 2015 Federal per diem base rate of $728.31, yielding a Federal per diem base rate of $743.73 for FY 2016. Similarly, we applied the 1.7 percent payment update and the 1.0041 wage index budget-neutrality factor to the FY 2015 ECT payment per treatment, yielding an ECT payment per treatment of $320.19 for FY 2016.

As noted above, section 1886(s)(4) of the Act requires the establishment of a quality data reporting program for the IPF PPS beginning in RY 2015. We refer readers to section V. of this final rule for a discussion of the IPF Quality Reporting Program. Section 1886(s)(4)(A)(i) of the Act requires that, for RY 2014 and each subsequent rate year, the Secretary shall reduce any annual update to a standard Federal rate for discharges occurring during the rate year by 2.0 percentage points for any IPF that does not comply with the quality data submission requirements with respect to an applicable year. Therefore, we will apply a 2.0 percentage point reduction to the Federal per diem base rate and the ECT payment per treatment as follows:

For IPFs that failed to submit quality reporting data under the IPFQR program, we will apply a −0.3 percent annual update (that is, 1.7 percent reduced by 2 percentage points, in accordance with section 1886(s)(4)(A)(ii) of the Act) and the wage index budget-neutrality factor of 1.0041 to the FY 2015 Federal per diem base rate of $728.31, yielding a Federal per diem base rate of $729.10 for FY 2016.

Similarly, we will apply the −0.3 percent annual update and the 1.0041 wage index budget-neutrality factor to the FY 2015 ECT payment per treatment of $313.55, yielding an ECT payment per treatment of $313.89 for FY 2016.

C. Updates to the IPF PPS Patient-Level Adjustment Factors

1. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). While we have since used more recent claims data to simulate payments to set the fixed dollar loss threshold amount for the outlier policy and to assess the impact of the IPF PPS updates, we continue to use the regression-derived adjustment factors established in 2005 for FY 2016.

2. IPF PPS Patient-Level Adjustments

The IPF PPS includes payment adjustments for the following patient-level characteristics: Medicare Severity Diagnosis Related Groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments. We did not propose any changes to the IPF PPS Patient-level Adjustments.

a. MS–DRG Assignment

We believe it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing psychiatric care. For this reason, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set (ICD–9–CM) and DRG patient classification system (that is, the CMS DRGs) that were utilized at the time under the IPPS. In the May 2008 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). In the 2008 IPF PPS notice (73 FR 25716), we provided a crosswalk to reflect changes that were made under the IPF PPS to adopt the new MS–DRGs. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on the patient's principal diagnosis. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis. Mapping the DRGs to the MS–DRGs resulted in the current 17 IPF–MS–DRGs, instead of the original 15 DRGs, for which the IPF PPS provides an adjustment.

For the FY 2016 update, we are not making any changes to the IPF MS–DRG adjustment factors. In FY 2015 rulemaking (79 FR 45945 through 45947), we proposed and finalized conversions of the ICD–9–CM-based MS–DRGs to ICD–10–CM/PCS-based MS–DRGs, which will be implemented on October 1, 2015. Further information for the ICD–10–CM/PCS MS–DRG conversion project can be found on the CMS ICD–10–CM Web site at *http://www.cms.hhs.gov/Medicare/Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.*

For FY 2016, we will continue to make a payment adjustment for psychiatric diagnoses that group to one of the existing 17 IPF–MS–DRGs listed in the Addendum. Psychiatric principal diagnoses that do not group to one of the 17 designated DRGs will still receive the Federal per diem base rate and all other applicable adjustments, but the payment would not include a DRG adjustment.

As noted above, the diagnoses for each IPF–MS–DRG will be updated on October 1, 2015, using the ICD–10–CM/PCS code sets.

b. Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. In the May 2011 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Current billing instructions for claims for discharges on or after October 1, 2015 require IPFs to enter the complete ICD–10–CM codes for up to 24 additional diagnoses if they co-exist at the time of admission, or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM ''code first'' instructions apply. As we explained in the May 2011 IPF PPS final rule (76 FR 265451), the ''code first'' rule applies when a condition has both an underlying etiology and a manifestation due to the underlying etiology. For these conditions, ICD–9–CM has a coding convention that requires the underlying conditions to be sequenced first followed by the manifestation. Whenever a combination exists, there is a ''use additional code'' note at the etiology code and a ''code first'' note at the manifestation code.

The same principle holds for ICD–10–CM as for ICD–9–CM. Whenever a combination exists, there is a ''use additional code'' note in the ICD–10–CM codebook pertaining to the etiology code, and a ''code first'' code pertaining to the manifestation code. In the FY 2015 IPF PPS final rule, we provided a ''code first'' table for reference that highlights the same or similar manifestation codes where the ''code first'' instructions apply in ICD–10–CM that were present in ICD–9–CM (79 FR 46009).

As noted previously, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. The 17 comorbidity categories formerly defined using ICD–9–CM codes were converted to ICD–10–CM/PCS in the FY 2015 IPF PPS final rule (79 FR 45947 to 45955). The goal for converting the comorbidity categories is referred to as replication, meaning that the payment adjustment for a given patient encounter is the same after ICD–10–CM implementation as it would be if the same record had been coded in ICD–9–CM and submitted prior to ICD–10–CM/PCS implementation on October 1, 2015. All conversion efforts were made with the intent of achieving this goal.

We did not propose any refinements to the comorbidity adjustments, and will continue to use the existing adjustments in effect in FY 2015. The FY 2016 comorbidity adjustments are found in the Addendum to this final rule.

Comment: We received one comment suggesting that we change the comorbidity adjustment to add a number of infectious diseases which the commenters felt increased IPF costs. The commenter provided a listing of ICD–10–CM codes for these conditions.

Response: Changes to the comorbidity adjustment would occur as part of a larger IPF PPS refinement, as the comorbidity adjustment factors are derived through a regression analysis, which also includes other IPF PPS adjustments (for example, the age adjustment). We did not propose to refine the IPF PPS in the FY 2016 IPF PPS proposed rule, and therefore, this comment is outside the scope of this rule. However, we will consider the comment when we undertake future refinements.

3. Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (that is, the range of ages) for payment adjustments. In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant.

We did not propose any changes to the patient age adjustments; for FY 2016, we will continue to use the patient age adjustments currently in effect in FY 2015, as shown in the Addendum to this final rule.

4. Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the Federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF.

We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying emergency department (ED). If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section III.D.4. of this final rule.

We did not propose any changes to the variable per diem adjustment factors; for FY 2016, we will continue to use the variable per diem adjustment factors currently in effect as shown in the Addendum to this final rule. A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

D. Updates to the IPF PPS Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the May 2006 IPF PPS final rule (71 FR 27061) and in the May 2008 (73 FR 25719) and May 2009 IPF PPS notices (74 FR 20373), in order to provide an adjustment for geographic wage levels, the labor-related portion of

an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) and (C).

b. Wage Index for FY 2016

Since the inception of the IPF PPS, we have used the pre-floor, pre-reclassified acute care hospital wage index in developing a wage index to be applied to IPFs because there is not an IPF-specific wage index available. We believe that IPFs generally compete in the same labor markets as acute care hospitals, so the pre-floor, pre-reclassified hospital wage index should reflect IPF labor costs. As discussed in the May 2006 IPF PPS final rule for FY 2007 (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS wage index for the labor market area in which the IPF is located, without taking into account geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, please see the CY 2013 IPPS/LTCH PPS final rule (77 FR 53365 through 53374). For FY 2016, we will continue to apply the most recent hospital wage index (that is, the FY 2015 pre-floor, pre-reclassified hospital wage index, which is the most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (that is, data from hospital cost reports for the cost reporting period beginning during FY 2011) without any geographic reclassifications, floors, or other adjustments. We apply the FY 2016 IPF PPS wage index to payments beginning October 1, 2015.

We apply the wage index adjustment to the labor-related portion of the federal rate, which we changed from 69.294 percent to 75.2 percent in FY 2016. This percentage reflects the labor-related share of the 2012-based IPF market basket for FY 2016 (see section III.A.6. of this final rule).

c. OMB Bulletins and Transitional Wage Index

OMB publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061 through 27067), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB CBSA geographic designations in RY 2007, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applies to the hospital wage index used to determine the current IPF PPS wage index and stated that we expect to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721). The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bulletins_default/*.

In accordance with our established methodology, we have historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the hospital wage index used to determine the IPF PPS wage index. For the FY 2015 IPF wage index, we used the FY 2014 pre-floor, pre-reclassified hospital wage index to adjust the IPF PPS payments. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at *http://www.whitehouse.gov/omb/bulletins_default/*. Because the FY 2014 pre-floor, pre-reclassified hospital wage index was finalized prior to the issuance of this Bulletin, the FY 2015 IPF PPS wage index, which was based on the FY 2014 pre-floor, pre-reclassified hospital wage index, did not reflect OMB's new area delineations based on the 2010 Census. According to OMB, ''[t]his bulletin provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246 through 37252) and Census Bureau data.'' These OMB Bulletin changes are reflected in the FY 2015 pre-floor, pre-reclassified hospital wage index, upon which the FY 2016 IPPS PPS wage index is based. We have adopted these new OMB CBSA delineations in the FY 2016 IPF PPS wage index.

We believe that the most current CBSA delineations accurately reflect the local economies and wage levels of the areas where IPFs are located, and we believe that it is important for the IPF PPS to use the latest CBSA delineations available in order to maintain an up-to-date payment system that accurately reflects the reality of population shifts and labor market conditions.

In adopting these changes for the IPF PPS, it was necessary to identify the new labor market area delineation for each county and facility in the country. For example, there will be new CBSAs, urban counties that would become rural, rural counties that would become urban, and existing CBSAs that would be split apart. Because the wage index of urban areas is typically higher than that of rural areas, IPF facilities currently located in rural counties that will become urban, beginning October 1, 2015, will generally experience an increase in their wage index values. We identified 105 counties and 37 IPFs that will move from rural to urban status due to the new CBSA delineations beginning in FY 2016, shown in Table 15.

TABLE 15—FY 2016 RURAL TO URBAN CBSA CROSSWALK

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
Baldwin County, Alabama.	1	RURAL	0.6963	19300	URBAN	0.7248	4.09
Pickens County, Alabama.	1	RURAL	0.6963	46220	URBAN	0.8337	19.73
Cochise County, Arizona.	3	RURAL	0.9125	43420	URBAN	0.8937	−2.06

TABLE 15—FY 2016 RURAL TO URBAN CBSA CROSSWALK—Continued

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
Little River County, Arkansas.	4	RURAL	0.7311	45500	URBAN	0.7362	0.70
Windham County, Connecticut.	7	RURAL	1.1251	49340	URBAN	1.1493	2.15
Sussex County, Delaware.	8	RURAL	1.0261	41540	URBAN	0.9289	−9.47
Citrus County, Florida	10	RURAL	0.8006	26140	URBAN	0.7625	−4.76
Gulf County, Florida	10	RURAL	0.8006	37460	URBAN	0.7906	−1.25
Highlands County, Florida.	10	RURAL	0.8006	42700	URBAN	0.7982	−0.30
Sumter County, Florida	10	RURAL	0.8006	45540	URBAN	0.8095	1.11
Walton County, Florida	10	RURAL	0.8006	18880	URBAN	0.8156	1.87
Lincoln County, Georgia.	11	RURAL	0.7425	12260	URBAN	0.9225	24.24
Morgan County, Georgia.	11	RURAL	0.7425	12060	URBAN	0.9369	26.18
Peach County, Georgia	11	RURAL	0.7425	47580	URBAN	0.7542	1.58
Pulaski County, Georgia.	11	RURAL	0.7425	47580	URBAN	0.7542	1.58
Kalawao County, Hawaii.	12	RURAL	1.0741	27980	URBAN	1.0561	−1.68
Maui County, Hawaii ...	12	RURAL	1.0741	27980	URBAN	1.0561	−1.68
Butte County, Idaho	13	RURAL	0.7398	26820	URBAN	0.8933	20.75
De Witt County, Illinois	14	RURAL	0.8362	14010	URBAN	0.9165	9.60
Jackson County, Illinois	14	RURAL	0.8362	16060	URBAN	0.8324	−0.45
Williamson County, Illinois.	14	RURAL	0.8362	16060	URBAN	0.8324	−0.45
Scott County, Indiana ..	15	RURAL	0.8416	31140	URBAN	0.8605	2.25
Union County, Indiana	15	RURAL	0.8416	17140	URBAN	0.9473	12.56
Plymouth County, Iowa	16	RURAL	0.8451	43580	URBAN	0.8915	5.49
Kingman County, Kansas.	17	RURAL	0.7806	48620	URBAN	0.8472	8.53
Allen County, Kentucky	18	RURAL	0.7744	14540	URBAN	0.8410	8.60
Butler County, Kentucky.	18	RURAL	0.7744	14540	URBAN	0.8410	8.60
Acadia Parish, Louisiana.	19	RURAL	0.7580	29180	URBAN	0.7869	3.81
Iberia Parish, Louisiana	19	RURAL	0.7580	29180	URBAN	0.7869	3.81
St. James Parish, Louisiana.	19	RURAL	0.7580	35380	URBAN	0.8821	16.37
Tangipahoa Parish, Louisiana.	19	RURAL	0.7580	25220	URBAN	0.9452	24.70
Vermilion Parish, Louisiana.	19	RURAL	0.7580	29180	URBAN	0.7869	3.81
Webster Parish, Louisiana.	19	RURAL	0.7580	43340	URBAN	0.8325	9.83
St. Marys County, Maryland.	21	RURAL	0.8554	15680	URBAN	0.8593	0.46
Worcester County, Maryland.	21	RURAL	0.8554	41540	URBAN	0.9289	8.59
Midland County, Michigan.	23	RURAL	0.8207	33220	URBAN	0.7935	−3.31
Montcalm County, Michigan.	23	RURAL	0.8207	24340	URBAN	0.8799	7.21
Fillmore County, Minnesota.	24	RURAL	0.9124	40340	URBAN	1.1398	24.92
Le Sueur County, Minnesota.	24	RURAL	0.9124	33460	URBAN	1.1196	22.71
Mille Lacs County, Minnesota.	24	RURAL	0.9124	33460	URBAN	1.1196	22.71
Sibley County, Minnesota.	24	RURAL	0.9124	33460	URBAN	1.1196	22.71
Benton County, Mississippi.	25	RURAL	0.7589	32820	URBAN	0.8991	18.47
Yazoo County, Mississippi.	25	RURAL	0.7589	27140	URBAN	0.7891	3.98
Golden Valley County, Montana.	27	RURAL	0.9024	13740	URBAN	0.8686	−3.75
Hall County, Nebraska	28	RURAL	0.8924	24260	URBAN	0.9219	3.31

TABLE 15—FY 2016 RURAL TO URBAN CBSA CROSSWALK—Continued

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
Hamilton County, Nebraska.	28	RURAL	0.8924	24260	URBAN	0.9219	3.31
Howard County, Nebraska.	28	RURAL	0.8924	24260	URBAN	0.9219	3.31
Merrick County, Nebraska.	28	RURAL	0.8924	24260	URBAN	0.9219	3.31
Jefferson County, New York.	33	RURAL	0.8208	48060	URBAN	0.8386	2.17
Yates County, New York.	33	RURAL	0.8208	40380	URBAN	0.8750	6.60
Craven County, North Carolina.	34	RURAL	0.7995	35100	URBAN	0.8994	12.50
Davidson County, North Carolina.	34	RURAL	0.7995	49180	URBAN	0.8679	8.56
Gates County, North Carolina.	34	RURAL	0.7995	47260	URBAN	0.9223	15.36
Iredell County, North Carolina.	34	RURAL	0.7995	16740	URBAN	0.9073	13.48
Jones County, North Carolina.	34	RURAL	0.7995	35100	URBAN	0.8994	12.50
Lincoln County, North Carolina.	34	RURAL	0.7995	16740	URBAN	0.9073	13.48
Pamlico County, North Carolina.	34	RURAL	0.7995	35100	URBAN	0.8994	12.50
Rowan County, North Carolina.	34	RURAL	0.7995	16740	URBAN	0.9073	13.48
Oliver County, North Dakota.	35	RURAL	0.7099	13900	URBAN	0.7216	1.65
Sioux County, North Dakota.	35	RURAL	0.7099	13900	URBAN	0.7216	1.65
Hocking County, Ohio	36	RURAL	0.8329	18140	URBAN	0.9539	14.53
Perry County, Ohio	36	RURAL	0.8329	18140	URBAN	0.9539	14.53
Cotton County, Oklahoma.	37	RURAL	0.7799	30020	URBAN	0.7918	1.53
Josephine County, Oregon.	38	RURAL	1.0083	24420	URBAN	1.0086	0.03
Linn County, Oregon ...	38	RURAL	1.0083	10540	URBAN	1.0879	7.89
Adams County, Pennsylvania.	39	RURAL	0.8719	23900	URBAN	1.0104	15.88
Columbia County, Pennsylvania.	39	RURAL	0.8719	14100	URBAN	0.9347	7.20
Franklin County, Pennsylvania.	39	RURAL	0.8719	16540	URBAN	1.0957	25.67
Monroe County, Pennsylvania.	39	RURAL	0.8719	20700	URBAN	0.9372	7.49
Montour County, Pennsylvania.	39	RURAL	0.8719	14100	URBAN	0.9347	7.20
Utuado Municipio, Puerto Rico.	40	RURAL	0.4047	10380	URBAN	0.3586	−11.39
Beaufort County, South Carolina.	42	RURAL	0.8374	25940	URBAN	0.8708	3.99
Chester County, South Carolina.	42	RURAL	0.8374	16740	URBAN	0.9073	8.35
Jasper County, South Carolina.	42	RURAL	0.8374	25940	URBAN	0.8708	3.99
Lancaster County, South Carolina.	42	RURAL	0.8374	16740	URBAN	0.9073	8.35
Union County, South Carolina.	42	RURAL	0.8374	43900	URBAN	0.8277	−1.16
Custer County, South Dakota.	43	RURAL	0.8312	39660	URBAN	0.8989	8.14
Campbell County, Tennessee.	44	RURAL	0.7365	28940	URBAN	0.7015	−4.75
Crockett County, Tennessee.	44	RURAL	0.7365	27180	URBAN	0.7747	5.19
Maury County, Tennessee.	44	RURAL	0.7365	34980	URBAN	0.8969	21.78
Morgan County, Tennessee.	44	RURAL	0.7365	28940	URBAN	0.7015	−4.75

TABLE 15—FY 2016 RURAL TO URBAN CBSA CROSSWALK—Continued

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
Roane County, Tennessee.	44	RURAL	0.7365	28940	URBAN	0.7015	−4.75
Falls County, Texas	45	RURAL	0.7855	47380	URBAN	0.8137	3.59
Hood County, Texas ...	45	RURAL	0.7855	23104	URBAN	0.9386	19.49
Hudspeth County, Texas.	45	RURAL	0.7855	21340	URBAN	0.8139	3.62
Lynn County, Texas	45	RURAL	0.7855	31180	URBAN	0.8830	12.41
Martin County, Texas ..	45	RURAL	0.7855	33260	URBAN	0.8940	13.81
Newton County, Texas	45	RURAL	0.7855	13140	URBAN	0.8508	8.31
Oldham County, Texas	45	RURAL	0.7855	11100	URBAN	0.8277	5.37
Somervell County, Texas.	45	RURAL	0.7855	23104	URBAN	0.9386	19.49
Box Elder County, Utah	46	RURAL	0.8891	36260	URBAN	0.9225	3.76
Augusta County, Virginia.	49	RURAL	0.7674	44420	URBAN	0.8326	8.50
Buckingham County, Virginia.	49	RURAL	0.7674	16820	URBAN	0.9053	17.97
Culpeper County, Virginia.	49	RURAL	0.7674	47894	URBAN	1.0403	35.56
Floyd County, Virginia	49	RURAL	0.7674	13980	URBAN	0.8473	10.41
Rappahannock County, Virginia.	49	RURAL	0.7674	47894	URBAN	1.0403	35.56
Staunton City County, Virginia.	49	RURAL	0.7674	44420	URBAN	0.8326	8.50
Waynesboro City County, Virginia.	49	RURAL	0.7674	44420	URBAN	0.8326	8.50
Columbia County, Washington.	50	RURAL	1.0892	47460	URBAN	1.0934	0.39
Pend Oreille County, Washington.	50	RURAL	1.0892	44060	URBAN	1.1425	4.89
Stevens County, Washington.	50	RURAL	1.0892	44060	URBAN	1.1425	4.89
Walla Walla County, Washington.	50	RURAL	1.0892	47460	URBAN	1.0934	0.39
Fayette County, West Virginia.	51	RURAL	0.7410	13220	URBAN	0.8024	8.29
Raleigh County, West Virginia.	51	RURAL	0.7410	13220	URBAN	0.8024	8.29
Green County, Wisconsin.	52	RURAL	0.9041	31540	URBAN	1.1130	23.11

The wage index values of rural areas are typically lower than that of urban areas. Therefore, IPFs located in a county that is currently designated as urban under the IPF PPS wage index that will become rural when we adopt the new CBSA delineations may experience a decrease in their wage index values. We identified 38 counties and four IPFs that will move from urban to rural status due to the new CBSA delineations beginning in FY 2016. Our use of updated data for this final rule increased the number of counties and the number of IPFs that changed status from urban to rural from 37 to 38, and three to four, respectively. Table 16 shows the CBSA delineations and the urban wage index values for FY 2015 based on existing CBSA delineations, compared with the proposed CBSA delineations and wage index values for FY 2016 based on the new OMB CBSA delineations. Table 16 also shows the percentage change in these values for those counties that will change from urban to rural, beginning in FY 2016, when we adopt the new CBSA delineations.

TABLE 16—FY 2016 URBAN TO RURAL CBSA CROSSWALK

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
Greene County, Alabama.	46220	URBAN	0.8387	1	RURAL	0.6914	−17.56
Franklin County, Arkansas.	22900	URBAN	0.7593	4	RURAL	0.7311	−3.71
Power County, Idaho ...	38540	URBAN	0.9672	13	RURAL	0.7398	−23.51
Franklin County, Indiana.	17140	URBAN	0.9473	15	RURAL	0.8416	−11.16
Gibson County, Indiana	21780	URBAN	0.8537	15	RURAL	0.8416	−1.42

TABLE 16—FY 2016 URBAN TO RURAL CBSA CROSSWALK—Continued

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
Greene County, Indiana.	14020	URBAN	0.9062	15	RURAL	0.8416	−7.13
Tipton County, Indiana	29020	URBAN	0.8990	15	RURAL	0.8416	−6.38
Franklin County, Kansas.	28140	URBAN	0.9419	17	RURAL	0.7779	−17.41
Geary County, Kansas	31740	URBAN	0.8406	17	RURAL	0.7779	−7.46
Nelson County, Kentucky.	31140	URBAN	0.8593	18	RURAL	0.7748	−9.83
Webster County, Kentucky.	21780	URBAN	0.8537	18	RURAL	0.7748	−9.24
Franklin County, Massachusetts.	44140	URBAN	1.0271	22	RURAL	1.1553	12.48
Ionia County, Michigan	24340	URBAN	0.8965	23	RURAL	0.8288	−7.55
Newaygo County, Michigan.	24340	URBAN	0.8965	23	RURAL	0.8288	−7.55
George County, Mississippi.	37700	URBAN	0.7396	25	RURAL	0.7570	2.35
Stone County, Mississippi.	25060	URBAN	0.8179	25	RURAL	0.7570	−7.45
Crawford County, Missouri.	41180	URBAN	0.9366	26	RURAL	0.7725	−17.52
Howard County, Missouri.	17860	URBAN	0.8319	26	RURAL	0.7725	−7.14
Washington County, Missouri.	41180	URBAN	0.9366	26	RURAL	0.7725	−17.52
Anson County, North Carolina.	16740	URBAN	0.9230	34	RURAL	0.7899	−14.42
Greene County, North Carolina.	24780	URBAN	0.9371	34	RURAL	0.7899	−15.71
Erie County, Ohio	41780	URBAN	0.7784	36	RURAL	0.8348	7.25
Ottawa County, Ohio ...	45780	URBAN	0.9129	36	RURAL	0.8348	−8.56
Preble County, Ohio	19380	URBAN	0.8938	36	RURAL	0.8348	−6.60
Washington County, Ohio.	37620	URBAN	0.8186	36	RURAL	0.8348	1.98
Stewart County, Tennessee.	17300	URBAN	0.7526	44	RURAL	0.7277	−3.31
Calhoun County, Texas	47020	URBAN	0.8473	45	RURAL	0.7847	−7.39
Delta County, Texas	19124	URBAN	0.9703	45	RURAL	0.7847	−19.13
San Jacinto County, Texas.	26420	URBAN	0.9734	45	RURAL	0.7847	−19.39
Summit County, Utah ..	41620	URBAN	0.9512	46	RURAL	0.9005	−5.33
Cumberland County, Virginia.	40060	URBAN	0.9625	49	RURAL	0.7554	−21.52
Danville City County, Virginia.	19260	URBAN	0.7963	49	RURAL	0.7554	−5.14
King And Queen County, Virginia.	40060	URBAN	0.9625	49	RURAL	0.7554	−21.52
Louisa County, Virginia	40060	URBAN	0.9625	49	RURAL	0.7554	−21.52
Pittsylvania County, Virginia.	19260	URBAN	0.7963	49	RURAL	0.7554	−5.14
Surry County, Virginia	47260	URBAN	0.9223	49	RURAL	0.7554	−18.10
Morgan County, West Virginia.	25180	URBAN	0.9080	51	RURAL	0.7274	−19.89
Pleasants County, West Virginia.	37620	URBAN	0.8186	51	RURAL	0.7274	−11.14

We note that IPFs in some urban CBSAs will experience a change in their wage index values even though they remain urban because an urban CBSA's boundaries and/or the counties included in that CBSA can change. Table 17 shows those counties that would experience a change in their wage index value in FY 2016 due to the new OMB CBSAs. Table 17 shows the urban CBSA delineations and wage index values for FY 2015 based on existing CBSA delineations, compared with the urban CBSA delineations and wage index values for FY 2016 based on the new OMB delineations, and the percentage change in these values, for counties that will remain urban even though the CBSA boundaries and/or counties included in that CBSA will change.

TABLE 17—FY 2015 URBAN TO A DIFFERENT FY 2016 URBAN CBSA CROSSWALK

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
Flagler County, Florida	37380	URBAN	0.8462	19660	URBAN	0.8376	−1.02
De Kalb County, Illinois	16974	URBAN	1.0412	20994	URBAN	1.0299	−1.09
Kane County, Illinois ...	16974	URBAN	1.0412	20994	URBAN	1.0299	−1.09
Madison County, Indiana.	11300	URBAN	1.0078	26900	URBAN	1.0133	0.55
Meade County, Kentucky.	31140	URBAN	0.8593	21060	URBAN	0.7701	−10.38
Essex County, Massachusetts.	37764	URBAN	1.0769	15764	URBAN	1.1159	3.62
Ottawa County, Michigan.	26100	URBAN	0.8136	24340	URBAN	0.8799	8.15
Jackson County, Mississippi.	37700	URBAN	0.7396	25060	URBAN	0.7896	6.76
Bergen County, New Jersey.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Hudson County, New Jersey.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Middlesex County, New Jersey.	20764	URBAN	1.0989	35614	URBAN	1.2837	16.82
Monmouth County, New Jersey.	20764	URBAN	1.0989	35614	URBAN	1.2837	16.82
Ocean County, New Jersey.	20764	URBAN	1.0989	35614	URBAN	1.2837	16.82
Passaic County, New Jersey.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Somerset County, New Jersey.	20764	URBAN	1.0989	35084	URBAN	1.1233	2.22
Bronx County, New York.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Dutchess County, New York.	39100	URBAN	1.1533	20524	URBAN	1.1345	−1.63
Kings County, New York.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
New York County, New York.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Orange County, New York.	39100	URBAN	1.1533	35614	URBAN	1.2837	11.31
Putnam County, New York.	35644	URBAN	1.3110	20524	URBAN	1.1345	−13.46
Queens County, New York.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Richmond County, New York.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Rockland County, New York.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Westchester County, New York.	35644	URBAN	1.3110	35614	URBAN	1.2837	−2.08
Brunswick County, North Carolina.	48900	URBAN	0.8867	34820	URBAN	0.8620	−2.79
Bucks County, Pennsylvania.	37964	URBAN	1.0837	33874	URBAN	1.0157	−6.27
Chester County, Pennsylvania.	37964	URBAN	1.0837	33874	URBAN	1.0157	−6.27
Montgomery County, Pennsylvania.	37964	URBAN	1.0837	33874	URBAN	1.0157	−6.27
Arecibo Municipio, Puerto Rico.	41980	URBAN	0.4449	11640	URBAN	0.4213	−5.30
Camuy Municipio, Puerto Rico.	41980	URBAN	0.4449	11640	URBAN	0.4213	−5.30
Ceiba Municipio, Puerto Rico.	21940	URBAN	0.3669	41980	URBAN	0.4438	20.96
Fajardo Municipio, Puerto Rico.	21940	URBAN	0.3669	41980	URBAN	0.4438	20.96
Guanica Municipio, Puerto Rico.	49500	URBAN	0.3375	38660	URBAN	0.4154	23.08
Guayanilla Municipio, Puerto Rico.	49500	URBAN	0.3375	38660	URBAN	0.4154	23.08
Hatillo Municipio, Puerto Rico.	41980	URBAN	0.4449	11640	URBAN	0.4213	−5.30

TABLE 17—FY 2015 URBAN TO A DIFFERENT FY 2016 URBAN CBSA CROSSWALK—Continued

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
Luquillo Municipio, Puerto Rico.	21940	URBAN	0.3669	41980	URBAN	0.4438	20.96
Penuelas Municipio, Puerto Rico.	49500	URBAN	0.3375	38660	URBAN	0.4154	23.08
Quebradillas Municipio, Puerto Rico.	41980	URBAN	0.4449	11640	URBAN	0.4213	−5.30
Yauco Municipio, Puerto Rico.	49500	URBAN	0.3375	38660	URBAN	0.4154	23.08
Anderson County, South Carolina.	11340	URBAN	0.8744	24860	URBAN	0.9161	4.77
Grainger County, Tennessee.	34100	URBAN	0.6983	28940	URBAN	0.7015	0.46
Lincoln County, West Virginia.	16620	URBAN	0.7988	26580	URBAN	0.8846	10.74
Putnam County, West Virginia.	16620	URBAN	0.7988	26580	URBAN	0.8846	10.74

Likewise, IPFs currently located in a rural area may remain rural under the new CBSA delineations but experience a change in their rural wage index value due to implementation of the new CBSA delineations. Table 18 shows the FY 2015 CBSA delineations and rural statewide wage index values, compared with the FY 2016 CBSA delineations and rural statewide wage index values, and the percentage change in these values, for those rural areas that will change.

TABLE 18—FY 2016 CHANGES TO THE STATEWIDE RURAL WAGE INDEX CROSSWALK

County name	FY 2014 CBSA Delineations/FY 2015 data			FY 2015 CBSA Delineations/FY 2015 data			Change in value (percent)
	CBSA	Urban/Rural	Wage index	CBSA	Urban/Rural	Wage index	
ALABAMA	1	RURAL	0.6963	1	RURAL	0.6914	−0.70
ARIZONA	3	RURAL	0.9125	3	RURAL	0.9219	1.03
CONNECTICUT	7	RURAL	1.1251	7	RURAL	1.1295	0.39
FLORIDA	10	RURAL	0.8006	10	RURAL	0.8371	4.56
GEORGIA	11	RURAL	0.7425	11	RURAL	0.7439	0.19
HAWAII	12	RURAL	1.0741	12	RURAL	1.0872	1.22
ILLINOIS	14	RURAL	0.8362	14	RURAL	0.8369	0.08
KANSAS	17	RURAL	0.7806	17	RURAL	0.7779	−0.35
KENTUCKY	18	RURAL	0.7744	18	RURAL	0.7748	0.05
LOUISIANA	19	RURAL	0.7580	19	RURAL	0.7108	−6.23
MARYLAND	21	RURAL	0.8554	21	RURAL	0.8746	2.24
MASSACHUSETTS	22	RURAL	1.3920	22	RURAL	1.1553	−17.00
MICHIGAN	23	RURAL	0.8207	23	RURAL	0.8288	0.99
MISSISSIPPI	25	RURAL	0.7589	25	RURAL	0.7570	−0.25
NEBRASKA	28	RURAL	0.8924	28	RURAL	0.8877	−0.53
NEW YORK	33	RURAL	0.8208	33	RURAL	0.8192	−0.19
NORTH CAROLINA	34	RURAL	0.7995	34	RURAL	0.7899	−1.20
OHIO	36	RURAL	0.8329	36	RURAL	0.8348	0.23
OREGON	38	RURAL	1.0083	38	RURAL	0.9949	−1.33
PENNSYLVANIA	39	RURAL	0.8719	39	RURAL	0.8083	−7.29
SOUTH CAROLINA	42	RURAL	0.8374	42	RURAL	0.8370	−0.05
TENNESSEE	44	RURAL	0.7365	44	RURAL	0.7277	−1.19
TEXAS	45	RURAL	0.7855	45	RURAL	0.7847	−0.10
UTAH	46	RURAL	0.8891	46	RURAL	0.9005	1.28
VIRGINIA	49	RURAL	0.7674	49	RURAL	0.7554	−1.56
WASHINGTON	50	RURAL	1.0892	50	RURAL	1.0877	−0.14
WEST VIRGINIA	51	RURAL	0.7410	51	RURAL	0.7274	−1.84
WISCONSIN	52	RURAL	0.9041	52	RURAL	0.9087	0.51

While we believe that the new CBSA delineations will result in wage index values that are more representative of the actual costs of labor in a given area, we also recognize that use of the new CBSA delineations will result in reduced payments to some IPFs and increased payments to other IPFs, due to changes in wage index values. Approximately 23.3 percent of IPFs will experience a decrease in wage index values due to CBSA changes, while 12.3 percent of IPFs will experience an increase in wage index values due to CBSA changes. The remaining 64.4 percent of IPFs will experience no change in their wage index values. While the wage index CBSA changes will be implemented in a budget-neutral fashion, the distributional effects of these CBSA changes appear to affect

rural IPFs in particular; column 5 in Table 29 in section VIII. of this final rule shows that rural providers overall are anticipated to experience payment reductions of 0.2 percent, with for-profit rural psychiatric hospitals anticipated to experience the greatest reduction of 0.5 percent.

We believe that it will be appropriate to provide for a transition period to mitigate any negative impacts on facilities that experience reduced payments as a result of our adopting the new OMB CBSA delineations. Therefore, we are implementing these CBSA changes using a 1-year transition with a blended wage index for all providers. For FY 2016, the wage index for each provider will consist of a blend of 50 percent of the FY 2016 IPF wage index using the current OMB delineations and 50 percent of the FY 2016 IPF wage index using the new OMB delineations. This results in an average of the two values. The FY 2017 IPF PPS wage index and subsequent IPF PPS wage indices will be based solely on the new OMB CBSA delineations. We believe a 1-year transition strikes an appropriate balance between ensuring that IPF PPS payments are as accurate and stable as possible while giving IPFs time to adjust to the new CBSA delineations. The final FY 2016 IPF PPS transitional wage index is located on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/WageIndex.html.*

Comment: We received one comment on the proposed transitional wage index, supporting the new OMB delineations, but stating that a 2-year transition was too short given the impact on providers. This commenter asked for 3-year transition instead of a 2-year transition.

Response: We appreciate the commenter's support for the new OMB delineations, but note that we proposed a 1-year transition, not a 2-year transition. We believe that our proposed 1-year transition is sufficient to allow providers to adjust to changes resulting from the new OMB delineations. A 1-year transition is also consistent with how the new OMB delineations have been handled in other Medicare benefits. Therefore, we are implementing the FY 2016 IPF PPS Wage Index as proposed, with a 1-year transition.

d. Adjustment for Rural Location and Phase Out the Rural Adjustment for IPFs Losing Their Rural Adjustment Due to CBSA Changes

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For FY 2016, we will continue to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

As noted in section III.D.1.c. of this final rule, we are adopting OMB updates to CBSA delineations. Adoption of the updated CBSAs will change the status of 37 IPF providers currently designated as ''rural'' to ''urban'' for FY 2016 and subsequent fiscal years. As such, these 37 newly urban providers will no longer receive the 17 percent rural adjustment.

While 34 of these 37 rural IPFs that will be designated as urban under the new CBSA delineations will experience an increase in their wage index value, all 37 of these IPFs will lose the 17 percent rural adjustment. Consistent with the transition policy adopted for Inpatient Rehabilitation Facilities (IRFs) in FY 2006 (70 FR 47923 through 47927), we considered the appropriateness of applying a 3-year phase-out of the rural adjustment for IPFs located in rural counties that will become urban under the new OMB delineations, given the potentially significant payment impacts for these IPFs. We believe that a phase-out of the rural adjustment transition period for these 37 IPFs specifically is appropriate because we expect these IPFs will experience a steeper and more abrupt reduction in their payments compared to other IPFs.

Therefore, in addition to the 1-year wage index transition policy noted above, we are finalizing a budget-neutral 3-year phase-out of the rural adjustment for existing FY 2015 rural IPFs that will become urban in FY 2016 and that experience a loss in payments due to changes from the new CBSA delineations. Accordingly, the incremental steps needed to reduce the impact of the loss of the FY 2015 rural adjustment of 17 percent will be taken over FYs 2016, 2017 and 2018. This policy will allow rural IPFs that will be classified as urban in FY 2016 to receive two-thirds of the 2015 rural adjustment for FY 2016, as well as the blended wage index. For FY 2017, these IPFs will receive the full FY 2017 wage index and one-third of the FY 2015 rural adjustment. For FY 2018, these IPFs will receive the full FY 2018 wage index without a rural adjustment. We believe a 3-year budget-neutral phase-out of the rural adjustment for IPFs that transition from rural to urban status under the new CBSA delineations will best accomplish the goals of mitigating the loss of the rural adjustment for existing FY 2015 rural IPFs. The purpose of the gradual phase-out of the rural adjustment for these providers is to alleviate the significant payment implications for existing rural IPFs that may need time to adjust to the loss of their FY 2015 rural payment adjustment or that experience a reduction in payments solely because of this re-designation. As stated, this policy is specifically for rural IPFs that become urban in FY 2016. We are not implementing a transition policy for urban IPFs that become rural in FY 2016 because these IPFs will receive the full rural adjustment of 17 percent beginning October 1, 2015.

For the reasons discussed, we are implementing a 3-year budget-neutral phase-out of the rural adjustment for the IPFs that during FY 2015 were designated as rural and for FY 2016 are designated as urban under the new CBSA system. This is in addition to our implementation of a 1-year blended wage index for all IPFs. We believe that the incremental reduction of the FY 2015 rural adjustment will be appropriate to mitigate a significant reduction in payment. We considered alternative timeframes for phasing out the rural adjustment for IPFs which will transition from rural to urban status in FY 2016, but believe that a 3-year budget-neutral phase-out of the rural adjustment will appropriately mitigate the adverse payment impacts for existing FY 2015 rural IPFs that will be designated as urban IPFs in FY 2016, while also ensuring that payment rates for these providers are set accurately and appropriately.

Comment: We received one comment asking that we phase out the rural adjustment for the 37 affected providers over 4 years rather than 3 years. This commenter was concerned that affected providers would be significantly impacted by the loss of the rural adjustment.

Response: We appreciate the commenter's request, but as noted above, we considered alternate timeframes for phasing out the rural adjustment. We believe that a 3-year phase-out balances the need for us to pay accurately and appropriately with sufficient time for providers to adjust to, and to mitigate the adverse payment effect. A 3-year phase-out is also consistent with the policy we followed in FY 2006 for Inpatient Rehabilitation

Facilities. As such, we are finalizing the rural adjustment phase-out for these 37 IPFs as proposed, with a 3-year phase out.

e. Budget Neutrality Adjustment

Changes to the wage index are made in a budget-neutral manner so that updates do not increase expenditures. Therefore, for FY 2016, we will continue to apply a budget-neutrality adjustment in accordance with our existing budget-neutrality policy. This policy requires us to estimate the total amount of IPF PPS payments for FY 2016 using the labor-related share and the wage indices from FY 2015 divided by the total estimated IPF PPS payments for FY 2016 using the labor-related share and wage indices from FY 2016. The estimated payments are based on FY 2014 IPF claims, inflated to the appropriate FY. This quotient is the wage index budget-neutrality factor, and it is applied in the update of the Federal per diem base rate for FY 2016 in addition to the market basket described in section III.A. of this final rule. The final wage index budget-neutrality factor for FY 2016 is 1.0041. We received no comments on the wage index budget-neutrality factor for FY 2016.

2. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the ratio of the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census (ADC).

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's ''teaching variable,'' which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF's ADC.

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a ''base year'' and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (that is, the publication date of the IPF PPS final rule). A complete discussion on the temporary adjustment to the FTE cap to reflect residents added due to hospital closure and by residency program appears in the January 27, 2011 IPF PPS proposed rule (76 FR 5018 through 5020) and the May 6, 2011 IPF PPS final rule (76 FR 26453 through 26456).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant. A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721). As with other adjustment factors derived through the regression analysis, we do not plan to rerun the teaching adjustment factors in the regression analysis until we more fully analyze IPF PPS data. Therefore, in this final rule, for FY 2016, we will continue to retain the coefficient value of 0.5150 for the teaching adjustment to the Federal per diem base rate.

3. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare PPSs (for example, the IPPS and LTCH PPS) adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA for IPFs located in Alaska and Hawaii is made by multiplying the nonlabor-related portion of the Federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors are published on the Office of Personnel Management (OPM) Web site (*http://www.opm.gov/oca/cola/rates.asp*).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- Rest of the State of Alaska.

As stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. However, sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of NDAA, locality pay is being phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA factors in the January 2011 IPF PPS proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates which had been reduced to account for the phase-in of locality pay. We did not intend to propose the reduced COLA rates because that would have understated the adjustment. Since the 2009 COLA rates did not reflect the phase-in of locality pay, we finalized the FY 2009 COLA rates for RY 2010 through RY 2014.

In the FY 2013 IPPS/LTCH final rule (77 FR 53700 through 53701), we established a methodology for FY 2014 to update the COLA factors for Alaska and Hawaii. Under that methodology, we use a comparison of the growth in the Consumer Price Indices (CPIs) in Anchorage, Alaska and Honolulu, Hawaii relative to the growth in the overall CPI as published by the Bureau of Labor Statistics (BLS) to update the COLA factors for all areas in Alaska and Hawaii, respectively. As discussed in the FY 2013 IPPS/LTCH proposed rule (77 FR 28145), because BLS publishes CPI data for only Anchorage, Alaska and Honolulu, Hawaii, our methodology for updating the COLA factors uses a comparison of the growth in the CPIs for those cities relative to the growth in the overall CPI to update the COLA factors for all areas in Alaska and Hawaii, respectively. We believe that the relative price differences between these cities and the United States (as measured by the CPIs mentioned above) are generally appropriate proxies for the relative price differences between the ''other areas'' of Alaska and Hawaii and the United States.

The CPIs for ''All Items'' that BLS publishes for Anchorage, Alaska, Honolulu, Hawaii, and for the average U.S. city are based on a different mix of commodities and services than is reflected in the nonlabor-related share of the IPPS market basket. As such, under the methodology we established to update the COLA factors, we calculated a ''reweighted CPI'' using the CPI for commodities and the CPI for services for each of the geographic areas to mirror the composition of the IPPS market basket nonlabor-related share. The current composition of BLS' CPI for ''All Items'' for all of the respective areas is approximately 40 percent commodities and 60 percent services. However, the nonlabor-related share of the IPPS market basket is comprised of 60 percent commodities and 40 percent services. Therefore, under the methodology established for FY 2014 in the FY 2013 IPPS/LTCH PPS final rule, we created reweighted indexes for Anchorage, Alaska, Honolulu, Hawaii, and the average U.S. city using the respective CPI commodities index and CPI services index and applying the approximate 60/40 weights from the IPPS market basket. This approach is appropriate because we would continue to make a COLA for hospitals located in Alaska and Hawaii by multiplying the nonlabor-related portion of the standardized amount by a COLA factor.

Under the COLA factor update methodology established in the FY 2014 IPPS/LTCH final rule, we adjust payments made to hospitals located in Alaska and Hawaii by incorporating a 25-percent cap on the CPI-updated COLA factors. We note that OPM's COLA factors were calculated with a statutorily mandated cap of 25 percent, and since at least 1984, we have exercised our discretionary authority to adjust Alaska and Hawaii payments by incorporating this cap. In keeping with this historical policy, we continue to use such a cap because our CPI-updated COLA factors use the 2009 OPM COLA factors as a basis.

In FY 2015 IPF PPS rulemaking, we adopted the same methodology for the COLA factors applied under the IPPS because IPFs are hospitals with a similar mix of commodities and services. We think it is appropriate to have a consistent policy approach with that of other hospitals in Alaska and Hawaii. Therefore, in the FY 2015 IPF PPS final rule, we adopted the cost of living adjustment factors shown in the Addendum for IPFs located in Alaska and Hawaii. Under IPPS COLA policy, the COLA updates are determined every four years, when the IPPS market basket is rebased. Since the IPPS COLA factors were last updated in FY 2014, they are not scheduled to be updated again until FY 2018. As such, we will continue using the existing IPF PPS COLA factors in effect in FY 2015 for FY 2016. The IPF PPS COLA factors for FY 2016 are shown in the Addendum of this final rule.

4. Adjustment for IPFs With a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute care hospital or a CAH, for preadmission services otherwise payable under the Medicare Outpatient Prospective Payment System (OPPS), furnished to a beneficiary on the date of the beneficiary's admission to the hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)), and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. That is, IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made when a patient is discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit. We clarified in the November 2004 IPF PPS final rule (69 FR 66960) that an ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH.

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF.

We did not propose any changes to the ED adjustment. For FY 2016, we will continue to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

E. Other Payment Adjustments and Policies

1. Outlier Payment Overview

The IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In the November 2004 IPF PPS

final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments.

After establishing the loss sharing ratios, we determined the current FY 2015 fixed dollar loss threshold amount through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target. Each year when we update the IPF PPS, we simulate payments using the latest available data to compute the fixed dollar loss threshold so that outlier payments represent 2 percent of total projected IPF PPS payments.

2. Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are updating the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal per diem base rate for all other cases that are not outlier cases.

Based on an analysis of the latest available data (that is, the March 2015 update of FY 2014 IPF claims) and rate increases, we believe it is necessary to update the fixed dollar loss threshold amount in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments. To update the IPF outlier threshold amount for FY 2016, we used FY 2014 claims data and the same methodology that we used to set the initial outlier threshold amount in the May 2006 IPF PPS final rule (71 FR 27072 and 27073), which is also the same methodology that we used to update the outlier threshold amounts for years 2008 through 2015. Based on an analysis of these updated data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 2.2 percent in FY 2015. Therefore, we will update the outlier threshold amount to $9,580 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2016.

Comment: One commenter wrote that the increase in the outlier threshold would result in significant losses for hospitals with a high percentage of outlier cases, and suggested that CMS transition to the higher threshold over 2 years.

Response: Our longstanding policy is to maintain a 2 percent outlier threshold, which would not be possible if we transitioned to the FY 2016 outlier threshold. We note that when we reanalyzed the outlier data for this final rule using the March 2015 update of the 2014 MedPAR claims, the final outlier threshold was lower than the proposed outlier threshold ($9,825).

3. Update to IPF Cost-to-Charge Ratio Ceilings

Under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount plus the IPF PPS amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the June 2003 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule (69 FR 66961), because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS. Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule: We calculated 2 national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the CY 2015 Provider Specific File.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2016 is 1.9041 for rural IPFs, and 1.7339 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate, and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national CCRs to the following situations:

- New IPFs that have not yet submitted their first Medicare cost report. We continue to use these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.
- IPFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean (that is, above the ceiling).
- Other IPFs for which the MAC obtains inaccurate or incomplete data with which to calculate a CCR.

We did not propose any changes to the application of the national CCRs or to the procedures for updating the CCR ceilings in FY 2016. However, we are updating the FY 2016 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2016, and to be used in each of the 3 situations listed above, using the most recent CCRs entered in the CY 2015 Provider Specific File we estimate the national median CCR of 0.6220 for rural IPFs and the national median CCR of 0.4650 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the

November 2004 IPF PPS final rule (69 FR 66961 through 66964).

IV. Other Payment Policy Issues

A. ICD–10–CM and ICD–10–PCS Implementation

We remind IPF providers that we are implementing the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) as the HIPAA designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury as of October 1, 2015. Below is a brief history of key activities leading to the October 1, 2015 implementation date.

In the Standards for Electronic Transactions final rule, published in the **Federal Register** on August 17, 2000 (65 FR 50312), the Department adopted the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) as the HIPAA designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury. Therefore, on January 1, 2005 when the IPF PPS began, we used ICD–9–CM as the designated code set for the IPF PPS. IPF claims with a principal diagnosis included in Chapter Five of the ICD–9–CM are paid the Federal per diem base rate and all other applicable adjustments, including any applicable DRG adjustment.

Together with the rest of the healthcare industry, we were scheduled to implement the 10th revision of the ICD coding scheme, that is, ICD–10–CM, on October 1, 2014. Hence, in the FY 2014 IPF PPS final rule (78 FR 46741–46742), we finalized a policy that ICD–10–CM codes will be used in IPF PPS.

On April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) was enacted. Section 212 of PAMA, titled ''Delay in Transition from ICD–9 to ICD–10 Code Sets,'' provided that ''[t]he Secretary of Health and Human Services may not, prior to October 1, 2015, adopt ICD–10 code sets as the standard for code sets under section 1173(c) of the Social Security Act (42 U.S.C. 1320d-2(c)) and section 162.1002 of title 45, Code of Federal Regulations.'' On May 1, 2014, the Secretary announced that HHS expected to issue an interim final rule that would require use of ICD–10–CM beginning October 1, 2015 and would continue to require use of ICD–9–CM through September 30, 2015. This announcement is available on the CMS Web site at *http://cms.gov/Medicare/Coding/ICD10/index.html.* HHS finalized the new compliance date of October 1, 2015 for ICD–10–CM and ICD–10–PCS in an August 4, 2014 final rule titled ''Administrative Simplification: Change to the Compliance Date for the International Classification of Diseases, 10th Revision (ICD–10–CM and ICD–10–PCS)'' (79 FR 45128). This rule also requires HIPAA covered entities to continue to use the ICD–9–CM code set through September 30, 2015. Therefore, beginning October 1, 2015, we require use of the ICD–10–CM and ICD–10–PCS codes for reporting the MS–DRG and comorbidity adjustment factors for IPF services.

Every year, changes to the ICD–10–CM and the ICD–10–PCS coding system will be addressed in the IPPS proposed and final rules. The changes to the codes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD–9–CM coding changes made in the annual IPPS update and will continue to do so for the ICD–10–CM and ICD–10–PCS coding changes. We will continue to publish coding changes in a Transmittal/Change Request, similar to how coding changes are announced by the IPPS and LTCH PPS. The coding changes relevant to the IPF PPS are also published in the IPF PPS proposed and final rules, or in IPF PPS update notices.

In § 412.428(e), we indicate that we will publish information pertaining to the annual update for the IPF PPS, which includes describing the ICD–9–CM coding changes and DRG classification changes discussed in the annual update to the hospital IPPS regulations. Because ICD–10–CM will be implemented on October 1, 2015, we need to update the regulation language at § 412.428(e) to refer to ICD–10–CM, rather than ICD–9–CM. Therefore, we are revising § 412.428(e) to state that the information we will publish annually in the **Federal Register** to describe IPF PPS updates would describe the ICD–10–CM coding changes and DRG classification changes discussed in the annual update to the hospital inpatient prospective payment system regulations.

In the FY 2015 IPF PPS final rule (79 FR 45945 through 46946), the MS–DRGs were converted so that the MS–DRG assignment logic uses ICD–10–CM/PCS codes directly. When an IPF submits a claim for discharges, the ICD–10–CM/PCS diagnosis and procedure codes will be assigned to the correct MS–DRG. In the FY 2015 IPF PPS final rule, we also identified the ICD–10–CM/PCS codes that are eligible for comorbidity payment adjustments under the IPF PPS (79 FR 45947 through 45955).

The ICD–10–CM guidelines are updated each year along with the ICD–10–CM code set. To find the annual coding guidelines, go to CDC's Web site at *http://www.cdc.gov/nchs/icd/icd10cm.htm* or the annual ICD–10–CM updates posted on the CMS ICD–10 Web site at *http://www.cms.gov/Medicare/Coding/ICD10/index.html.*

We received no comments on the proposed revision to the regulation text at § 412.428(e), and are implementing it as proposed. We received 2 comments on ICD–10–CM/PCS issues.

Comment: One commenter asked that CMS remain receptive to comments related to ICD–10–CM/PCS and conversion issues as health care staff become more familiar with the new coding. The other commenter was pleased that CMS had provided end-to-end testing, but noted that while claims submission was fairly seamless, receiving a remittance was less consistent. This commenter suggested that CMS allow IPFs to submit a larger number of varied claims and that we complete additional testing on the Medicare Administrative Contractor's ability to issue remittances timely.

Response: We thank the commenters for their thoughts and suggestions. While these comments are outside the scope of this rule, we have shared them with the areas within CMS that handle ICD–10–CM/PCS conversion and end-to-end testing.

B. Status of Future IPF PPS Refinements

For RY 2012, we identified several areas of concern for future refinement, and we invited comments on these issues in our RY 2012 proposed and final rules. For further discussion of these issues and to review the public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

We have delayed making refinements to the IPF PPS until we have completed a thorough analysis of IPF PPS data on which to base those refinements. Specifically, we will delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We have begun the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS in the future, as appropriate.

IPF Covered Services

The IPF PPS established the Federal per diem base rate for each patient day in an IPF from the national average routine operating, ancillary, and capital

costs. Preliminary analysis reveals that in 2012 to 2013, over 20 percent of IPF stays show no reported ancillary costs, such as laboratory and drug costs, in cost reports or charges on claims. The majority of these stays with zero ancillary costs or charges were in for-profit, free-standing IPF hospitals. We would expect that patients admitted to an IPF would undergo laboratory testing as part of the admission history and physical. We would also expect that most patients requiring hospitalization for active psychiatric treatment would need drugs. Therefore, we were surprised when the analysis showed such a large number of stays reporting no laboratory services and no drugs were provided throughout the hospitalization. Until further analysis is completed, we can only surmise that the stays did not require ancillaries and therefore, were not provided, or that the ancillary services were separately billed.

We remind the industry that we pay only the inpatient psychiatric facility for services furnished to a Medicare beneficiary who is an inpatient of that inpatient psychiatric facility, except for certain professional services, and that payments made under this subpart are payments in full for all inpatient hospital services, provided directly or under arrangement (see 42 CFR 412.404(d)), as specified in 42 CFR 409.10.

The covered services specified in § 409.10(a), which apply to IPFs, include the following: bed and board; nursing services and other related services; use of hospital or CAH facilities; medical social services; drugs, biologicals, supplies, appliances, and equipment; certain other diagnostic or therapeutic services; medical or surgical services provided by certain interns or residents-in-training; and transportation services, including transport by ambulance.

Only the professional services listed in § 409.10(b) can be separately billed for a Medicare beneficiary who is an inpatient at an IPF, including services of physicians, physician assistants, nurse practitioners, clinical nurse specialists, certified nurse mid-wives, anesthetists, and qualified psychologists. (See § 409.10(b) for specifics on how these professions and services are defined. These regulations are available online at the electronic Code of Federal Regulations, at *http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=%2Findex.tpl.*)

Ancillary costs such as laboratory costs and drugs are already included in the Medicare IPF PPS per diem payment and should not be unbundled and billed separately to Medicare. We expect that the IPF would be recording the cost of all drugs provided to its Medicare patients on its Medicare cost reports, and reporting charges for those drugs on its Medicare claims. We expect that when an IPF contracts with an outside laboratory to provide services to its Medicare inpatients, the IPF would instruct the laboratory to bill the IPF and not to bill Medicare.

Similarly, drugs provided to IPF Medicare inpatients where Medicare is the primary payer should not be billed to Part D or to other insurers.

We are continuing to analyze claims and cost report data that do not include ancillary charges or costs, and will be sharing our findings with the Center for Program Integrity and the Office of Financial Management for further investigation, as the results warrant. Our refinement analysis is dependent on recent precise data for costs, including ancillary costs. We will continue to collect these data until an accurate refinement analysis can be performed. Therefore, we are not making refinements in this final rule. Once we have gathered timely and accurate data, we will analyze that data with the expectation of a refinement update in future rulemaking. We invite comments on this issue of zero ancillary costs to better understand industry practices.

Comment: We received two comments on this section, with one commenter asking that CMS engage stakeholders in the policy development process for refinements, and that CMS consider any changes carefully, to preserve access to IPF services for vulnerable beneficiaries. A second commenter was concerned that CMS lacks accurate cost data for refinements, particularly if unbundling is occurring with ancillary costs. This commenter also cited findings by the Medicare Payment Advisory Commission which also noted concerns about limited IPF data, and which suggested CMS consider using an assessment tool with IPF patients for future refinements. This commenter suggested that CMS examine the tools already in use in IPFs to gauge their effectiveness in explaining differences in patient needs and their ability to add data collection at minimal cost to providers.

Response: We thank the commenters for their comments, and will consider them as we undertake IPF refinements in future rulemaking.

V. Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

A. Background

1. Statutory Authority

Section 1886(s)(4) of the Act, as added and amended by sections 3401(f) and 10322(a) of the Affordable Care Act, requires the Secretary to implement a quality reporting program for inpatient psychiatric hospitals and psychiatric units. Section 1886(s)(4)(A)(i) of the Act requires that, for FY 2014 [4] and each subsequent fiscal year, the Secretary must reduce any annual update to a standard federal rate for discharges occurring during the fiscal year by 2.0 percentage points for any inpatient psychiatric hospital or psychiatric unit that does not comply with quality data submission requirements with respect to an applicable fiscal year.

As provided in section 1886(s)(4)(A)(ii) of the Act, the application of the reduction for failure to report under section 1886(s)(4)(A)(i) of the Act may result in an annual update of less than 0.0 percent for a fiscal year, and may result in payment rates under section 1886(s)(1) of the Act being less than the payment rates for the preceding year. In addition, section 1886(s)(4)(B) of the Act requires that the application of the reduction to a standard Federal rate update be noncumulative across fiscal years. Thus, any reduction applied under section 1886(s)(4)(A) of the Act will apply only with respect to the fiscal year rate involved and the Secretary may not take into account the reduction in computing the payment amount under the system described in section 1886(s)(1) of the Act for subsequent years.

Section 1886(s)(4)(C) of the Act requires that, for FY 2014 (October 1, 2013, through September 30, 2014) and each subsequent year, each psychiatric hospital and psychiatric unit must submit to the Secretary data on quality measures as specified by the Secretary. The data must be submitted in a form and manner and at a time specified by the Secretary. Under section 1886(s)(4)(D)(i) of the Act, unless the

[4] The statute uses the term ''rate year'' (RY). However, beginning with the annual update of the inpatient psychiatric facility prospective payment system (IPF PPS) that took effect on July 1, 2011 (RY 2012), we aligned the IPF PPS update with the annual update of the ICD–9–CM codes, effective on October 1 of each year. This change allowed for annual payment updates and the ICD–9–CM coding update to occur on the same schedule and appear in the same **Federal Register** document, promoting administrative efficiency. To reflect the change to the annual payment rate update cycle, we revised the regulations at 42 CFR 412.402 to specify that, beginning October 1, 2012, the RY update period would be the 12-month period from October 1 through September 30, which we refer to as a ''fiscal year'' (FY) (76 FR 26435). Therefore, with respect to the IPFQR Program, the terms ''rate year'', as used in the statute, and ''fiscal year'' as used in the regulation, both refer to the period from October 1 through September 30. For more information regarding this terminology change, we refer readers to section III. of the RY 2012 IPF PPS final rule (76 FR 26434 through 26435).

exception of subclause (ii) applies, measures selected for the quality reporting program must have been endorsed by the entity with a contract under section 1890(a) of the Act. The National Quality Forum (NQF) currently holds this contract.

Section 1886(s)(4)(D)(ii) of the Act provides an exception to the requirement for NQF endorsement of measures: In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. Pursuant to section 1886(s)(4)(D)(iii) of the Act, the Secretary must publish the measures applicable to the FY 2014 IPFQR Program no later than October 1, 2012.

Section 1886(s)(4)(E) of the Act requires the Secretary to establish procedures for making public the data submitted by inpatient psychiatric hospitals and psychiatric units under the IPFQR Program. These procedures must ensure that a facility has the opportunity to review its data prior to the data being made public. The Secretary must report quality measures that relate to services furnished by the psychiatric hospitals and units on the CMS Web site.

2. Covered Entities

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645), we established that the IPFQR Program's quality reporting requirements cover those psychiatric hospitals and psychiatric units paid under Medicare's IPF PPS (42 CFR 412.404(b)). Generally, psychiatric hospitals and psychiatric units within acute care and critical access hospitals that treat Medicare patients are paid under the IPF PPS. Consistent with prior rules, we continue to use the term ''inpatient psychiatric facility'' (IPF) to refer to both inpatient psychiatric hospitals and psychiatric units. This usage follows the terminology in our IPF PPS regulations at § 412.402. For more information on covered entities, we refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645).

3. Considerations in Selecting Quality Measures

Our objective in selecting quality measures is to balance the need for information on the full spectrum of care delivery and the need to minimize the burden of data collection and reporting. We have focused on measures that evaluate critical processes of care that have significant impact on patient outcomes and support CMS and HHS priorities for improved quality and efficiency of care provided by IPFs. We refer readers to section 4.a. of the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645 through 53646) for a detailed discussion of the considerations taken into account in selecting quality measures.

Before being proposed for inclusion in the IPFQR Program, measures are placed on a list of measures under consideration, which is published annually by December 1 on behalf of CMS by the NQF. In compliance with section 1890A(a)(2) of the Act, measures proposed for the IPFQR Program were included in 2 publicly available documents: ''List of Measures under Consideration for December 1, 2013,'' and ''List of Measures under Consideration for December 1, 2014'' (*http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx).* The Measure Applications Partnership (MAP), a multi-stakeholder group convened by the NQF, reviews the measures under consideration for the IPFQR Program, among other Federal programs, and provides input on those measures to the Secretary. The MAP's 2014 and 2015 recommendations for quality measures under consideration are captured in the following documents: ''MAP Pre-Rulemaking Report: 2014 Recommendations on Measures for More than 20 Federal Programs'' (*http://www.qualityforum.org/Publications/2014/01/MAP_Pre-Rulemaking_Report__2014_Recommendations_on_Measures_for_More_than_20_Federal_Programs.aspx*) and ''Process and Approach for MAP Pre-Rulemaking Deliberations 2015'' (*http://www.qualityforum.org/Publications/2015/01/Process_and_Approach_for_MAP_Pre-Rulemaking_Deliberations_2015.aspx*.) We considered the input and recommendations provided by the MAP in selecting all measures for the IPFQR Program, including those discussed below.

B. Retention of IPFQR Program Measures Adopted in Previous Payment Determinations

Since the inception of the IPFQR Program in FY 2013, we have adopted a total of 14 mandatory measures. In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53646 through 53652), we adopted six chart-abstracted IPF quality measures for the FY 2014 payment determination and subsequent years. In the FY 2014 IPPS/LTCH PPS final rule (78 FR 50889 through 50895), we added 2 measures for the FY 2016 payment determination and subsequent years. In the FY 2015 IPF PPS final rule (79 FR 45963 through 45974), we finalized the addition of 2 new measures to the IPFQR Program to those already adopted for the FY 2016 payment determination and subsequent years, and finalized four quality measures for the FY 2017 payment determination and subsequent years.

C. Removal of HBIPS–4 From the IPFQR Program Measure Set for the FY 2017 Payment Determination and Subsequent Years

We first adopted HBIPS–4 Patients Discharged on Multiple Antipsychotic Medications in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53649 through 53650). We refer readers to that rule for a detailed discussion of the measure. At the time we adopted the measure, it was NQF-endorsed and intended for use in conjunction with HBIPS–5 Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification. However, the NQF removed its endorsement of HBIPS–4 in January 2014. The NQF's Behavioral Health Steering Committee, in its May 2014 Technical Expert Panel Report, found that current evidence indicated that HBIPS–4 ''does not allow for the distinction of differences in providers . . . .'' [5] Moreover, the Steering Committee noted that HBIPS–4 ''is not a measure of quality of patient care . . . and there is insufficient evidence to warrant the endorsement of this measure given the use of HBIPS–5, which addresses patients discharged on multiple antipsychotic medications with appropriate justification.'' [6] For these reasons, the Steering Committee did not re-endorse HBIPS–4.

As we stated in the FY 2013 IPPS/LTCH PPS final rule, we originally proposed HBIPS–4, in part, because HBIPS–4 and HBIPS–5 were intended to be reported as a set (77 FR 53649). However, as discussed above, the NQF no longer believes HBIPS–4 is necessary in that set, and we agree. As we stated in the proposed rule, we have the authority to maintain measures that are not NQF-endorsed under section 1886(s)(4)(D)(ii) of the Act. However, based on the loss of NQF endorsement and because providers must still submit data for HBIPS–5, which we believe

[5] Behavioral Health Endorsement Maintenance 2014, Phase 2, Technical Report, 67, (May 9, 2014). Available at *http://www.qualityforum.org/Publications/2014/05/Behavioral_Health_Endorsement_Maintenance_2014_-_Phase_II.aspx.*

[6] *Ibid.*

sufficiently includes the information HBIPS–4 was intended to collect, we stated our belief that removal of HBIPS–4 from the IPFQR Program is warranted. We noted that the data collection period for FY 2016 has ended and providers are required to submit this data. Therefore, we stated that FY 2017 is the first year that we will be able to remove this measure from the program, and we proposed to remove HBIPS–4 beginning with the FY 2017 payment determination.

We welcomed public comments on this proposal. The comments received and our responses are outlined below.

Comment: Many commenters supported the removal of HBIPS–4, noting that it is no longer NQF-endorsed and is not risk-adjusted, the use of a measure for the sake of documentation does not lead to improved care or provide actionable information and only increases burden, and HBIPS–5 details the quality of care for those receiving multiple antipsychotic medications. A few commenters, however, did not support CMS' removal of HBIPS–4, stating that the practice of prescribing more than one antipsychotic medication is a major contributor to high-dose prescribing, which increases the potential of adverse side effects and healthcare costs, and HBIPS–4 and HBIPS–5 are paired and, therefore, HBIPS–5 is less meaningful without HBIPS–4.

Response: As stated above, although HBIPS–4 and HBIPS–5 were originally paired, the NQF no longer believes that HBIPS–4 is necessary to that set and has removed endorsement of HBIPS–4, stating that HBIPS–4 ''does not allow for the distinction of differences in providers . . . .'' [7] Moreover, the Steering Committee noted that HBIPS–4 ''is not a measure of quality of patient care . . . and there is insufficient evidence to warrant the endorsement of this measure given the use of HBIPS–5. . . .'' [8] We agree and believe that HBIPS–5 is sufficient without HBIPS–4 and that HBIPS–4 should be removed from the IPFQR Program measure set as it increases burden without concomitant benefit.

Comment: Some commenters supported CMS' removal of HBIPS–4 but contended that problems remain with HBIPS–5 because IPFs are not always able to obtain a thorough history about patients and do not know, therefore, whether there is adequate justification for patients to be on more than one antipsychotic. Commenters recommended that CMS work with the measure developer and other stakeholders to determine if HBIPS–5 should include additional exclusions, such as patients for whom an IPF was unable to obtain records due to an inability to contact previous or current providers or patients for whom a caregiver wishes to be on multiple antipsychotics.

Response: We have not proposed to change HBIPS–5, and, therefore, will not be altering it in the final rule (77 FR 53650). We will, however, continue to monitor these issues in future years of the IPFQR Program.

For the reasons stated above, and as displayed in Table 19, we are finalizing our proposal to remove HBIPS–4: Patients Discharged on Multiple Antipsychotic Medications beginning with the FY 2017 payment determination.

TABLE 19—IPFQR PROGRAM MEASURE TO BE REMOVED FOR THE FY 2017 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

NQF #	Measure ID	Measure
N/A	HBIPS–4	Patients Discharged on Multiple Antipsychotic Medications.

D. New Quality Measures for the FY 2018 Payment Determination and Subsequent Years

In the FY 2016 IPF PPS proposed rule, we proposed to add five new measures to the IPFQR Program for the FY 2018 payment determination and subsequent years (80 FR 25047). The sections below outline our rationale for proposing these measures.

1. TOB–3 Tobacco Use Treatment Provided or Offered at Discharge and the Subset Measure TOB–3a Tobacco Use Treatment at Discharge (NQF #1656)

Tobacco use is one of the greatest contributors of morbidity and mortality in the United States, accounting for more than 435,000 deaths annually.[9] Smoking is a known cause of multiple cancers, heart disease, stroke, complications of pregnancy, chronic obstructive pulmonary disease, other respiratory problems, poorer wound healing, and many other diseases.[10] This health issue has significant implications for persons with mental illness and substance use disorders. Tobacco use is much higher among people with co-existing mental health conditions than for the general population.[11] One study has estimated that these individuals are twice as likely to smoke as the rest of the population.[12] Tobacco use also creates a heavy financial cost to both individuals and society. Smoking-attributable health care expenditures are estimated at $96 billion per year in direct medical expenses and $97 billion in lost productivity.[13]

Strong and consistent evidence demonstrates that timely tobacco dependence interventions for patients using tobacco can significantly reduce the risk of developing a tobacco-related disease, as well as provide improved health outcomes for those already suffering from a tobacco-related

[7] Behavioral Health Endorsement Maintenance 2014, Phase 2, Technical Report, 67, (May 9, 2014). Available at *http://www.qualityforum.org/Publications/2014/05/Behavioral_Health_Endorsement_Maintenance_2014_-_Phase_II.aspx.*

[8] *Ibid.*

[9] Centers for Disease Control and Prevention. Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004.'' *Morb Mortal Wkly Rep.* 2008. 57(45): 1226–1228. Available at: *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm.*

[10] U.S. Department of Health and Human Services. ''The health consequences of smoking: A report of the Surgeon General.'' Atlanta, GA, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

[11] Fiore, Michael C., Goplerud, Eric, Shroeder, Steven A. (2010). The Joint Commission's New Tobacco Cessation Measures—Will Hospitals Do the Right Thing? *N Engl J Med* 2012; 366:1172–1174. Available at *http://www.nejm.org/doi/full/10.1056/nejmp1115176.*

[12] Lasser K., Boyd J.W., Woolhandler S., Himmelstein, D.U., McCormick D., Bor D.H.. Smoking and mental illness: A population-based prevalence study. *JAMA.* 2000; 284(20):2606–2610.

[13] Centers for Disease Control and Prevention. ''Best Practices for Comprehensive Tobacco Control Programs—2007.'' Atlanta, GA, Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2007.

disease.[14] Even a minimal intervention has been shown to result in cessation.[15] Research discloses that tobacco users hospitalized with psychiatric illnesses who enter into smoking-cessation treatment can successfully overcome their tobacco dependence; [16] however, ''studies show that many hospitals do not consistently provide cessation services to their patients.'' [17] Evidence also suggests that tobacco cessation treatment does not increase, and may even decrease, the risk of re-hospitalization for tobacco users hospitalized with psychiatric illnesses.[18] Research further demonstrates that effective tobacco cessation support across the care continuum can be provided with only minimal additional provider effort and without harm to the mental health recovery process.[19]

TOB–3 (NQF #1656) is a chart-abstracted measure that identifies those patients 18 years of age and older who have used tobacco products within 30 days of admission and who ''were referred to or refused evidence-based outpatient counseling *AND* received or refused a prescription for FDA-approved cessation medication upon discharge.'' [20] TOB–3a is a subset of TOB–3 and identifies those IPF ''patients who were referred to evidence-based outpatient counseling *AND* received a prescription for FDA-approved cessation medication upon discharge as well as those who were referred to outpatient counseling and had reason for not receiving a prescription for medication.'' [21]

[14] U.S. Department of Health and Human Services. ''The health consequences of smoking: a report of the Surgeon General.'' Atlanta, GA, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

[15] Fiore M.C., Jaén C.R., Baker T.B., et al. *Treating Tobacco Use and Dependence: 2008 Update.* Clinical Practice Guideline. Rockville, MD: U.S. Department of Health and Human Services. Public Health Service. May 2008, *available at http://www.ncbi.nlm.nih.gov/books/NBK63952.*

[16] Prochaska, J.J., et al. ''Efficacy of Initiating Tobacco Dependence Treatment in Inpatient Psychiatry: A Randomized Controlled Trial.'' *Am. J. Pub. Health.* 2013 August 15; e1–e9.

[17] Fiore, Michael C., Goplerud, Eric, Shroeder, Steven A. (2010). The Joint Commission's New Tobacco Cessation Measures—Will Hospitals Do the Right Thing? *N Engl J Med* 2012; 366:1172–1174, *available at http://www.nejm.org/doi/full/10.1056/nejmp1115176.*

[18] Prochaska, JJ, et al. ''Efficacy of Initiating Tobacco Dependence Treatment in Inpatient Psychiatry: A Randomized Controlled Trial.'' *Am. J. Pub. Health.* 2013 August 15; e1–e9.

[19] *Ibid.*

[20] TOB–3 and TOB–3a Measure Specifications, available at *http://www.jointcommission.org/assets/1/6/HIQR_Jan2015_v4_4a_1_EXE.zip.*

[21] *Ibid.*

Providers must report this measure set as ''an overall rate which includes all patients to whom tobacco treatment was provided, or offered and refused, at the time of hospital discharge (TOB–3), and a second rate, a subset of the first, which includes only those patients who received tobacco use treatment at discharge. (TOB–3a).'' [22] For more information on the measure specifications, we refer readers to the *Specifications Manual for National Hospital Inpatient Quality Measures* at *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482.*Providing counseling and recommending cessation medication are core strategies of the Treating Tobacco Use and Dependence Guidelines.[23] For the reasons stated above, we stated that we believe that adoption of the TOB–3/TOB–3a measure set, which assesses IPFs' offering of these tobacco use cessation treatments to IPF patients, will result in better overall health outcomes for IPF patients.

Furthermore, we noted that the adoption of this measure set will strengthen related measures already in place in the IPFQR Program. Currently, the IPFQR Program includes 2 other tobacco cessation measures: (1) Tobacco Use Screening (TOB–1), a chart-abstracted measure that assesses hospitalized patients who are screened within the first 3 days of admission for tobacco use (cigarettes, smokeless tobacco, pipe, and cigar) within the previous 30 days; and (2) Tobacco Use Treatment Provided or Offered (TOB–2), which includes the subset, Tobacco Use Treatment (TOB–2a). TOB–2/TOB–2a is a chart-abstracted measure set reported as an overall rate that includes all patients to whom tobacco use treatment was provided, or offered and refused, and a second rate, a subset of the first, which includes only those patients who received tobacco use treatment. TOB–1 and TOB–2/TOB–2a provide a picture of care given *during the hospital stay.* In contrast, TOB–3/TOB–3a present the care given *at discharge.* Together, these 3 measures/measure sets present a broader picture of the entire episode of care. We noted that if the TOB–3/TOB–3a measure set is adopted, the IPFQR Program's measure set will showcase both the facility's practice of screening patients for tobacco use and the outcomes of a facility's practice of offering opportunities to stop during the course of the stay and upon discharge. Further, we stated that the adoption of TOB–3/TOB–3a could alert IPFs to gaps in treatment for smoking cessation intervention at discharge if rates for these measures are low. We noted our belief that this knowledge will support the development of quality improvement plans and better engage patients in treatment.

We also stated our belief that public reporting of this information will provide consumers and other stakeholders with useful information in choosing among different facilities for patients who use tobacco products. In addition, we observed that this measure set promotes the National Quality Strategy priority of Effective Prevention and Treatment, particularly with respect to the leading causes of mortality, starting with cardiovascular disease. As noted above, tobacco use is one of the greatest contributors of morbidity and mortality in the United States, [24] contributing to various forms of cardiovascular disease, among many other conditions. [25] ''Tobacco use remains the chief preventable cause of illness and death in our society.'' [26] Cessation interventions can significantly reduce the risk of developing tobacco-related disease, [27] leading to decreases in cardiovascular disease, among other diseases, and, ultimately, mortality. We noted our belief that encouraging intervention would promote effective treatment of tobacco use, and may contribute to prevention of the many

[22] TOB–3 and TOB–3a Measure Specifications, available at *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482.*

[23] *See* Fiore MC, Jaén CR, Baker TB, et al. *Treating Tobacco Use and Dependence: 2008 Update.* Clinical Practice Guideline. Rockville, MD: U.S. Department of Health and Human Services. Public Health Service. May 2008. Available at *http://www.ncbi.nlm.nih.gov/books/NBK63952.* The specific strategy is further specified in Strategy 4A.

[24] Centers for Disease Control and Prevention. Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004.'' *Morb Mortal Wkly Rep.* 2008. 57(45): 1226–1228. Available at: *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm.*

[25] U.S. Department of Health and Human Services. ''The health consequences of smoking: A report of the Surgeon General.'' Atlanta, GA, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

[26] Fiore, Michael C., Goplerud, Eric, Shroeder, Steven A. (2010). The Joint Commission's New Tobacco Cessation Measures—Will Hospitals Do the Right Thing? *N Engl J Med* 2012; 366:1172–1174. Available at: *http://www.nejm.org/doi/full/10.1056/nejmp1115176.*

[27] U.S. Department of Health and Human Services. ''The health consequences of smoking: A report of the Surgeon General.'' Atlanta, GA, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

diseases that are associated with tobacco use.

For these reasons, we included TOB–3/TOB–3a in our ''List of Measures under Consideration for December 1, 2014.'' The MAP provided input on the measure set and supported its inclusion in the IPFQR Program in its report ''Process and Approach for MAP Pre-Rulemaking Deliberations 2015'' available at *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=78711.* Moreover, this measure set is NQF-endorsed for the IPF setting in conformity with the statutory criteria for measure selection under section 1886(s)(4)(D)(i) of the Act.

For these reasons, we proposed to adopt TOB–3/3a for the FY 2018 payment determination and subsequent years. We welcomed public comments on this proposal. The comments we received and our responses are set forth below.

Comment: Comments submitted from a consumer perspective strongly recommended adopting TOB–3/3a given the prevalence of tobacco use among those with mental illness, noting that rates are 2 to 4 times higher than the overall adult population in the United States. These commenters noted that tobacco use is the leading cause of premature disease and death in the United States, is a primary driver of hospitalizations for cancers, stroke, cardiovascular and respiratory disease, causes complications in pregnancy and newborns, and interferes with recovery and healing. These commenters also noted that hospitalizations are an ideal time to initiate cessation because most hospitals are smoke-free or tobacco-free environments, patients may be more likely to quit if the reason for hospitalization is caused or made worse by smoking, and patients may be more likely to continue cessation medications if they are given them during hospitalizations with a positive effect. They also pointed out that HHS has stated that hospitalizations present an unequaled opportunity to promote tobacco cessation, urging evidence-based interventions. Despite these facts, commenters noted that most hospitals have not placed a high priority on cessation efforts, specifically at discharge, thus presenting an opportunity for incorporation of cessation strategies into discharge planning and sustained participation in cessation treatment after patients reenter communities. Supporters of the measure also noted that, together with TOB–1 and TOB–2/2a, TOB–3/3a provides a comprehensive picture of tobacco use treatment around all episodes of inpatient psychiatric care. Finally, these commenters stated that, although the measure is chart-abstracted, the abstraction can be done at the same time the facility is abstracting data for TOB–1 and TOB–2/2a, thereby not substantively increasing burden.

Response: We thank commenters for their support.

Comment: Many commenters recommended that CMS not adopt TOB–3/3a because, they said the measure is a population health measure not created for IPFs and, therefore, does not address quality of psychiatric care. In addition, commenters stated that tobacco cessation is not a primary treatment goal for the majority of patients and may even be contraindicated if a practitioner believes the patient should focus on modifying a different behavior. These commenters also asserted that, when needed, IPFs already use appropriate screening tools. Commenters underscored that measures should be directly related to the reasons that patients seek or require IPF services. One commenter stated that this measure should not be adopted because 5 measures in the area of tobacco cessation are excessive. Other commenters stated that the measure is redundant given TOB–1 and TOB–2/2a. One commenter contended that the measure will show no differentiation in providers, rendering it meaningless to consumers. Finally, one commenter suggested that it may be operationally difficult for IPFs to comply with TOB–3/3a because IPFs may have to modify discharge procedures in order to manage offering and providing medications or counseling for heavy smokers, and suggested, therefore, that the measure be delayed until the FY 2019 payment determination.

Response: As we stated in the FY 2014 IPPS/LTCH PPS final rule (79 FR 45972), we disagree with commenters that maintain that tobacco cessation measures do not provide meaningful information regarding quality of care at IPFs. We continue to believe that reporting this information will provide meaningful distinctions between IPFs and that tobacco cessation treatment is an essential step for IPF patients, specifically because of the prevalence of tobacco use in this community. Tobacco use is the leading preventable cause of premature morbidity and mortality in the United States,[28] affects people with co-existing mental health conditions at a much higher rate than for the general population,[29] and is associated with estimated costs of $96 billion per year in direct medical expenses and $97 billion in lost productivity. [30] These figures are supported by recent studies, including those provided by the U.S. Surgeon General.[31] Furthermore, we disagree that measures must be created for IPFs or specifically for the IPF population to be indicative of quality care. We believe that limiting the program to only measures or conditions that specifically apply to the psychiatric population creates a false demarcation between nonpsychiatric and psychiatric care. In our opinion, IPFs should be considering the overall health of the patient throughout the length of his/her episode of care, in addition to the patient's psychiatric condition. Finally, although some IPFs may currently use appropriate screening tools, as asserted by commenters, these rates may not be publicly reported; a major goal of the IPFQR Program is to provide the public with information upon which to choose providers. Since, as discussed above, tobacco use is high among the IPF-population, we believe that publicly reporting this data will facilitate patient choice.

Additionally, we do not believe that TOB–3/3a is redundant, excessive or unnecessary. TOB–3/3a rounds out the tobacco measures we have previously adopted by showcasing the facility's practice of screening patients for tobacco use and the outcomes of a facility's practice of offering opportunities to stop during the course

[28] Centers for Disease Control and Prevention. Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004.'' *Morb Mortal Wkly Rep.* 2008. 57(45): 1226–1228. Available at: *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm.*

[29] Fiore, Michael C., Goplerud, Eric, Shroeder, Steven A. (2010). The Joint Commission's New Tobacco Cessation Measures—Will Hospitals Do the Right Thing? *N Engl J Med* 2012; 366:1172–1174. Available at *http://www.nejm.org/doi/full/10.1056/nejmp1115176.*

[30] Centers for Disease Control and Prevention. ''Best Practices for Comprehensive Tobacco Control Programs—2007.'' Atlanta, GA, Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2007.

[31] U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. Available at *http://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm.* CDC. Vital Signs: Current cigarette smoking among adults aged ≥18 years with mental illness—United States, 2009–2011. MMWR 2013;62(05):81–87. Available at *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6205a2.htm?s_cid=mm6205a2_w.* Xu X, Bishop EE, Kennedy SM, Simpson SA, Pechacek TF. Annual healthcare spending attributable to cigarette smoking: an update. Am J Prev Med 2015;48(3):326–333.

of the stay (TOB -1/2/2a) and upon discharge (TOB–3/3a), thus encompassing the entire episode of care. Furthermore, we are unaware of a situation in which tobacco cessation measures, which could lead to a decrease in disease and even premature death, would be contraindicated. As we state above, we believe the provider should be considering the overall health of the patient.

Finally, we understand that the measure may require some facilities to change their existing discharge procedures for the purpose of improving their performance on the measure, and that such changes may take longer to accomplish than the time available before measure data is collected. However, because we already require TOB–1/2/2a, we believe these changes will be minimal. In addition, if facilities have low measure rates, these low measure rates help signal important quality improvement and operational gaps and encourage IPFs to close these gaps, with the goal of higher measure rates in the future.

Comment: Several commenters recommended changes to this measure. One commenter recommended that CMS change the measure specifications to include minors since these individuals would also benefit from smoking cessation. Another commenter noted that the current specification require an appointment made by the healthcare provider for ongoing evidence-based counseling with clinicians, and IPFs may not be able to arrange a specific date for outpatient appointments. This commenter asked CMS to modify the measure to allow hospitals to arrange a referral without a specific appointment date. Other commenters stated that the measure should exclude patients who were screened but later decided they did not wish to receive treatment, asserting that informed consent is a hallmark of medical delivery, and, as specified, the measure is a measure of patient cooperation rather than provider quality; one commenter suggested, instead, capturing a rate of ''patient refusal after treatment was offered.''

Response: When feasible and practicable, we believe it is important to implement measures as they are specified, especially once such measures are NQF-endorsed. As such, we do not believe we should make the suggested modifications to the measure. We encourage commenters to suggest these changes to the measure's steward, The Joint Commission, so that the measure can be properly specified, tested, and endorsed for these changes. Furthermore, we believe that patient compliance is indicative of quality care. That is, we maintain that it is important that providers understand gaps in patient compliance so that they can modify their actions and policy to systematically encourage such compliance.

Comment: One commenter requested that the measure be refined so that ''referral to evidence-based outpatient counseling'' specifies that ''referral to evidence-based tobacco cessation interventions'' may include outpatient counseling, community resources, or telephonic counseling services. Another commenter maintained that the measure should be inclusive of behavioral healthcare treatment approaches that meet the intent of ''outpatient counseling.'' Another commenter expressed concern with the availability of outpatient counseling services, particularly in rural areas, noting that many patients may not feel comfortable having a referral made from a psychiatric facility.

Response: As specified, the measure does not state examples of what ''referral to evidence-based outpatient counseling'' should include. We believe it is important to give providers flexibility in prescribing interventions to best fit the needs of the patient; telephonic counseling services or other types of community resources may meet the requirements for the measure and provide additional opportunities for outpatient counseling in rural areas if they provide evidence-based tobacco cessation counseling on an outpatient basis. Finally, upon discharge, many patients are referred to outpatient providers; we do not believe this measure presents unique issues to discharge referrals and believe that providers should adhere to confidentiality laws and requirements in all of these situations.

Comment: One commenter stated that because of its limited resources as a community mental health center, it would likely face reduced payment as a result of this measure, and, therefore, urged us not to adopt it.

Response: As we stated above, the IPFQR Program does not penalize facilities for low measure rates; facilities are only penalized if they fail to report these data.

Comment: Many commenters recommended that CMS review the TOB measures to see if they are effective and appropriate in the IPF setting and should continue to be required for the IPFQR Program.

Response: We continuously evaluate whether our measures are effective and appropriate for the IPFQR Program. Furthermore, as stated above, this measure is endorsed for all inpatient settings, which is inclusive of the IPF-setting. We will continue to do so for the TOB measure set.

Comment: One commenter noted that several states do not provide financial support for prescription medication for tobacco use treatment, which may translate to high costs for the patient, and recommended that the measure track patients who are unable to accept treatment due to costs.

Response: We thank the commenter for this suggestion, and we will consider it for future years of the IPFQR Program.

For the reasons stated above, we are finalizing our proposal to adopt TOB–3 Tobacco Use Treatment Provided or Offered at Discharge and the subset measure TOB–3a Tobacco Use Treatment at Discharge (NQF #1656) for the FY 2018 payment determination and subsequent years.

2. SUB–2 Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention (NQF #1663)

Individuals with mental health conditions experience substance use disorders (SUDs) at a much higher rate than the general population. Individuals with the most serious mental illnesses have the highest rates of SUDs. Co-occurring SUDs often go undiagnosed and, without treatment, contribute to a longer persistence of disorders, poorer treatment outcomes, lower rates of medication adherence, and greater impairments to functioning.

Substance abuse, particularly alcohol abuse, is a significant problem in the elderly. Alcohol use disorders are the most prevalent type of addictive disorder in individuals ages 65 and over.[32] Roughly 6 percent of the elderly are considered to be heavy users of alcohol.[33] Alcohol abuse is often associated with depression and contributes to the etiology of many serious medical conditions, including liver disease and cardiovascular disease. For these reasons, it is important to assess IPFs' efforts to offer alcohol abuse treatment to those patients who screen positive for alcohol abuse.

SUB–2 includes ''[p]atients 18 years of age and older who screened positive for unhealthy alcohol use who received or refused a brief intervention during

[32] *Ross, S. (2005). Alcohol Use Disorders in the Elderly. Primary Psychiatry, 12(1):32–40.*

[33] AL Mirand and JW Welte. Alcohol consumption among the elderly in a general population, Erie County, New York. *Am J Public Health.* 1996 July; 86(7): 978–984.

the hospital [34] stay.'' [35] SUB–2a includes ''[p]atients who received the brief intervention during the hospital stay.'' [36] The measure set is chart-abstracted and ''is reported as an overall rate which includes all patients to whom a brief intervention was provided, or offered and refused, and a second rate, a subset of the first, which includes only those patients who received a brief intervention.'' [37] For more information on the measure specifications, we refer readers to the *Specifications Manual for National Hospital Inpatient Quality Measures* at *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482*.

We stated our belief that the addition of the SUB–2/SUB–2a measure set to the related existing substance abuse measure in the IPFQR Program will improve the overall quality of care that patients receive in IPF settings, as well as overall patient health outcomes. We previously adopted the SUB–1 measure (Alcohol Use Screening (SUB–1) (NQF #1661)) (78 FR 50890 through 50892). SUB–1 assesses ''hospitalized patients 18 years of age and older who are screened during the hospital stay using a validated screening questionnaire for unhealthy alcohol use.'' SUB–1 alone does not provide a full picture of an IPF's response to this screening. However, when linked to SUB–2/SUB–2a, the IPF measure set depicts the rate at which patients are screened for potential alcohol abuse *and* the rate at which those who screen positive accept the offered interventions. Further, the adoption of SUB–2/SUB 2a could alert IPFs to gaps in treatment for interventions if rates are low, which supports the development of quality improvement plans and better patient engagement in treatment. In addition, data for the SUB–2/SUB–2a measure set, in combination with the SUB–1 measure, would afford consumers useful information in choosing among different facilities, particularly for patients who may require assistance with unhealthy alcohol use.

Additionally, we stated our belief that this measure set promotes the National Quality Strategy priority of Effective Prevention and Treatment for the leading causes of mortality, starting with cardiovascular disease. As noted above, alcohol use disorders are the most prevalent type of addictive disorder in individuals ages 65 and over [38] and contribute to serious medical conditions, including cardiovascular disease and liver disease. We noted that encouraging interventions would promote treatment of unhealthy alcohol use and may contribute to prevention of the many diseases that are associated with alcohol abuse, including cardiovascular disease.

For these reasons, we included the SUB–2/SUB–2a measure set in our ''List of Measures under Consideration for December 1, 2014.'' The MAP provided input on the measure set and supported its inclusion in the IPFQR Program in its report ''Process and Approach for MAP Pre-Rulemaking Deliberations 2015'' available at *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=78711*. Moreover, this measure set is NQF-endorsed for the IPF setting, in conformity with the statutory criteria for measure selection under section 1886(s)(4)(D)(i) of the Act.

Therefore, we proposed to adopt SUB–2/2a for the FY 2018 payment determination and subsequent years. We welcomed public comments on this proposal. The comments we received and our responses are set forth below.

Comment: Comments submitted from a consumer perspective supported the measure since alcohol use may be a contributing factor to the mental health of patients. Commenters noted that mental health and substance abuse treatment have historically been provided separately and not in a coordinated fashion and the measure could serve as a catalyst for coordinated, integrated responses. Furthermore, these commenters stated that the addition of these measures will complement SUB–1.

Response: We thank commenters for their support.

Comment: Many commenters recommended that CMS not adopt SUB–2/2a because, they submitted, the measure is a population screening measure neither created for IPFs nor systematically tested in the IPF setting, and, therefore, does not address quality of psychiatric care. Specifically, commenters stated that this measure penalizes providers for a patient's refusal to receive treatment, and is therefore a measure of patient cooperation rather than provider quality. In addition, commenters asserted that measures should be directly related to reasons that patients seek or require IPF services to focus providers on optimal care and recommended measures specific to evidence-based practices. Finally, commenters noted that IPFs already perform an in-depth assessment of patients' alcohol and substance abuse history, and current use and patients with such disorders are treated through a multi-disciplinary and multi-model plan, so the measure is not necessary, and the measure will show no differentiation in providers, rendering it meaningless to consumers.

Response: As we stated in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50891), although the SUB measures were developed using all hospitalizations in general acute care, we believe that SUB–2 is equally applicable to freestanding IPFs and psychiatric units within acute care facilities because risky alcohol use is an area of high comorbidity for populations hospitalized in all of these settings. Furthermore, we disagree that measures must be created for IPFs or specifically for the IPF population to be indicative of quality care. We believe that limiting the program to only measures or conditions that specifically apply to the psychiatric population creates a false demarcation between nonpsychiatric and psychiatric care. In our opinion, IPFs should be considering the overall health of the patient throughout the length of his/her episode of care, in addition to the patient's psychiatric condition. Furthermore, we believe that patient compliance is indicative of quality care. That is, we maintain that it is important that providers understand gaps in patient compliance so that they can modify their actions and policy to systematically encourage such compliance. Additionally, although we believe that the measure will differentiate between providers, we will monitor measure rates to assure the measure provides meaningful information to consumers by differentiating care among IPFs. Finally, although some IPFs may currently use appropriate screening tools and provide cessation treatment, as asserted by commenters, these rates may not be publicly reported; a major goal of the IPFQR Program is to provide the public with information upon which to choose providers. Since, as discussed above,

[34] Although the measure refers to ''hospitals,'' the measure is specified for all in-patient settings. *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482*.

[35] SUB–2 and SUB–2a Measure Specifications, available at *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482*.

[36] *Ibid*.

[37] SUB–2 and SUB–2a Measure Specifications, available at *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482*.

[38] Stephen Ross. Alcohol Use Disorders in the Elderly. Psychiatry Weekly (no date). Available at: *http://www.psychweekly.com/aspx/article/ArticleDetail.aspx?articleid=19*.

alcohol use is high among the IPF-population, we believe that publicly reporting this data will facilitate patient choice.

Comment: Several commenters stated that the measure should not be adopted because it does not go far enough, stating the measure separates alcohol use from other substances when psychiatric patients are routinely screened for all substance use issues.

Response: As we stated in the FY 2014 IPPS/LTCH PPS final rule (78 FR 58092), we recognize that this measure only assesses alcohol use and that screening for risky use/abuse of other substances would also be desirable. We believe the SUB measure set to be an important first step in this area, and we intend to consider the incorporation of other substance use measures into the program in the future.

Comment: Many commenters urged CMS to modify this measure to include more than a ''brief'' intervention since patients who demonstrate behaviors sufficient to warrant involuntary inpatient commitment and are dually diagnosed with substance abuse or dependence require more intensive than ''brief'' substance use treatments. One commenter stated that ''brief intervention'' needs further definition and clarification to suggest or require brief intervention structures supported by evidence, such as the FRAMES (feedback, responsibility, advice, menu of options, empathy, and self-efficacy) structure. Other commenters submitted that there is no evidence supporting the efficacy of brief interventions for individuals that have alcohol or other substance use.

Response: We disagree with the commenters regarding the efficacy of brief interventions, specifically as they are defined by the measure. In 2014, during the measures maintenance process, the NQF's Behavioral Health Steering Committee stated that ''in order to receive credit for the brief intervention there must be a bedside discussion with the patient focusing on increasing the patient's understanding of the impact of substance use on his or her health and motivating the patient to change risky behaviors. The intervention should include feedback concerning the quantity and frequency of alcohol consumed by the patient in comparison with national norms, a discussion of negative physical, emotional, and occupational consequences, and a discussion of the overall severity of the problem. The brief intervention may be given by a variety of healthcare professionals such as physician, nurse, certified addictions counselor, psychologist, social worker, or health educator with training in brief intervention.'' [39] We understand that for heavy users of alcohol, brief intervention may not be enough, but these brief interventions, we believe, are an important first-step to cessation. Furthermore, if providers believe that additional cessation strategies are warranted, we highly encourage using them. In addition, as described, the FRAMES structure would satisfy the requirements for ''brief intervention,'' and we believe that the provider community could use this framework. We note, however, that such structure is not required as long as the provider meets the elements discussed above.

Comment: One commenter expressed concern that the measure set does not exclude cases when treatment was offered but refused. This commenter requested that CMS report the measure as the percentage of patients who were offered treatment and refused, or retitle the measure to ''patients who were offered alcohol use intervention and accepted.'' This commenter also requested that CMS allow clinicians to determine whether a patient's cognitive impairment in the first three days of admission prevented screening because some patients are alert and oriented but impaired cognitively so as to not allow screening for substance abuse.

Response: When feasible and practicable, we believe it is important to implement measures as they are specified, especially where, as here, the measure set is NQF-endorsed. As such, we do not believe we should make the suggested modifications to the measure. We encourage the commenter to suggest these changes to the measure's steward, The Joint Commission, so that the measure can be properly specified, tested, and endorsed for these changes. In addition, the measure set is bifurcated specifically to delineate patients that refuse or do not otherwise receive treatment. SUB–2 measures ''[p]atients 18 years of age and older who screened positive for unhealthy alcohol use who received or refused a brief intervention during the hospital [40] stay,'' [41] but SUB–2a only includes ''[p]atients who received the brief intervention during the hospital stay.'' [42] Thus, the measure rates that will be published on *Hospital Compare* will allow the public to derive rates of patient refusal. As stated above, however, we believe that patient compliance is indicative of quality care. That is, we maintain that it is important that providers understand gaps in patient compliance so that they can modify their actions and policy to systematically encourage such compliance.

Comment: One commenter stated that because of its limited resources as a community mental health center, it would likely face reduced payment as a result of this measure, and, therefore, urged us not to adopt it.

Response: As we stated above, the IPFQR Program does not penalize facilities for low measure rates; facilities are only penalized if they fail to report these data.

Comment: One commenter noted that individuals screening positive for alcohol dependency may need both brief interventions and further assessment or referral to specialty treatment and, therefore, suggested an additional quality measure that assesses patients who were defined as alcohol dependent and referred to a substance use disorder specialist for assessment. Another commenter urged CMS to adopt SUB–3/3a to complement SUB–1/2/2a, noting that co-occurring substance use disorders are prevalent in many patients with psychiatric diagnoses and SUB–3/3a will ensure that patients continue to receive treatment after discharge. Another commenter encouraged CMS to consider additional non-alcohol substance abuse disorder measures, specifically the use of opioids.

Response: We thank the commenters for these suggestions and will consider them for future years of the program.

For the reasons stated above, we are finalizing our proposal to adopt SUB–2 Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention (NQF #1663) for the FY 2018 payment determination and subsequent years.

3. Transition Record With Specified Elements Received by Discharged Patients (Discharges From an Inpatient Facility to Home/Self Care or Any Other Site of Care) (NQF #0647) and Removal of HBIPS–6

Effective and timely communication of a patient's clinical status and other relevant information at the time of discharge from an inpatient facility is essential for supporting appropriate continuity of care. Establishment of an

[39] *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=76540.*

[40] Although the measure refers to ''hospitals,'' the measure is specified for all in-patient settings. *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482.*

[41] SUB–2 and SUB–2a Measure Specifications, available at *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482.*

[42] *Ibid.*

effective transition from one treatment setting to another is enhanced by providing patients and their caregivers with sufficient information regarding treatment during hospitalization. Receiving discharge instructions can assist the patient in understanding how to maintain and enhance his/her care when discharged to home or any other site, and studies have shown that readmissions can be prevented by providing detailed, personalized information to patients pre-discharge.[43]

The Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any other Site of Care) measure is a chart-abstracted measure that captures the ''[p]ercentage of patients, regardless of age, discharged from an inpatient facility to home or other site of care, or their caregiver(s), who received a transition record (and with whom a review of all included information was documented) at the time of discharge.'' [44] At a minimum, the transition record should include:

- Reason for inpatient admission;
- Major procedures and tests performed during inpatient stay and summary of results;
- Principal diagnosis at discharge;
- Current medication list;
- Studies pending at discharge;
- Patient instructions;
- Advance directive or surrogate decision maker documented or reason for not providing advance care plan;
- 24-hour/7-day contact information, including physician for emergencies related to inpatient stay;
- Contact information for obtaining results of studies pending at discharge;
- Plan for follow-up care; and
- Primary physician, other health care professional, or site designated for follow-up care.[45]

The measure was developed by the American Medical Association–convened Physician Consortium for Performance Improvement (AMA-convened PCPI), ''a national, physician-led initiative dedicated to improving patient health and safety.'' [46] For more information on this measure, including its specifications, we refer the readers to the AMA-convened PCPI list of measures at *http://www.qualityforum.org/Qps/0647*.

The Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any other Site of Care) measure seeks to prevent gaps in care transitions caused by the patient receiving inadequate or insufficient information that lead to avoidable adverse events and cost CMS approximately $15 billion due to avoidable patient readmissions.[47]

We stated our belief that public reporting of this measure will afford patients and their families or caregivers useful information in choosing among different facilities and will promote the National Quality Strategy priority of Communication and Care Coordination. As articulated by HHS, ''Care coordination is a conscious effort to ensure that all key information needed to make clinical decisions is available to patients and providers. It is defined as the deliberate organization of patient care activities between 2 or more participants involved in a patient's care to facilitate appropriate delivery of health care services.'' [48] This measure will promote appropriate care coordination by specifying that patients discharged from an inpatient facility receive relevant and meaningful transition information. This measure also promotes Person and Family Engagement, ''a set of behaviors by patients, family members, and health professionals and a set of organizational policies and procedures that foster both the inclusion of patients and family members as active members of the health care team and collaborative partnerships with providers and provider organizations.'' [49] This measure will inform patients of their status at discharge, empowering them to become active members in their care. Additionally, the inclusion in this measure of an advance care plan will support open communication of the patient's, and his/her caregiver's/surrogate's, wishes, resulting in improved patient-provider communication.

For these reasons, we included this measure in our ''List of Measures under Consideration for December 1, 2014.'' The MAP provided input on the measure and supported its inclusion in the IPFQR Program in its report ''Process and Approach for MAP Pre-Rulemaking Deliberations 2015'' available at *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=78711*. In addition, the MAP had previously suggested this measure as one that could fill a gap in communication between the provider and patient at discharge [50] and recommended that the measure be used for dual eligible patients (that is, patients with both Medicare and Medicaid coverage), who comprise a significant beneficiary population served within IPFs.[51] Moreover, this measure set is NQF-endorsed for the IPF setting, in conformity with the statutory criteria for measure selection under section 1886(s)(4)(D)(i) of the Act.

We proposed that, if this measure is finalized, it would replace the existing HBIPS–6 Post-Discharge Continuing Care Plan measure.[52] We stated our belief that the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure is a more effective and robust measure than HBIPS–6 for use in the IPF setting. Specifically, HBIPS–6 requires discharge plans to only have 4 components:

- Reason for hospitalization;
- Principal diagnosis;
- Discharge medications; and
- Next level of care recommendations.[53]

In contrast, the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure requires additional elements, including those described below, which are intended to improve quality of care,

[43] Jack BW, Chetty VK, Anthony D, et al. A reengineered hospital discharge program to decrease rehospitalization. *Ann Intern Med* 2009; 150:178–187.

[44] Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) Measure Specifications. Available at *http://www.qualityforum.org/Qps/0647*.

[45] *Ibid*.

[46] *See http://www.ama-assn.org/ama/pub/physician-resources/physician-consortium-performance-improvement/about-pcpi.page?* The AMA–PCPI ''is nationally recognized for measure development, specification and testing of measures, and enabling use of measures in electronic health records (EHRs) . . . [the organization] develops, tests, implements and disseminates evidence-based measures that reflect the best practices and best interest of medicine . . .''

[47] Medicare Payment Advisory Commission. Promoting Greater Efficiency in Medicare. June 2007. Available at: *http://www.medpac.gov/documents/reports/Jun07_EntireReport.pdf*.

[48] US DHHS. ''National Healthcare Disparities Report 2013.'' Available at: *http://www.ahrq.gov/research/findings/nhqrdr/nhdr13/chap7.html*.

[49] Guide to Patient and Family Engagement: Environmental Scan Report. May 2012. Agency for Healthcare Research and Quality. Rockville, MD. Available at: *http://www.ahrq.gov/research/findings/final-reports/ptfamilyscan/ptfamily1.html*.

[50] *http://www.qualityforum.org/Publications/2012/10/MAP_Families_of_Measures.aspx*.

[51] *http://www.qualityforum.org/Publications/2014/08/2014_Input_on_Quality_Measures_for_Dual_Eligible_Beneficiaries.aspx*.

[52] In the FY 2013 IPPS/LTCH PPS final rule, we adopted HBIPS–6, beginning with the FY 2014 payment determination (77 FR 53650–53651). We refer readers to that rule for a detailed discussion of this measure.

[53] *See https://manual.jointcommission.org/releases/TJC2014A1/*.

decrease costs, and increase beneficiary engagement.

First, this measure requires the provider to communicate both studies pending at discharge as well as contact information so that patients or their families can obtain the results of those studies. Approximately 40 percent of discharged patients have test results that are pending and about a quarter of such test results require further action that, if not taken in a timely manner, could result in potentially avoidable negative outcomes.[54] HBIPS–6 does not require providers to specify studies pending at discharge.

Second, the transition record is also required to contain a list of major procedures and tests that were performed during the hospitalization and summary results. HBIPS–6 does not include this requirement. We believe it is important for a patient to understand which tests were performed on him/her and for what purpose, understanding the outcome and consequences of these tests. This knowledge may serve to empower patients to seek additional care or follow-up when necessary, reducing the risk of avoidable consequences and readmissions.

Third, the transition record in this measure is required to include patient instructions while HBIPS–6 has no such requirement. Without instructions, the patient may not take the necessary steps for recovery, leading to complications and/or readmissions.

Fourth, this measure requires both of the following: (1) 24-hour/7-day contact information including physicians for emergencies related to inpatient stay; and (2) the primary physician, other health care professional, or sites designated for follow-up care. HBIPS–6 does not have these requirements. Again, this information can lead to reduced complications and an increased likelihood of appropriate follow-up care, resulting in reduced readmissions.

Finally, the elements required for the transition record measure are far better aligned than HBIPS–6 with the elements required in the Summary of Care record required by the Electronic Health Record (EHR) Incentive Program for eligible hospitals and critical access hospitals and with the guidance on discharge planning provided by the Medicare Learning Network available at *https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Discharge-Planning-Booklet-ICN908184.pdf*.

In summary, we stated our belief that the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure is more robust than HBIPS–6 because it includes these and other elements that are currently absent from HBIPS–6. Therefore, we proposed to adopt the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure for the FY 2018 payment determination and subsequent years, and to remove HBIPS–6. We welcomed public comments on these proposals. The comments we received and our responses are set forth below.

Comment: Many comments submitted from a consumer perspective supported the adoption of this measure, stating that the transition from inpatient to home/self-care or any other site is extremely critical; the measure supports patient engagement, and patient activation, and provides patients with necessary documentation for follow-up care. Commenters also stated that, unlike HBIPS–6, because this measure is not limited to the inpatient psychiatric setting, it decreases the separation between psychiatric and nonpsychiatric care.

Response: We thank the commenters for their support.

Comment: Many commenters recommended that CMS not replace HBIPS–6 with the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure for several reasons. First, commenters asserted that HBIPS–6 is widely-used and fully operational, was developed with the input of IPFs, and fully tested in the IPF-setting, whereas the proposed measure does not appear to be widely used or have benchmarking data available. One commenter specifically submitted that the measure was developed for use at the individual-clinician level rather than at the facility-level. Commenters stated that most IPFs have been reporting HBIPS data for over eight years, allowing them to understand trends and performance gaps, and believed that removing HBIPS–6 could upset quality improvement efforts currently in place. Commenters also stated that continually revising the measures does not provide reliable data on which to base decisions about patient care and evaluate care improvement over time.

Second, commenters contended that HBIPS–6 better addresses the core elements of the proposed measure and requires more stringent documentation of medications, noting that, although the proposed measure requires more information, it is the practice of IPFs to include all relevant information in the continuing care plan, and, if needed, hospitals communicate additional elements to the next level care provider. Commenters further stated that the new elements required by this measure are not germane to the vast majority of psychiatric patients, commenting that the rule mainly cites articles that did not necessarily study psychiatric patients, and that the new elements are primarily based on medical models rather than psychiatric care.

Third, commenters contended that retiring HBIPS–6 will increase burden on IPFs because of the 7 additional elements required by the proposed measure and because IPFs will still be required to abstract data for HBIPS–6 for The Joint Commission.

Finally, some commenters stated that the measure is duplicative of, and sometimes misaligned with, the requirements of Medicare's Conditions of Participation. Commenters believed that the Conditions of Participation meet the goals of promoting care coordination by specifying that patients discharged from an inpatient facility receive relevant and meaningful transition information and the results are publicly reported.

Commenters suggested that, if CMS wishes to require transition elements in addition to HBIPS–6, CMS either allow hospitals more time to operationalize the measure, implementing the measure beginning with the FY 2019 payment determination, or that CMS work with The Joint Commission to revise HBIPS–6 to include additional elements.

Response: We agree with commenters that there may be some increase in burden due to the removal of HBIPS–6 and the adoption of the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure, since HBIPS–6 requires 4 elements while the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure requires 11 elements. However, we believe that this burden will be significantly mitigated by the overlap in the two measures; the 4 elements required by HBIPS–6 satisfy 4 of the 11 elements for the new measure. We clarify in this final rule that, if the IPF

[54] Kripalani S, LeFevre F, Phillips CO, et al. Deficits in communication and information transfer between hospital based and primary care physicians: implications for patient safety and continuity of care. *JAMA* 2007;297(8):831–841.

meets the documentation requirements of HBIPS–6, it also meets the documentation requirements for the following elements for the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure: (1) Reason for hospitalization; (2) principal diagnosis; (3) discharge medications; and (4) next level of care recommendations. Therefore a hospital could abstract data for and comply with HBIPS–6 by also complying with and abstracting data for the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure. Furthermore, if it is currently the practice of IPFs to include all relevant information in the continuing care plan, as some commenters assert, we do not understand how the measure would substantially increase burden. In addition, for the reasons stated above, we believe the additional elements in the new transition measure are indicative of quality care, leading to a decrease in re-hospitalizations and an increase in patient safety. We also do not agree that replacing this measure will upset quality improvement efforts begun by HBIPS–6. If IPFs have already begun quality improvement in this area, we believe it will continue and even surpass the current state because the proposed measure is even more robust, requiring 7 additional elements. Therefore, we believe that the benefit of the removal of HBIPS–6 and the adoption of the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure outweighs any associated burden and furthers the goals of the IPFQR Program. In addition, the measure is endorsed at the facility-level, not the clinical-level, and was developed with a broad range of inpatient settings in mind that did not specifically exclude IPFs; the measure developer is considering explicitly including the IPF-setting in the next round of measure maintenance so that the measure is endorsed not only for all inpatient settings, but explicitly states that it is endorsed for the IPF-setting.

Furthermore, we disagree that the Conditions of Participation are duplicative of or misaligned with this measure. To the extent that the measure and Conditions of Participation overlap, they are aligned in their requirements. Furthermore, this measure requires elements in addition to those of the Conditions of Participation, increasing the quality of care delivered to patients.

To clarify, although HBIPS–6 requires documentation in the medical record of discharge medications, dosage, and indication for use or that no medications were prescribed at discharge, the new measure requires documentation of *all* medications to be taken by patient after discharge, including all *continued* and new medications. We believe that it is important that patients understand all medications that they should be taking, even those not specifically prescribed at discharge. Thus, we believe that this new measure is actually more robust than HBIPS–6.

Additionally, as we have stated previously, we disagree that measures must be created for IPFs or specifically for the IPF population to be indicative of quality care. Many issues concerning service quality are not specific to a particular setting. We believe that the content of transition records is one such issue. Further, we believe that limiting the program to only measures or conditions that specifically apply to the psychiatric population creates a false demarcation between nonpsychiatric and psychiatric care.

Finally, although we believe this measure to be a critical indicator of quality care, we understand that with the additional elements required it may take providers time to change their operations to begin collecting this data. Therefore, we will only require IPFs to report the last two quarters of data for this measure for the FY 2018 payment determination; that is, providers will only be required to report data for July 1, 2016–December 31, 2016. Beginning with the FY 2019 payment determination, IPFs will be required to report all four quarters of data or will face a payment reduction.

Comment: Some commenters asserted that patients have expressed frustration with the length of discharge instructions, and the number of elements required by this measure may overwhelm the patient, causing the patient or caregiver to lose interest and disregard the important information. Commenters also stated that some of this information could be misinterpreted if the patient reviews the information after discharge and not in the presence of a clinician. One commenter specifically contended that ''patient instructions'' should not be included in the record because they will become lost in the packet of information and many patients are discharged to places, such as a group home, residential care, or jail, where they are not able to keep such a large amount of information, putting their confidentiality at risk. Another commenter stated its belief that the requirements in the measure for patients to receive and understand their transition records is burdensome because the timeframe for collection does not allow enough time for hospitals to modify the language in their current systems to account for health literacy. Therefore, some commenters requested that the measure be limited to items necessary for the transition period to the next follow-up care visit and be tailored to psychiatric patient's ability to comprehend. Other commenters, however, specifically noted that the measure will enhance the likelihood that patients will have the information they need to effectively manage their own care (or for their caregiver to understand and assist with managing the patient's care).

Response: We agree that the measure will help, rather than harm, patients. We are committed to patient engagement and believe that the more that patients know about their condition and treatment, the more empowered they become in their care and their follow-up treatment. If facilities believe that certain items in the record need to be explained, we believe it is incumbent upon them to become partners in care with patients and sufficiently explain these details. Although such changes may present additional burden to facilities, we believe that this burden is far outweighed by the benefit of fostering an involved and empowered patient population. Additionally, we do not believe that this measure presents confidentiality issues for patients. Once a patient receives his or her record, the disposition of the information is up to the patient. Thus, as with all discharge records, a patients may choose to do with the information as they so choose without raising confidentiality concerns.

Comment: Some commenters supported the measure because it more closely aligns with existing summary of care document requirements for EHRs, but some commenters stated that, psychiatric hospitals are not eligible for the EHR Incentive Program and the majority of organizations to which IPFs discharge patients do not have electronic records. Other commenters stated their belief that this measure would require providers to modify their EHRs.

Response: Nothing in this measure requires a facility to use an EHR. While we recognize that psychiatric hospitals are not eligible for the EHR Incentive Program, we believe that, whenever

possible, the goals of the agency should be aligned to foster streamlined processes and procedures across providers and care settings. Furthermore, we are not aware of any specific EHR changes that would need to be made to accommodate this measure, and, when the record is transmitted to a next-level provider per the measure discussed below, the ''transition record may be transmitted to the facility or physician or other health care professional designated for follow-up care via fax, secure email, or mutual access to an electronic health record (EHR).'' [55]

Comment: Some commenters maintained that CMS inappropriately compared HBIPS–6 with the proposed measure when the HBIPS–6 transition plan is not required to go to the patient.

Response: We believe comparing these measures was appropriate because both concern practices around documentation of the care provided during the inpatient stay. In fact, the requirements for patient communication in the measure is an important reason for choosing it to replace HBIPS–6, which does not require the documentation to go to the patient. As we discuss above, we believe it is vital to provide this information to enhance patient engagement.

Comment: Commenters expressed concern that the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure is not stratified by age, which limits the usefulness of the data, given the variation across populations.

Response: As stated above, when feasible and practicable, we believe it is important to implement measures as they are specified especially where, as here, the measure is NQF-endorsed. As such, this measure is not specified to be reported by age. Furthermore, we believe that presenting the measure as an aggregate number rather than stratified by age will allow greater rather than less insight into these data because, as further explained in section V.F.1. of this final rule, the resultant number of cases is often too small to allow public reporting when data are stratified by age.

Comment: Comments submitted from a consumer perspective recommended that CMS consider adding the following additional elements to the existing transition measure: (1) Information on locations and contacts for community services and support group meetings; (2) recommendations for additional, non-medication mental health treatments; (3) recommendations for relevant physical health suggested appointments and clinical references; (4) patient surveys evaluating the quality of mental health care received; (5) information about side effects from medications and potential warning signs of adverse medication interactions; (6) information about follow-up care for alcohol or substance use treatment; and (7) documented coordination between inpatient and outpatient providers. Another commenter stated that the measure should exclude patients discharged in less than 24 hours because collecting the required information takes at least this amount of time. The same commenter also submitted that patients discharged to another acute facility should be excluded from the measure since such a discharge is always accompanied by an appropriate transition record. Another commenter stated that additional exclusions should be added, including patient refusal and unplanned discharges, noting that more than 6 percent of discharges fall in these categories. One commenter noted that ''medication indications'' is missing from the proposed measure, but appears in HBIPS–6, and questions why CMS believes this is no longer a necessary element, noting that such an omission is welcome because of the burden in documenting this information. Other commenters, however, stated that this more stringent documentation of medications is necessary.

Response: As stated above, when feasible and practicable, we believe it is important to implement measures as they are specified, especially once such measures are NQF-endorsed. As such, we do not believe we should make the suggested modifications to the measure. We encourage the commenters to suggest these changes to the measure's steward, the AMA-convened PCPI, so that the measure can be properly specified, tested, and endorsed for these changes.

Comment: Some commenters stated that this measure was either the same as or similar to a measure previously adopted by the Hospital OQR Program that was subsequently removed because hospitals raised concerns about potential privacy issues related to releasing certain elements of the record to family members or caregivers. Commenters asked if the measure had been revised to address these issues and if IPFs will be constrained by state laws, and, if so, since state laws differ from state-to-state, how the measure can be implemented nationwide.

Response: We believe the commenters stating that the measure is the same as a measure adopted by the Hospital OQR Program are incorrect. The Hospital OQR Program adopted and finalized NQF #0649 Transition Record with Specified Elements Received by Discharged Patients (Emergency Department Discharges to Ambulatory Care [Home/Self Care] or Home Health Care). Although this measure is also stewarded by the AMA–PCPI and requires a transition record, it is not the same as NQF #0647, which we proposed. The measures differ in regards to the location from which the patient is discharged; specifically, NQF #0649 measures discharges from the emergency department, while NQF #0647 measures discharges from an inpatient facility. We believe that this difference is critical because the circumstances surrounding discharge from an emergency department are typically not planned; that is, a patient is discharged the same day he/she arrives with the individual that brought him/her to the emergency room, whom a patient may or may not feel comfortable sharing information. Those discharged from an inpatient setting usually have advanced notice and can plan accordingly. Thus, we do not believe, and neither does the AMA–PCPI, that NQF #0647 raises any of the privacy concerns articulated by the Hospital OQR Program for #0649.

Comment: Commenters requested clarification on several elements of the discharge plan: (1) What needs to be transmitted to satisfy the advanced directive requirement and who is a ''surrogate decision maker''; (2) what is defined as a ''major procedure''; (3) which tests should be included in the transition record; and (4) what is ''24 hour, 7-day a week contact information.'' Another commenter requested that CMS clarify whether psychiatric patients undergo major procedures and tests during their stay, and, if so, the most common procedures and tests. Another commenter requested CMS to opine if Indiana's Physician Order for Scope Treatment document would satisfy the advance directive element. Another commenter stated that psychiatric patients are often not in the best position to formulate an advanced care plan.

Response: According to the measure steward, the AMA-convened PCPI, to satisfy the ''advance directive or surrogate decision maker documented or reason for not providing advance care plan'' element, the IPF need only document whether the patient has an

[55] Timely Transmission of Transition Record (Discharged from Inpatient Facility to Home/Self Care or Any Other Site of Care), available at *http://www.ama-assn.sorg/apps/listserv/x-check/qmeasure.cgi?submit=PCPI.*

advance directive or surrogate decision maker or a reason he/she does not have one. No additional documentation need be transmitted and a patient need not create an advance directive to satisfy the measure. A ''surrogate decision maker'' is an individual that the patient has designated to make decisions for him/her. Again, per the measure specifications, the patient need not necessarily have a surrogate decision maker, but the IPF should document why he or she does not in the absence of one.

The AMA–PCPI has also clarified that ''major procedure'' and ''tests'' are intentionally not defined to allow flexibility for providers; therefore, we cannot quantify which procedures or tests are major. If a provider believes a procedure to be ''major'' or a test important enough to be included, it should be included in the transition record.

Regarding the ''24 hour, 7-day a week contact information,'' IPFs need only provide a number where a patient can contact the facility with questions. This number need not connect the patient to his/her specific doctor, although it may do so.

For the reasons stated above, we are finalizing our proposal to adopt Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) and remove HPIBS–6: Post-Discharge Continuing Care Plan for the FY 2018 payment determination and subsequent years with one modification. For the FY 2018 payment determination, we will only require IPFs to report data on this measure for the last two quarters of the reporting period (July 1, 2016–December 1, 2016). Beginning with the FY 2019 payment determination, IPFs will be required to report all four quarters of data.

4. Timely Transmission of Transition Record (Discharges From an Inpatient Facility to Home/Self Care or Any Other Site of Care) (NQF #0648) and Removal of HBIPS–7

The literature shows infrequent communication between hospital physicians and primary care practitioners and that the availability of discharge summaries at the patient's first post-discharge visit with the primary care practitioner is low, which affects the quality of care provided to patients.[56] The Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure (NQF #0648) is a chart-abstracted measure developed by AMA-convened PCPI to narrow gaps in care transition that result in adverse health outcomes for patients and cost CMS about $15 billion due to readmissions,[57] as discussed above. This measure captures the ''[p]ercentage of patients, regardless of age, discharged from an inpatient facility to home or any other site of care for whom a transition record was transmitted to the facility or primary physician or other health care professional designated for follow-up care within 24 hours of discharge.'' [58] For more information on this measure, including its specifications, we refer the readers to *http://www.qualityforum.org/Qps/0648.*

We stated our belief that public reporting of this measure will afford consumers, and their families or caregivers, useful information in choosing among different facilities because it communicates how quickly a summary of the patient's record will be transmitted to his or her other treating facilities and physicians, improving care, as outlined above. We further believe that this measure will promote the National Quality Strategy priority of Communication and Care Coordination. As discussed above, according to HHS, ''Care coordination is a conscious effort to ensure that all key information needed to make clinical decisions is available to patients and providers. It is defined as the deliberate organization of patient care activities between 2 or more participants involved in a patient's care to facilitate appropriate delivery of health care services.'' [59] This measure enables a patient's primary care physician or other healthcare practitioner to timely receive a transition record of the inpatient hospitalization.

For these reasons, we included this measure in our ''List of Measures under Consideration for December 1, 2014.'' The MAP provided input on the measure and supported its inclusion in the IPFQR Program (*http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=78711*). In addition, the MAP had previously suggested this measure as one that could fill a gap in communication [60] and recommended that the measure be used for dual eligible patients (that is, patients with both Medicare and Medicaid coverage), who comprise a significant beneficiary population served within IPFs.[61] Moreover, this measure set is NQF-endorsed for the IPF setting, in conformity with the statutory criteria for measure selection under section 1886(s)(4)(D)(i) of the Act.

We proposed that if we finalized this measure, it would replace the existing HBIPS–7: Post Discharge Continuing Care Plan Transmitted to the Next Level of Care Provider Upon Discharge measure.[62] HBIPS–7 requires that the continuing care plan be transmitted to the next care provider no later than the fifth day post discharge.[63] The Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure requires transmission to the next level of care within 24 hours of discharge. More timely communication of vital information regarding the inpatient hospitalization results in better care, reduction of systemic medical errors, and improved patient outcomes. Studies show that the risks of re-hospitalization are lower when primary care providers have access to patients' post-discharge records at the first post-discharge visit,[64] [65] which may be within a day (or days) of discharge. Critically, the availability of the discharge record to the next level provider within 24 hours after discharge supports more effective care coordination and patient safety, since a delay in communication can result in medication or treatment errors. Thus, we stated our belief that replacing HBIPS–7 with the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care

[56] Kripalani S, LeFevre F, Phillips CO, et al. Deficits in communication and information transfer between hospital based and primary care physicians: Implications for patient safety and continuity of care. JAMA 2007;297(8):831–841.

[57] Medicare Payment Advisory Commission. Promoting Greater Efficiency in Medicare. June 2007. Available at: *http://www.medpac.gov/documents/reports/Jun07_EntireReport.pdf.*

[58] Timely Transmission of Transition Record (Discharged from Inpatient Facility to Home/Self Care or Any Other Site of Care), available at *http://www.ama-assn.sorg/apps/listserv/x-check/qmeasure.cgi?submit=PCPI.*

[59] US DHHS. ''National Healthcare Disparities Report 2013.'' Available at: *http://www.ahrq.gov/research/findings/nhqrdr/nhdr13/chap7.html.*

[60] *http://www.qualityforum.org/Publications/2012/10/MAP_Families_of_Measures.aspx.*

[61] *http://www.qualityforum.org/Publications/2014/08/2014_Input_on_Quality_Measures_for_Dual_Eligible_Beneficiaries.aspx.*

[62] In the FY 2013 IPPS/LTCH PPS final rule, we adopted HBIPS–7 Post Discharge Continuing Care Plan Transmitted to the Next Level of Care Provider Upon Discharge, beginning with the FY 2014 payment determination (77 FR 53651–53652). We refer readers to that rule for a detailed discussion of this measure.

[63] *https://manual.jointcommission.org/releases/TJC2014A1/.*

[64] van Walraven C, Seth R, Austin PC, Laupacis A. (2002). Effect of discharge summary availability during postdischarge visits on hospital readmission. *Journal of General Internal Medicine* 17:186–192.

[65] Jack BW, Chetty VK, Anthony D, et al. (2009). A reengineered hospital discharge program to decrease rehospitalization. *Ann Intern Med.150*(3),178–187.

or Any Other Site of Care) measure would increase the quality of care provided to patients, reduce avoidable readmissions, and increase patient safety.

Therefore we proposed to replace HBIPS–7 with the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure beginning with the FY 2018 payment determination. We welcomed public comments on these proposals. The comments we received and our responses are set forth below.

Comment: Comments submitted from a consumer perspective strongly supported the adoption of this measure, specifically the 24-hour requirement, since lack of coordinated care has led to high rates of re-hospitalization, arrests, homelessness, and other negative consequences, and the measure will ensure that there is only a potential 24-hour gap between discharge and the next level of care. Commenters maintained that the measure would promote safe and effective care and communication and care coordination efforts of the National Quality Strategy. Commenters also stated that the measure more closely aligns with existing summary of care document requirements for EHRs, and is applicable to more settings than HBIPS–7, decreasing the separation between psychiatric and nonpsychiatric care.

Response: We thank the commenters for their support, and agree that psychiatric and nonpsychiatric care should be considered as a whole in treating a patient.

Comment: Many commenters recommended that CMS not replace HBIPS–7 with the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure for several reasons. First, commenters submitted that HBIPS–7 is widely-used and fully operational, was developed with the input of IPFs, and fully tested in the IPF setting, whereas the proposed measure does not appear to be widely used or have benchmarking data available. One commenter specifically maintained that the measure was developed for use at the individual clinician level rather than at the facility level. Other commenters stated that most IPFs have been reporting HBIPS data for over 8 years, allowing them to understand trends and performance gaps, and believed that removing HBIPS–7 could upset quality improvement efforts currently in place. Commenters also stated that any comparative data may not be meaningful since national comparative rates would include settings other than IPFs. Many commenters specifically noted that room for improvement in HBIPS–7 remains, with a compliance rate of only 44 percent for the two-thirds of psychiatric facilities that began using this measure as a result of the IPFQR Program. Commenters recommended that CMS refrain from changing measures in the same domain to allow time for providers to change and stabilize their procedures.

Second, commenters expressed concern that the 24-hour window for transmission does not improve the quality of data submitted to the next level of care provider, is in conflict with other documentation requirements, such as the allowable time for the discharge summary to be completed, focuses on how quickly the documentation is completed rather than the quality of data transmitted, and is nearly impossible for providers to meet. Some commenters noted that the 24-hour timeframe is not necessary because most patients are not seen by an outpatient provider within 24 hours of discharge and most communication is done through fax, necessitating a longer timeframe to ensure control over who receives the data and compliance with confidentiality requirements.

Third, commenters contended that HBIPS–7 better addresses the core elements of the proposed measure and requires more stringent documentation of medications, noting that, although the proposed measure requires more information, it is the practice of IPFs to include all relevant information in the continuing care plan. In addition, commenters stated that the new elements are primarily based on medical models rather than psychiatric care and focus on areas not important in the psychiatric population.

Finally, commenters asserted that removing HBIPS–7 will increase burden on IPFs because IPFs will still be required to abstract data for this measure for The Joint Commission.

Commenters suggested that, if we wish to require transition elements in addition to HBIPS–7, we either allow hospitals more time to operationalize the measure, implementing it beginning with the FY 2019 payment determination, or that CMS work with The Joint Commission to revise HBIPS–7 to include additional elements.

Response: Although we agree that there may be some increase in burden due to the removal of HBIPS–7 and the adoption of the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure, we note that the primary difference between the two measures is in the timing of transmission; HBIPS–7 requires transmission to the next-level care provider within 5 days of discharge, while the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure requires the same within 24-hours of discharge. Thus, by transmitting the transition record within 24 hours, the provider satisfies both the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure and HBIPS–7. Therefore a hospital could abstract data for and comply with HBIPS–7 by also complying with and abstracting data for the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure. Furthermore, although we believe that high-quality data is important, we note that the point of this measure is timeliness. As we explain above, studies show that the risks of re-hospitalization are lower when primary care providers have access to patients' post-discharge records at the first post-discharge visit,[66] [67] which may be within a day (or days) of discharge. Additionally, the AMA–PCPI maintains, and we agree, that studies have documented the prevalence of communication gaps and discontinuities in care for patients after discharge and the significant effect of these lapses on hospital readmissions and other indicators of the quality of transitional care.[68] Therefore, we believe that the 24-hour window is critical to quality improvement and that the benefit of the removal of HBIPS–7 and the adoption of the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure outweighs any associated burden and further the goals of the IPFQR Program. Furthermore, we do not agree with commenters that it is ''impossible'' for providers to meet the 24-hour transmission requirement; the NQF specifically reviews a measure for feasibility and has endorsed this measure. Thus, we believe this measure

[66] van Walraven C, Seth R, Austin PC, Laupacis A. (2002). Effect of discharge summary availability during postdischarge visits on hospital readmission. *Journal of General Internal Medicine* 17:186–192.

[67] Jack BW, Chetty VK, Anthony D, et al. (2009). A reengineered hospital discharge program to decrease rehospitalization. *Ann Intern Med. 150*(3),178–187.

[68] Kripalani S, LeFevre F, Phillips CO, et al. Deficits in communication and information transfer between hospital based and primary care physicians: implications for patient safety and continuity of care. JAMA 2007;297(8):831–841.

can be implemented. In addition, although some patients are not seen in 24-hours, some are, and we believe that their records should be available to the next-level provider. Finally, as explained below, we do not believe this measure presents any confidentiality issues.

Additionally, we note that the additional elements that commenters state are required by this measure are actually required by the measure we are adopting above, NQF #0647. In addition, the need for ''more stringent documentation of medications,'' is found in the measure we are removing above, HBIPS–6. We discuss any issues associated with the measures in that section. We believe the only additional burden when comparing this measure to HBIPS–7 is the decreased timeline. In addition, the measure was developed with a broad range of inpatient settings in mind and did not specifically exclude IPFs; the measure developer is considering explicitly including the IPF-setting in the next round of measure maintenance so that the measure is endorsed not only for all inpatient settings, but explicitly states that it is endorsed for the IPF-setting.

We do not agree that replacing this measure will upset quality improvement efforts begun by HBIPS–7. If IPFs have already begun quality improvement in this area, we believe it will continue and even surpass the current state because the proposed measure is even more robust. We also disagree that the data may not be meaningful because, when posted on *Hospital Compare,* the data will include all IPFs participating in the IPFQR Program, thus allowing consumers to meaningfully compare the quality of care provided by each IPF participating in the program.

Finally, although we believe this measure to be a critical indicator of quality care, we understand that the change from requiring the document within 5 days of discharge to within 24 hours may initially prove operationally difficult for providers. Therefore, we will only require IPFs to report the last two quarters of data for this measure for the FY 2018 payment determination; that is, providers will only be required to report data for July 1, 2016–December 31, 2016. Beginning with the FY 2019 payment determination, IPFs will be required to report all four quarters of data or will face a payment reduction.

Comment: Some commenters noted that it could be problematic to implement this measure if a patient is discharged on a weekend. Commenters noted that some of the discharge planning resources such as social workers and case managers are not present to support the inpatient discharge process and many offices are closed on Saturday and Sunday. One commenter noted that some providers turn off their fax machines on weekends. Other commenters stated that 24 hours is not realistic even on weekdays because EHRs across systems are not yet a reality, and the measure may require providers to modify their EHRs. One commenter also noted that some community mental health clinics may not be able to receive the transition document, noting that quality care may not be improved if the next-level care provider is overloaded or unable to provide the necessary care. Commenters requested that CMS amend the measure to allow more time for transmission, with one commenter urging that 3 days is a more reasonable timeline.

Response: As stated above, we believe that the 24-hour window is critical to this measure. Furthermore, we note that the measure only requires *transmission* of the record, not receipt of the record. The ''transition record may be transmitted to the facility or physician or other health care professional designated for follow-up care via fax, secure email, or mutual access to an electronic health record (EHR).'' [69] Thus, the measure can be satisfied even if an office is closed. Finally, we are not aware of any specific EHR changes that would need to be made to accommodate this measure, because the measure need not be transmitted as an EHR.

Comment: Commenters expressed concern that the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure is not stratified by age, which limits the usefulness of the data, given the variation across populations.

Response: As stated above, when feasible and practicable, we believe it is important to implement measures as they are specified, especially where, as here, such measures are NQF-endorsed. This measure is not specified to be reported by age. Furthermore, we believe that presenting the measure as an aggregate number rather than stratified by age will allow greater rather than less insight into these data because, as further explained in section V.F.1. of this final rule, the resultant number of cases is often too small to allow public reporting when data are stratified by age.

Comment: One commenter stated that this measure violates HIPAA because patients have no control over how the next-level provider will use the discharge record and noted that the same measure was suspended from the Hospital OQR Program for privacy concerns.

Response: Neither we nor the measure developer are aware of any provision of HIPAA that this measure would violate. Furthermore, we believe the commenter is incorrect. The Hospital OQR Program adopted and finalized NQF #0649 Transition Record with Specified Elements Received by Discharged Patients (Emergency Department Discharges to Ambulatory Care [Home/Self Care] or Home Health Care). Although this measure, NQF #0648, is also stewarded by the AMA–PCPI and requires a transition record, it is not the same as NQF #0649. The measures differ in regards to the location from which the patient is discharged; specifically, NQF #0649 measures discharges from the emergency department, while NQF #0648 measures discharges from an inpatient facility. We believe that this difference is critical because the circumstances surrounding discharge from an emergency department are typically not planned; that is, a patient is discharged the same day he/she arrives with the individual that brought him/her to the emergency room, whom a patient may or may not feel comfortable sharing information. Those discharged from an inpatient setting usually have advanced notice and can plan accordingly. Thus, we do not believe, and neither does the AMA–PCPI, that NQF #0648 raises any of the privacy concerns articulated by the Hospital OQR Program for #0649.

Comment: One commenter stated that many patients do not have follow-up care, and, therefore, suggested that the measure should specify that the record be provided to family members or other caregivers when appropriate.

Response: We note that we are adopting the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure above, which requires transmission of the transition record to the patient. We believe this measure will allow family members and caregivers the opportunity to understand the discharge information if the patient wishes to share such information.

For the reasons stated above, we are finalizing our proposal to adopt the Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) measure and remove HBIPS–7: Post Discharge Continuing

[69] Timely Transmission of Transition Record (Discharged from Inpatient Facility to Home/Self Care or Any Other Site of Care), available at *http://www.ama-assn.sorg/apps/listserv/x-check/qmeasure.cgi?submit=PCPI.*

Care Plan Transmitted to the Next Level of Care Provider Upon Discharge for the FY 2018 payment determination and subsequent years with one modification. For the FY 2018 payment determination, we will only require IPFs to report data for this measure for the last two quarters of the reporting period (July 1, 2016–December 1, 2016). Beginning with the FY 2019 payment determination, IPFs will be required to report all four quarters of data.

5. Screening for Metabolic Disorders

Studies show that both second generation antipsychotics (SGAs) and antipsychotics increase the risk of metabolic syndrome.[70] Metabolic syndrome involves a cluster of conditions that occur together, including excess body fat around the waist, high blood sugar, high cholesterol, and high blood pressure, and increases the risk of coronary artery disease, stroke, and type 2 diabetes. Recognizing this problem, in February 2004, the American Diabetes Association (ADA), the American Psychiatric Association (APA), the American Association of Clinical Endocrinologists, and the North American Association for the Study of Obesity released a consensus statement finding that the use of SGAs ''have been associated with reports of dramatic weight gain, diabetes (even acute metabolic decompensation, for example, diabetic ketoacidosis [DKA]), and an atherogenic lipid profile (increased LDL cholesterol and triglyceride levels and decreased HDL cholesterol) . . . [and] [s]ubsequent drug surveillance and retrospective database analyses suggest that there is an association between specific SGAs and both diabetes and obesity.'' [71] SGAs also have an effect on serum lipids and could result in dyslipidemia.[72] Given these concerns, the group recommended that ''baseline screening measures be obtained before, or as soon as clinically feasible after, the initiation of any antipsychotic medication,'' including body mass index (BMI), blood pressure, fasting plasma glucose, and fasting lipid profile.[73] Although the consensus statement specifically discussed the issues with SGAs, the ADA also emphasized that ''*all* patients receiving antipsychotic medications [should] be screened'' [74] and subsequent studies have found that ''[i]n schizophrenic patients, the level of lipid profile had been increased in *both* atypical and conventional antipsychotic users'' [75]

Numerous other organizations have also made similar recommendations.[76] For example, the National Association of State Mental Health Program Directors Medical Directors Council notes, ''the second generation antipsychotic medications have become more highly associated with weight gain, diabetes, dyslipidemia, insulin resistance, and the metabolic syndrome.'' They recommend the same screening as the consensus statement (BMI, blood pressure, fasting plasma glucose, and fasting lipid profile) and emphasize that this screening is ''the standard of care for the general population.'' [77] Likewise, the Mount Sinai Conference,[78] convened in 2002, recommended that, for every patient with schizophrenia, ''regardless of the antipsychotic prescribed,'' mental health providers should, among other things: (1) Monitor and chart BMI; (2) measure plasma glucose levels (fasting or HbA1c); and (3) obtain a lipid profile.[79]

Despite these consensus statements and guidelines, many of which are over a decade old, screening for metabolic syndrome remains low and there appears to be disagreement regarding where the responsibility for this screening lies.[80] Studies show a systematic lack of metabolic risk monitoring of patients who have been prescribed antipsychotics.[81] Screening for metabolic syndrome may reduce the risk of preventable adverse events and improve the physical health status of the patient. Therefore, we stated our belief that it is necessary to include a measure of metabolic syndrome screening in the IPFQR Program.

The Screening for Metabolic Disorders measure is a chart-abstracted measure developed by CMS and defined as a percentage of discharges from an IPF for which a structured metabolic screening for 4 elements was completed in the past year. The denominator includes IPF patients discharged with one or more routinely scheduled antipsychotic medications during the measurement period. The numerator is the total number of patients who received a metabolic screening either prior to, or during, the index IPF stay. The screening must contain four tests: (1) BMI; (2) blood pressure; (3) glucose or HbA1c; and (4) a lipid panel—which includes total cholesterol (TC), triglycerides (TG), high density lipoprotein (HDL), and low density lipoprotein (LDL–C) levels. The screening must have been completed at least once in the 12 months prior to the patient's date of discharge. Screenings can be conducted either at the reporting facility or another facility for which records are available to the reporting facility. The following patients are excluded from the measure: (1) Patients for whom a screening could not be completed within the stay due to the patient's enduring unstable medical or

[70] The American Diabetes Association, APA, the American Association of Clinical Endocrinologists, and the North American Association for the Study of Obesity (2004). Consensus development conference on antipsychotic drugs and obesity and diabetes. *Diabetes Care, 27,* 596–601. Marder, Stephen R., M.D., et al. Physical Health Monitoring of Patients with Schizophrenia. Am J Psychiatry. 2004 Aug;161(8):1334–49.

[71] The American Diabetes Association, APA, the American Association of Clinical Endocrinologists, and the North American Association for the Study of Obesity (2004). Consensus development conference on antipsychotic drugs and obesity and diabetes. *Diabetes Care, 27,* 596–601.

[72] *Ibid.*

[73] *Ibid.*

[74] The American Diabetes Association (2006). Antipsychotic Medications and the Risk of Diabetes and Cardiovascular Disease. Available at: *http://professional.diabetes.org/admin/UserFiles/file/CE/AntiPsych%20Meds/Professional%20Tool%20%231(1).pdf* (emphasis added).

[75] Roohafsza, H, Khani, A, Afshar, H, Garakyaraghi, A, Ghodsi, B. Lipid profile in antipsychotic drug users: A comparative study. *ARYA Atheroscler.* May 2013; 9(3): 198–202 (emphasis added).

[76] De Hert, M., Dekker, J.M. & Wood, D. (2009). Cardiovascular disease and diabetes in people with severe mental illness. Position statement from the European Psychiatric Association (EPA), supported by the European Association for the Study of Diabetes (EASD) and the European Society of Cardiology (ESC). *Eur Psychiatry, 24,* 412–424; Zolnierek, C.D. (2009). Non-psychiatric hospitalization of people with mental illnesses: A systematic review. *Journal of Advanced Nursing, 65*(8), 1570–1583.

[77] National Association of State Mental Health Program Directors Medical Directors Council (2006). Morbidity and mortality in people with serious mental illness. Available at: *http://www.nasmhpd.org/docs/publications/MDCdocs/Mortality%20and%20Morbidity%20Final%20Report%208.18.08.pdf.*

[78] The Mount Sinai Conference was conferred to ''focus on specific questions regarding the pharmacotherapy of schizophrenia . . . Participants in the conference were selected based on their knowledge of and contributions to the literature in this area . . . Also in attendance [were] various groups concerned with improving psychopharmacology in routine practice settings.'' Marder, Stephen R., M.D., et al. Physical Health Monitoring of Patients with Schizophrenia. Am J Psychiatry. 2004 Aug;161(8):1334–49.

[79] Marder, Stephen R., M.D., et al. Physical Health Monitoring of Patients with Schizophrenia. Am J Psychiatry. 2004 Aug;161(8):1334–49.

[80] *See e.g.,* Brooks, Megan. ''Metabolic Screening in Antipsychotic Users: Whose Job Is It?'' *Medscape Medical News.* 8 May 2012. Available at *http://www.medscape.com/viewarticle/763468.* Mittal D, Li C, Viverito K, Williams JS, Landes RD, Thapa PB, Owen R. Monitoring for metabolic side effects among outpatients with dementia receiving antipsychotics. *Psychiatr Serv.* 2014 Sep 1;65(9):1147–53.

[81] Nasrallah, H. A, MD (2012). There is no excuse for failing to provide metabolic monitoring for patients receiving antipsychotics. Current Psychiatry, 4 (citing Mitchell AJ, Delaffon V, Vancampfort D, *et al.* Guideline concordant monitoring of metabolic risk in people treated with antipsychotic medication: Systematic review and meta-analysis of screening practices. *Psychol Med.* 2012;42(1):125–147.)

psychological condition; and (2) patients with a length of stay equal to or greater than 365 days, or less than 3 days. In section V.F.3. of this final rule, we finalize a sampling methodology for this and certain other measures.

Testing of this measure demonstrated that performance on the metabolic screening measure was low, on average, across the tested IPFs. The measure's average performance rate of 42 percent signals a strong opportunity for improvement. During testing, the metabolic screening measure also demonstrated nontrivial variation in performance among IPFs (6.2–98.6 percent). In addition, it demonstrated near-perfect agreement between chart abstractors (kappa of 0.93 for the measure numerator).[82]

We included the Screening for Metabolic Disorders measure (then titled ''IPF Metabolic Screening'') in our ''Measures Under Consideration List'' in December 2013. The MAP did not recommend this measure, noting, ''a different NQF-endorsed measure better addresses the needs of the program.'' [83] However, the different NQF-endorsed measure was not identified by the MAP, and we stated that we are unaware of any screening measures for metabolic syndrome that are NQF-endorsed. We noted that, when presented to the MAP, the denominator for this measure was the ''total number of psychiatric inpatients admitted during the measurement period.'' Based on testing and further feedback on the measure, we revised the measure by reducing its application to only those patients on antipsychotic medication; the denominator for the measure is now ''IPF patients discharged with one or more routinely scheduled antipsychotic medications during the measurement period.'' We stated our belief that this change was appropriate because, as discussed above, the patients most at risk for metabolic syndrome are those receiving antipsychotics, and the APA and other consensus organizations recommend this screening for patients on antipsychotics. Furthermore, we stated our belief that we, by limiting the application of the measure only to those receiving antipsychotics, have reduced provider burden, both in terms of possible changes in practice that might result from the measure, as well as the direct burden resulting from its collection and reporting.

We also stated our belief that this measure promotes the National Quality Strategy priority of Making Care Safer, which seeks to reduce risk that is caused by the delivery of healthcare. As discussed above, antipsychotics have been shown to be related to metabolic syndrome. The Screening for Metabolic Disorders measure is aimed at the prevention and treatment of serious side effects of these drugs.

Section 1886(s)(4)(D)(ii) of the Act authorizes the Secretary to specify a measure that is not endorsed by NQF as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We have been unable to identify any measures addressing screening for metabolic syndrome for the IPF setting that have been endorsed by the NQF or adopted by any other consensus organization. We stated our belief that the proposed measure for the Screening for Metabolic Disorders meets the measure selection exception requirement under section 1886(s)(4)(D)(ii) of the Act.

For the reasons stated above, we proposed to adopt the Screening for Metabolic Disorders measure beginning with the FY 2018 payment determination. We welcomed public comments on this proposal. The comments we received and our responses are set forth below.

Comment: Comments submitted from a consumer perspective supported this measure, noting that it is imperative to treat co-occurring conditions. Furthermore, these commenters noted that this measure has some potential to connect the ''physical health care provider to the psychiatric services provider'', and metabolic screening is an important area of follow-up that will improve patient outcomes. These commenters also made the following recommendations: (1) The measure should also include reviewing the results of the screening with the patient; (2) the measure should require further cardiovascular disease testing be performed if the screening indicates that it is warranted; (3) the measure should refer patients to the appropriate cardiovascular specialist, if needed; (4) the measure should include all patients receiving mental health treatment; (5) individuals for whom a screening cannot be completed within the stay ''due to the patient's enduring unstable medical or psychological condition'' should not be discharged until such a screening can occur since these individuals are arguably at greatest risk and their conditions should be stabilized before discharged; (6) for individuals excluded because of a length of stay of less than 3 days, the need for screening should be clearly identified as part of the discharge planning record so that this takes place on an outpatient basis; and (7) the rationale for excluding individuals who are hospitalized for 365 days or more be explained or removed.

Response: We thank commenters for their support and will address each of these recommendations in turn. First, we agree with the importance of the processes of care described by the commenters (that is, recommendations 1–4). However, the current measure, as specified and tested, addresses only the screening for metabolic abnormalities. We believe that this measure is an important first step in metabolic screening, and we will consider additional measures that address any necessary follow-up care in future years. Furthermore, we believe that other measures we are adopting, Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) and Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care), address the communication of specific information to the next care provider, such as major procedures and tests performed during inpatient stay and summary of results.

The exclusion ''due to the patient's enduring unstable medical or psychological condition'' is harmonized with other screening measures developed by the Joint Commission for the IPF setting. This exclusion was reviewed and supported by a Technical Expert Panel and an Expert Workgroup.[84] Additionally, during the testing of this measure, the exclusion applied to only one patient (0.2% of sample) indicating that the exclusion would be rare and only applied in the most severe cases where screening could not be conducted. Therefore, we will retain the exclusion and further evaluate the frequency of the exclusion with data from implementation.

[82] Development of Quality Measures for Inpatient Psychiatric Facilities. February 2015. U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Office of Disability, Aging, and Long-term Care Policy. Page xi, at *http://aspe.hhs.gov/daltcp/reports/2015/ipf.cfm.*

[83] MAP 2014 Recommendations on Measures for More than 20 Federal Programs, 179, at *http://www.qualityforum.org/Publications/2014/01/MAP_Pre-Rulemaking_Report__2014_Recommendations_on_Measures_for_More_than_20_Federal_Programs.aspx.*

[84] Health Services Advisory Group. Inpatient Psychiatric Facility Outcome and Process Measure Development and Maintenance: Screening of Metabolic Disorders Measure Workgroup. Tampa, FL; 2015. Available at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Downloads/Inpatient-Psychiatric-Facility-IPF-Outcome-and-Process-Measure-Development-and-Maintenance.zip.*

Patients with stays of fewer than 3 days were excluded from the metabolic screening measure based on the rationale that IPFs could not be expected to complete all metabolic screening tests (or verify that they were completed elsewhere within the previous 12 months) within that short time period. Therefore, we believe that we should retain this exclusion as specified.

Finally, as noted above, the screening must have been completed at least once in the 12 months prior to the patient's date of discharge. Thus, an IPF need only consider the past 12 months of records for a patient after that patient is discharged. Since this lookback is one year, we do not believe we should include patients who have been at the facility for more than one year. Furthermore, based on our testing of this measure, we believe this exclusion will be negligible, applying to less than 1.5 percent of the population. Therefore, we will retain the exclusion and further evaluate the frequency of the exclusion with data from implementation.

Comment: One commenter suggested that the ADA Consensus guidelines recommended a lipid profile every 5 years while the Screening for Metabolic Disorders measure requires a lipid profile every year, creating unnecessary costs. This commenter recommended that the measure be changed to require lipid panels every 5 years.

Response: The ADA Consensus guidelines from 2004 recommended that ''in those with normal lipid profile, repeat testing should be performed at 5-year intervals or more frequently if clinically indicated.[85] More recent recommendations, however, indicate yearly monitoring is preferred throughout treatment.[86] [87] [88] Therefore, to ensure appropriate screening and monitoring for patients on routinely scheduled antipsychotic medication(s), we believe that IPFs need to obtain either documentation of metabolic screening performed in the past 12 months or conduct the lipid panel testing prior to a patient's discharge from the facility.

Comment: Some commenters stated that the purpose of the ADA Consensus guidelines is to ensure long-term monitoring rather than annual screening and suggested that, as such, monitoring should be done in an outpatient rather than inpatient setting. One commenter suggested that the measure should be modified so that IPFs are required to communicate any baseline or ongoing screening tests with the outpatient provider who is assuming the management of medications at discharge.

Response: Although we agree that long-term metabolic monitoring of psychiatric patients is important, studies indicate that 40 percent to 80 percent of patients fail to find outpatient treatment after discharge from the inpatient setting.[89] In addition, studies find consistently low adherence rates to metabolic screening guidelines.[90] [91] These studies are confirmed by empirical analysis of calendar year 2012 and 2013 Medicare claims data, which indicated that only 53.8 percent of patients discharged from an IPF with at least two prescription claims for antipsychotic medications had at least one lipid panel annually in the outpatient setting.[92] Therefore, although we agree that the long-term monitoring for individuals is appropriate in the outpatient setting, we believe that the inpatient setting represents a clear opportunity to screen patients. We do believe it is important to convey test results to the next-level care provider, and we believe that the additional measures that we are adopting, Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) and Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care), should facilitate the communication of such information.

Comment: Many commenters recommended that CMS not adopt the Screening for Metabolic Disorders measure at the present time, but, instead suggested that CMS propose the measure after it has been tested and NQF-endorsed with full specifications available. Some commenters questioned why CMS did not take the measure through the NQF-endorsement process, arguing that premature adoption may cause discrepancies between what the IPFQR Program implements and what NQF ultimately endorses. One commenter urged us to share the measure with the IPF TEP and other stakeholders. One commenter stated that the TEP convened to evaluate the measure made several important recommendations to amend the measure and recommended that, if the measure is adopted, it should include these recommendations. Another commenter noted that the measure was only tested among six facilities.

Response: The measure has been finalized for NQF submission and will be submitted during the next call for behavioral health measures, which is expected in calendar year 2016. The measure specifications were evaluated by two separate Technical Expert Panels and an Expert Workgroup. The recommendations from these experts have been incorporated into the measure definitions. Although we agree that NQF endorsement of a measure is preferred, we are permitted to include a measure that has not been NQF-endorsed under section 1886(s)(4)(D)(ii) of the Act. Under that section, the Secretary is authorized to specify a measure that is not endorsed by the NQF as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures that had been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topic of metabolic screening for patients taking antipsychotics in the IPF setting. We believe that this area is important, specifically because of the gaps in treatment, and we believe it is important to implement a measure of metabolic screening as soon as possible.

We acknowledge that testing for this measure occurred in six facilities; however the facilities selected represent a variety of facility types from across the

[85] American Diabetes Association, American Psychological Association, American Association of Clinical Endocrinologists, North American Association for the Study of Obesity. Consensus development conference on antipsychotic drugs and obesity and diabetes. *Diabetes Care.* 2004;27(596–601).

[86] American Diabetes Association, American Psychological Association, American Association of Clinical Endocrinologists, North American Association for the Study of Obesity. Consensus development conference on antipsychotic drugs and obesity and diabetes. *Diabetes Care.* 2004;27(596–601).

[87] National Institute for Health and Care Excellence (NICE). *Bipolar disorder: The assessment and management of bipolar disorder in adults, children and young people in primary and secondary care.* London, UK 2014.

[88] National Institute for Health and Care Excellence (NICE). *Psychosis and schizophrenia in adults: Treatment and management.* London, UK 2014.

[89] Cuffel B, Held M, Goldman W. Predictive Models and the Effectiveness of Strategies for Improving Outpatient Follow-up Under Managed Care. *Psychiatric Services.* 2002 November; 53 (11): 1438–1443.

[90] Cohn T. Metabolic Monitoring for Patients on Antipsychotic Medications. *Psychiatric Times.* December 2013.

[91] Rodday AM, Parsons SK, Mankiw C, et al. Child and Adolescent Psychiatrists' Reported Monitoring Behaviors for Second-Generation Antipsychotics. *J. Child Adolesc. Psychopharmacol.* 2015.

[92] Health Services Advisory Group. Inpatient Psychiatric Facility Outcome and Process Measure Development and Maintenance: Screening of Metabolic Disorders Measure Workgroup. Tampa, FL; 2015. Available at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Downloads/Inpatient-Psychiatric-Facility-IPF-Outcome-and-Process-Measure-Development-and-Maintenance.zip.*

country. These facilities are diverse in both structure and size. Three of the IPFs selected are private psychiatric units with fewer than 50 patient beds, two are public freestanding facilities with over 100 beds, and one is a private freestanding facility with 400 beds. In addition, the six IPFs were geographically distributed by region including Mid-Atlantic, Northeast, Midwest, South, and West.[93] Therefore, we believe this testing was adequate to evaluate the measure.

Comment: Many commenters expressed concern that the measure adds significant burden for providers. Specifically, they suggested that IPFs involved in measure testing verified that chart-abstraction of this measure was more intensive than the other screening measures; they also expressed concern that the additional lab tests required by this measure may not be fully reimbursed by CMS, stating that most lab tests cost between $30 and $50. One commenter noted that, because the measure allows screenings at another facility, the measures may increase burden not only to the immediate facility, but potentially to other facilities.

Response: In testing the measure, the abstraction time for this measure did not exceed 20 minutes for any given discharge, which is only slightly more time (5 minutes more) than the measures previously adopted by this program (79 FR 45979). Furthermore, the CMS-convened Screening of Metabolic Disorders Measure Workgroup reviewed this measure and the majority of members indicated that the costs of any duplicate testing would have minimal unintended consequences.[94] Finally, we believe that transmitting records between providers for the purpose of improving patient care is an essential component of effective care coordination and communication of previously delivered care, and, therefore, the benefits of such communication outweigh any associated burden.

Comment: Many commenters stated that they could not comment on the measure without full specifications, noting that many issues remained unclear, including: (1) If the measure allows for patient refusal of a screening; (2) how the measure addresses ''fasting'' bloodwork protocols; (3) how the measure addresses patients with changes in antipsychotic medication; (4) how the measure avoids unnecessary testing requirements for patients previously screened but whose records are unobtainable within a reasonable period of time; (5) how screening records ''available to the reporting facility'' from another facility is defined; (6) if the measure identified all appropriate patient exclusions; (7) if there are potential medical necessity issues that need to be addressed; (8) the actionability of the measure during a short-term hospitalization; (9) if the public reporting of a screening measure rate a measure of quality that will help the public differentiate among facilities; and (10) if the measure reflects an appropriate application of various practice guidelines from the perspective of the guideline developers.

Response: We agree with commenters that elements in the measure need to be clarified. We will take each of these issues in turn.

First, as stated above, we believe that patient compliance is indicative of quality care. That is, we maintain that it is important that providers understand gaps in patient compliance so that they can modify their actions and policy to systematically encourage patients to receive appropriate tests. We encourage providers to educate patients about the importance of these screenings, and we, therefore, will not exclude patients who refuse the screening.

Second, the emphasis in this measure is on the screening itself rather than the associated measure values. Clinical judgments about the best methods for conducting and interpreting the testing, including whether to use fasting glucose or an HbA1c test, are left to the facility.

Third, since all antipsychotic medication regimens require regular monitoring,[95] [96] we will not distinguish between patients whose antipsychotic regimens have changed during the inpatient stay.

Fourth, we agree that avoiding unnecessary testing requirements is an important consideration. But, as stated above, 40 percent to 80 percent of psychiatric patients fail to receive outpatient treatment,[97] and an analysis conducted of calendar year 2012 and 2013 claims data indicated that a little over half of patients taking antipsychotics had a lipid panel conducted annually in the outpatient setting.[98] Therefore, we believe it is important to conduct this testing in the inpatient setting, even if some duplication may result because the testing conducted in another setting was not obtainable.

Fifth, we believe that there are potentially multiple sources available to facilities to obtain testing results conducted by other providers and the phrase ''available to the reporting facility'' is not meant to limit the method of obtaining numerical lab results within the previous 12 months of the index discharge for evidence of screening. To fulfill the measure requirements, evidence of screening includes presence/absence of each screening element, based on the chart review and documentation of lab results (numeric values) in the medical record.

Sixth, we believe the measure incorporates all appropriate patient exclusions taking into consideration the comments provided by the TEPs and Screening of Metabolic Disorders Measure Workgroup.

Seventh, we believe it is important to treat the whole patient by addressing both the mental and the physical needs of patients in the IPF and guideline recommendations indicate yearly monitoring is preferred throughout treatment for patients taking antipsychotic medications.[99] [100] [101]

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[93] Blair R, Liu J, Rosenau M, et al. Development of Quality Measures for Inpatient Psychiatric Facilities: Final Report. 2015; Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services 2015. Available at: *http://aspe.hhs.gov/daltcp/reports/2015/ipf.cfm.* Accessed April 21, 2015.

[94] Health Services Advisory Group. Inpatient Psychiatric Facility Outcome and Process Measure Development and Maintenance: Screening of Metabolic Disorders Measure Workgroup. Tampa, FL; 2015. Available at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Downloads/Inpatient-Psychiatric-Facility-IPF-Outcome-and-Process-Measure-Development-and-Maintenance.zip.*

[95] National Institute for Health and Care Excellence (NICE). *Bipolar disorder: The assessment and management of bipolar disorder in adults, children and young people in primary and secondary care.* London, UK 2014.

[96] National Institute for Health and Care Excellence (NICE). *Psychosis and schizophrenia in adults: Treatment and management.* London, UK 2014.

[97] Cuffel B, Held M, Goldman W. Predictive Models and the Effectiveness of Strategies for Improving Outpatient Follow-up Under Managed Care. *Psychiatric Services.* 2002 November; 53 (11): 1438–1443.

[98] Health Services Advisory Group. Inpatient Psychiatric Facility Outcome and Process Measure Development and Maintenance: Screening of Metabolic Disorders Measure Workgroup. Tampa, FL; 2015. Available at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Downloads/Inpatient-Psychiatric-Facility-IPF-Outcome-and-Process-Measure-Development-and-Maintenance.zip.*

[99] American Diabetes Association, American Psychological Association, American Association of Clinical Endocrinologists, North American Association for the Study of Obesity. Consensus development conference on antipsychotic drugs and obesity and diabetes. *Diabetes Care.* 2004;27(596–601).

[100] National Institute for Health and Care Excellence (NICE). *Bipolar disorder: The assessment and management of bipolar disorder in*

Eighth, we believe that even short-term hospitalizations provide an opportunity for providing the best quality care for patients. As we state above, the inpatient setting represents a clear opportunity to screen patients and may be the only opportunity some patients have for this screening. We recognize, however, that obtaining the records or conducting the screening of very short-stay patients might be too difficult for the IPF, and therefore, patients with lengths of stay of less than 3 days is an exclusion in the measure.

Ninth, we believe a vital component of the CMS quality reporting programs is the public reporting of the information to inform patients and caregivers of differences in quality across providers. We believe that this measure will inform patients and caregivers of the quality of care in IPFs in terms of the screening for metabolic disorders among patients taking antipsychotic medications. Among the six test facilities, there was an average performance score of 41.5 percent, with a wide range of performance from 6.2 percent to 98.6 percent.[102]

Tenth, the measure is aligned with clinical practice guidelines for patients taking antipsychotic medications.[103] [104] [105].

We recognize it may take time for providers to review and understand these clarifications and changes to the measure. Therefore, we will only require IPFs to report the last two quarters of data for this measure for the FY 2018 payment determination; that is, providers will only be required to report data for this measure for July 1, 2016–December 31, 2016. Beginning with the FY 2019 payment determination, IPFs will be required to report all four quarters of data or will face a payment reduction.

Comment: Many commenters noted that, although the measure allows IPFs to obtain data from outside sources, because of the cost of doing so, most would complete the testing themselves, unnecessarily increasing costs and leading to an overutilization of tests. One commenter stated its belief that it will be difficult to determine the patients that were on one antipsychotic medication in the past year and suggested, instead, that the measure be limited to the four antipsychotic medications that contribute to metabolic disorders, Clozaril, Seroquel, Zyprexa, and Risperdal, indicating that these medications should have a metabolic screening every 3 months, which would be easier to monitor.

Response: The Screening of Metabolic Disorders Measure Workgroup reviewed this measure and the majority of members indicated that the costs of any duplicate testing would have minimal unintended consequences based on data that only about half of the patients discharged from an IPF had at least one annual screening.[106] Furthermore, studies suggest that antipsychotic-induced weight gain occurs in all diagnostic groups and is common in both first and second generation antipsychotics.[107] [108] [109] [110] Generally, guidelines recommending monitoring do not distinguish their recommendations based on first or second generation antipsychotics.[111] [112] [113] Therefore, although it may be less burdensome to monitor the four antipsychotics the commenter suggested above, based on the heightened risk of metabolic disorders in this population, we believe this measure should apply to all patients on any antipsychotic regimen.

For the reasons stated above, we are finalizing our proposal to adopt the Screening for Metabolic Disorders measure for the FY 2018 payment determination and subsequent years with one modification. For the FY 2018 payment determination, we will only require IPFs to report data for this measure for the last two quarters of the reporting period (July 1, 2016–December 1, 2016). Beginning with the FY 2019 payment determination, IPFs will be required to report all four quarters of data.

6. Summary of Measures for the FY 2018 Payment Determination and Subsequent Years

The measures that we are adopting for the IPFQR Program for the FY 2018 payment determination and subsequent years are set forth in Table 20.

TABLE 20—NEW IPFQR PROGRAM MEASURES FOR THE FY 2018 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

National Quality Strategy Priority	NQF #	Measure ID	Measure
Effective Prevention and Treatment	1656	TOB–3 and TOB–3a	Tobacco Use Treatment Provided or Offered at Discharge and the subset measure Tobacco Use Treatment at Discharge.

adults, children and young people in primary and secondary care. London, UK2014.

[101] National Institute for Health and Care Excellence (NICE). *Psychosis and schizophrenia in adults: Treatment and management.* London, UK2014.

[102] Blair R, Liu J, Rosenau M, et al. Development of Quality Measures for Inpatient Psychiatric Facilities: Final Report. 2015; Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services 2015. Available at: *http://aspe.hhs.gov/daltcp/reports/2015/ipf.cfm.* Accessed April 21, 2015.

[103] American Diabetes Association, American Psychological Association, American Association of Clinical Endocrinologists, North American Association for the Study of Obesity. Consensus development conference on antipsychotic drugs and obesity and diabetes. Diabetes Care. 2004;27(596–601).

[104] National Institute for Health and Care Excellence (NICE). *Bipolar disorder: The assessment and management of bipolar disorder in adults, children and young people in primary and secondary care.* London, UK2014.

[105] National Institute for Health and Care Excellence (NICE). *Psychosis and schizophrenia in adults: Treatment and management.* London, UK 2014.

[106] Health Services Advisory Group. Inpatient Psychiatric Facility Outcome and Process Measure Development and Maintenance: Screening of Metabolic Disorders Measure Workgroup. Tampa, FL: Health Services Advisory Group; 2015. Available at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Downloads/Inpatient-Psychiatric-Facility-IPF-Outcome-and-Process-Measure-Development-and-Maintenance.zip.*

[107] Musil R, Obermeier M, Russ P, Hamerle M. Weight gain and antipsychotics: A drug safety review. *Expert Opin Drug Saf.* 2015;14(1):73–96.

[108] Chiliza B, Asmal L, Oosthuizen P, *et al.* Changes in body mass and metabolic profiles in patients with first-episode schizophrenia treated for 12 months with a first-generation antipsychotic. *Eur. Psychiatry.* 2015;30(2):277–283.

[109] Alvarez-Jimenez M, Gonzalez-Blanch C, Crespo-Facorro B, *et al.* Antipsychotic-induced weight gain in chronic and first-episode psychotic disorders: A systematic critical reappraisal. *CNS Drugs.* 2008;22(7):547–562.

[110] Strassnig M, Miewald J, Keshavan M, Ganguli R. Weight gain in newly diagnosed first-episode psychosis patients and healthy comparisons: One-year analysis. *Schizophr. Res.* 2007;93(1–3):90–98.

[111] National Institute for Health and Care Excellence (NICE). Psychosis and schizophrenia in adults: Treatment and management. 2014; *http://www.nice.org.uk/guidance/cg178.* Accessed CG 178.

[112] National Institute for Health and Care Excellence (NICE). Bipolar disorder: the assessment and management of bipolar disorder in adults, children and young people in primary and secondary care. 2014; *http://www.nice.org.uk/guidance/cg185.* Accessed CG 185.

[113] Marder SR, Essock SM, Miller AL, et al. Physical health monitoring of patients with schizophrenia. *Am. J. Psychiatry.* 2004;161(8):1334–1349.

TABLE 20—NEW IPFQR PROGRAM MEASURES FOR THE FY 2018 PAYMENT DETERMINATION AND SUBSEQUENT YEARS—Continued

National Quality Strategy Priority	NQF #	Measure ID	Measure
Effective Prevention and Treatment	1663	SUB–2 and SUB–2a	Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention.
Communication and Care Coordination; Person and Family Engagement.	0647	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
Communication and Care Coordination	0648	N/A	Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
Making Care Safer	N/A	N/A	Screening for Metabolic Disorders.

The measures that we are removing beginning with the FY 2018 payment determination are set forth in Table 21.

TABLE 21—IPFQR PROGRAM MEASURES TO BE REMOVED FOR THE FY 2018 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

NQF #	Measure ID	Measure
0557	HBIPS–6	Post-Discharge Continuing Care Plan.
0558	HBIPS–7	Post Discharge Continuing Care Plan Transmitted to the Next Level of Care Provider Upon Discharge.

Therefore, the number of measures for the FY 2018 IPFQR Program and subsequent years will total 16, as set forth in Table 22.

TABLE 22—MEASURES FOR FY 2018 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

NQF #	Measure ID	Measure
0640	HBIPS–2	Hours of Physical Restraint Use.
0641	HBIPS–3	Hours of Seclusion Use.
0560	HBIPS–5	Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification.
0576	FUH	Follow-up After Hospitalization for Mental Illness.
1661	SUB–1	Alcohol Use Screening.
1663	SUB–2 and SUB–2a	Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention.*
1651	TOB–1	Tobacco Use Screening.
1654	TOB–2 TOB–2a	Tobacco Use Treatment Provided or Offered and Tobacco Use Treatment.
1656	TOB–3 and TOB–3a	Tobacco Use Treatment Provided or Offered at Discharge and the subset measure Tobacco Use Treatment at Discharge.*
1659	IMM–2	Influenza Immunization.
0647	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).*
0648	N/A	Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).*
N/A	N/A	Screening for Metabolic Disorders.*
N/A	N/A	Influenza Vaccination Coverage Among Healthcare Personnel.
N/A	N/A	Assessment of Patient Experience of Care.
N/A	N/A	Use of an Electronic Health Record.

* New measures finalized for the FY 2018 payment determination and future years.

E. Possible IPFQR Program Measures and Topics for Future Consideration

As we have previously indicated (79 FR 45974 through 45975), we seek to develop a comprehensive set of quality measures to be available for widespread use for informed decision-making and quality improvement in the IPF setting. Therefore, through future rulemaking, we intend to propose new measures for development or adoption that will help further our goals of achieving better health care and improved health for Medicare beneficiaries who obtain inpatient psychiatric services through the widespread dissemination and use of quality information.

We are developing a 30-day psychiatric readmission measure that is similar to the readmission measures

currently in use in other CMS quality reporting programs, such as the Hospital Inpatient Quality Reporting Program. In the future, we intend to develop a measure set that effectively assesses IPF quality across the range of services and diagnoses, encompasses all of the goals of the CMS quality strategy, addresses measure gaps identified by the MAP and others, and minimizes collection and reporting burden. We may also propose the removal of some measures in the future.

We welcomed public comments on possible new measures. The comments we received and our responses are set forth below.

Comment: One commenter expressed concern that CMS proposed time-intensive, chart-abstracted measures without discussing a future goal of working toward electronic submission of these measures.

Response: We agree that moving to electronic clinical quality measures is important and will ultimately reduce burden. At this time, we are not operationally able to implement electronic clinical quality measure reporting and not all of our measures are electronically specified. However, we continue to work toward transitioning to electronic clinical quality measures in the future.

Comment: Commenters urged the program not to burden providers with too many process measures and to move toward the use of outcome measures since these measures are more meaningful to patients and can have a greater impact on provider behavior. Some commenters specifically supported a readmissions measure, noting that such measure should focus on readmissions that are clinically related to the index admission and potentially preventable by the IPF. Commenters expressed concern that the IPF population is complex, with patients often having multiple comorbid mental health, substance abuse, and other medical conditions, and outpatient compliance is challenging. Therefore, commenters suggested that CMS adjust the measure for sociodemographic variables and work to ensure that the readmissions measure is adequately adjusted for case mix and provider type in order to more accurately capture and report readmission rates in an unbiased way, particularly for those hospitals that treat the most vulnerable patients. One commenter cautioned that a readmission measure can be gamed if it does not include all readmissions to the acute care system within a specified window. Another commenter noted that to accurately risk adjust a readmissions measure, the program may need to collect patient assessment data. Commenters also encouraged us to adopt a readmission measure only if it is NQF-endorsed for the IPF setting and has broad stakeholder support that considers important components of measures, including reliability, validity, feasibility of implementation, and stakeholders' and clinicians' input. Several commenters questioned whether the measure could be adequately risk-adjusted using claims and suggested a thorough NQF review to determine if claims-based measures can be accurately risk-adjusted for mental health patients. Another commenter encouraged us to ensure the measure does not incentivize facilities to deny admissions to meet the quality measurement.

Response: When appropriate, we strive to move toward measures of outcome and will consider these measures for future years of the program. Specifically, we believe a measure of readmissions to be important and will consider these important issues raised by commenters as we move forward with developing such a measure.

Comment: One commenter recommended including psychiatric patients in the HCAHPS survey rather than creating a survey just for the IPF population, noting that the HCAHPS survey is applicable to IPF patients, these patients can answer the questions in the HCAHPS survey, and creating a new survey would be overly burdensome. Other commenters, however, recommended developing a patient experience of care measure specified for psychiatric patients.

Response: We thank the commenters for their recommendations. We believe that patient and family engagement measures are important, and we will consider this suggestion in the future.

Comment: Commenters recommended the following measures for future consideration: (1) Number of hours before the individual was seen by a psychiatrist; (2) number of hours before the individual was transferred to a facility where he/she would receive appropriate treatment; (3) readmission to the same IPF within 30 days of discharge; (4) improved functioning or stabilization of functioning as measures through clinical assessment, patient self-assessment, or discharge to lower level of care; (5) receiving best practices specific to the conditions noted in the treatment plan as well as acuity of illness; (6) scheduled appointment for aftercare within 7 days of discharge, controlling for urban/rural area and type of provider, at minimum; (7) documentation of follow-up mental health services in the community within 14 days of discharge; (8) reduced payment rates for readmissions to psychiatric hospitals after discharge; (9) a change score on a standardized measure of psychiatric functioning to demonstrate the impact of hospitalization on a patient admitted to the IPF; and (10) length of stay.

Response: We thank the commenters for their recommendations and will consider them in the future.

Comment: One commenter encouraged CMS to consider adding staff-level related measures, specifically NQF #0205: Nursing Hours per Patient Day, since nursing and staff time contribute to a large amount of IPF costs and freestanding locations have a larger percentage of labor costs than IRFs or LTCHs.

Response: We thank the commenter for its recommendation and will consider such measures in the future.

Comment: Some commenters recommended CMS include HBIPS–1 in future years of the program since the measure will increase compliance with admission screening and will not increase burden to providers that report data to The Joint Commission.

Response: We thank the commenters for their recommendation and will consider it in the future.

F. Changes to Reporting Requirements

We are making the following changes to our reporting requirements for FY 2017 and subsequent years:

- Requiring that measures be reported as a single yearly count rather than by quarter and age; and
- Requiring that aggregate population counts be reported as a single yearly number rather than by quarter.

For FY 2018 and subsequent years we are also making one change, allowing uniform sampling requirements for certain measures.

1. Changes to Reporting by Age and Quarter for the FY 2017 Payment Determination and Subsequent Years

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53655 through 53656), we finalized our policy that IPFs must submit data for chart-abstracted measures to the Web-Based Measures Tool on an annual basis aggregated by quarter. We also finalized our policy that IPFs must submit data as required by The Joint Commission, which calls for IPFs to submit data for measures by age group. Since then, we have learned that obtaining data for each quarter and by age is burdensome to providers and the resultant number of cases is often too small to allow public reporting. That

is, we do not report data on *Hospital Compare* for measures with fewer than 11 cases; reporting by age and quarter often causes the number of cases to fall below 11. For example, for HBIPS–5, in Quarter 2 of 2013, only 5.75 percent of the data were reportable. Likewise, in Quarter 3 and Quarter 4 of 2013, for HBIPS–5, only 5.5 percent of the data were reportable.

Therefore, beginning with the FY 2017 payment determination, we proposed to require facilities to report data for chart-abstracted measures to the Web-Based Measures Tool on an aggregate basis by year, rather than by quarter, and to discontinue the requirement for reporting by age group. We proposed to require IPFs to report a single aggregate measure rate for each measure annually for each payment determination.

We stated our belief that this change will reduce provider burden because IPFs would report a single rate for each measure. In addition, we stated that we do not believe that quarterly data or data stratified by age are necessary for quality improvement activities. We are able to differentiate, and the public is able to view on *Hospital Compare,* those IPFs that perform well on measures from those for which quality improvement activities may be necessary based on an annual aggregate rate submission. We noted, however, that in the future, if our evolving measures set, quality improvement goals, and experience with the program indicate a change is needed, we may reevaluate and reinstate the requirement for quarterly reporting.

We welcomed public comments on this proposal. The comments we received and our responses are set forth below.

Comment: Many commenters supported this proposal, noting that IPFs will more easily be able to comply with reporting aggregate population as a single yearly count rather than by quarter and by age, and the proposal will improve the usability of the public display data.

Response: We thank commenters for their support.

Comment: Many commenters did not support the proposal, stating that submitting data by year rather than quarter will not decrease burden since it requires the same number of abstractions, is contrary to the national desire to have more current data, would reduce the ability of consumers to know if there are lower measure rates for certain age groups, and would decrease the ability to monitor trends over the year and by age. Other commenters suggested that we continue to work to improve the report format for consumers and consider allowing providers to report on a quarterly basis without segregating the measure by age so that we can publicly report data closer to real time. Many commenters requested that we convene TEPs to identify the best ways to reduce reporting burden.

Response: We believe that reporting data yearly and no longer reporting by age will be easier for IPFs because it will decrease the number of values reported from 16 numbers (that is, four age groups multiplied by four quarters) to 1 number for every measure, leading to an aggregate decrease of 210 values per year. Furthermore, although the public will no longer be able to view data by age, we believe that submitting and reporting data as an aggregate number will increase rather than decrease the ability to monitor trends, since, as we explain above, doing so will increase the number of cases that are reported and that we are, therefore, able to report on *Hospital Compare*. Finally, although we are not operationally able to implement them at this time, we will continue to consider commenters' suggestions to modify our reporting structures to allow more consumer-friendly interfaces and real-time data entry and viewing. We will also consider the suggestion that we convene TEPs to identify ways to reduce provider burden.

Comment: Some commenters contended that this change in methodology will only affect HBIPS–5, and stated that changing a methodology to improve reporting on one measure is ineffective, specifically because the change will not reduce provider burden since providers will still be required to submit this data to The Joint Commission by age and quarter. These commenters stated that it may be more effective and efficient to report HBIPS–5 by year rather than changing the data collection methodology.

Response: We do not agree that the reporting change is limited to HBIPS–5. Although the example provided in the proposed rule only includes HBIPS–5, we believe that, as we collect more data, specifically data on measures that we adopted last year and for which we will be collecting data this summer, values that do not meet minimum reporting thresholds as a result of age and quarter stratification will exist across measures. Additionally, although we acknowledge that many IPFs may report data to The Joint Commission by age and quarter, we believe the burden required to aggregate these numbers is minimal.

For the reasons stated above, we are finalizing our proposal to require facilities to report data for chart-abstracted measures to the Web-Based Measures Tool on an aggregate basis by year, rather than by quarter, and to discontinue the requirement for reporting by age group beginning with the FY 2017 payment determination. In Table 23, we set forth the quality reporting and submission timelines for the FY 2017 payment determination and subsequent years for all the measures except FUH and the Influenza Vaccination Coverage among Healthcare Personnel measures.

TABLE 23—QUALITY REPORTING PERIODS AND TIMEFRAMES FOR THE FY 2017 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

Payment determination (FY)	Reporting period for services provided	Data submission timeframe
2017	January 1, 2015–December 31, 2015	July 1, 2016–August 15, 2016.

In Table 24, we set forth the quality reporting and submission timelines for the FY 2018 payment determination and subsequent years for all the measures except FUH and the Influenza Vaccination Coverage among Healthcare Personnel measures. We note that FUH is claims-based, and therefore does not require additional data submission. The Influenza Vaccination Coverage among Healthcare Personnel measure is reported to the Centers for Disease Control and Prevention's National Healthcare Safety Network, and we refer readers to the FY 2015 IPF PPS final rule for more information on the reporting timeline for this measure (79 FR 45969). In addition, we note that, as finalized above, for the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care), Timely Transmission of

Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care), and Screening for Metabolic Disorders measures, we are only requiring facilities to report data for July 1, 2016–December 31, 2016 for the FY 2018 payment determination.

TABLE 24—QUALITY REPORTING PERIODS AND TIMEFRAMES FOR THE FY 2018 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

Payment determination (FY)	Reporting period for services provided		Data submission timeframe
2018	For All Measures Except NQF #0647, NQF #0648, and Screening for Metabolic Disorders.	January 1, 2016–December 31, 2016.	July 1, 2017–August 15, 2017.
	For NQF #0647, NQF #0648, and Screening for Metabolic Disorders.	July 1, 2016–December 31, 2016.	

2. Changes to Aggregate Population Count Reporting for the FY 2017 Payment Determination and Subsequent Years

In the FY 2015 IPF PPS final rule (79 FR 45973), we finalized our policy that IPFs must submit aggregate population counts for Medicare and non-Medicare discharges by age group, diagnostic group, and quarter, and sample size counts for measures for which sampling is performed. In section V.F.1. of this final rule, we finalized our proposal to only require measure reporting as an annual aggregate rate, rather than by quarter. Likewise, beginning with the FY 2017 payment determination, we proposed to require non-measure data to be reported as an aggregate, yearly count rather than by quarter. We welcomed public comments on this proposal. The comments we received and our responses are set forth below.

Comment: Some commenters supported this proposal.

Response: We thank commenters for their support.

Comment: Some commenters stated that aggregating data increases the possibility of human error and suggested that we allow patient-level reporting in the same way it is submitted to The Joint Commission. Commenter suggested that CMS convene TEPs to identify the best ways to reduce reporting burden in the future.

Response: To our knowledge, The Joint Commission does not require reporting non-measure data as required by the IPFQR Program. Thus, it is unclear to us what commenters mean in suggesting that we allow patient-level reporting in the same way as The Joint Commission. Additionally, we do not agree that adding together 4 numbers rather than reporting these numbers separately will increase human error by any noticeable margin, specifically since facilities were already required to manually submit these data. Furthermore, as stated above, we are finalizing our proposal to require facilities to report data for chart-abstracted measures to the Web-Based Measures Tool on an aggregate basis by year, rather than by quarter, and to discontinue the requirement for reporting by age group beginning with the FY 2017 payment determination. We believe it is important to collect non-measure data similarly to how measure data is collected. Finally, we will consider convening TEPs to identify ways to reduce provider burden in the future.

For the reasons stated above, we are finalizing our proposal to require facilities to report non-measure data as an aggregate, yearly count rather than by quarter beginning with the FY 2017 payment determination.

3. Changes to Sampling Requirements for the FY 2018 Payment Determination and Subsequent Years

Measure specifications for the measures that we have adopted allow sampling for some measures; however, for other measures, IPFs must report data for all discharges/patients. In addition, the sampling requirements sometimes vary by measure. In response to these policies, in the FY 2014 IPPS/LTCH PPS final rule, some commenters noted that different sampling requirements in the measures could increase burden on facilities because these differences will require IPFs to have varying policies and procedures in place for each measure (78 FR 50901). Although we stated our belief that the importance of these measures and of gathering information for all discharges/patients outweighs the burden of various sampling requirements, we now believe that the additional measures in this final rule tip the balance of benefit and burden. Therefore, and for the reasons provided below, we proposed to allow a uniform sampling methodology both for measures that require sampling and for certain other measures. Specifically, we proposed to allow The Joint Commission/CMS Global Initial Patient Population sampling in Section 2.9_Global Initial Patient Population found at *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482*. We stated our belief that this will allow IPFs to take one, global sample for all measures specified in Table 25, thereby decreasing burden on these facilities and streamlining policies and procedures.

In our current measure set, the measures for which we proposed to allow The Joint Commission/CMS Global sampling included those outlined in Table 25.

TABLE 25—MEASURES TO WHICH SAMPLING APPLIES

NQF #	Measure ID	Measure
0560	HBIPS–5	Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification.
1661	SUB–1	Alcohol Use Screening.
1663	SUB–2 and SUB–2a	Alcohol Use Brief Intervention Provided or Offered and SUB–2a Alcohol Use Brief Intervention.
1651	TOB–1	Tobacco Use Screening.
1654	TOB–2 TOB–2a	Tobacco Use Treatment Provided or Offered and Tobacco Use Treatment.

TABLE 25—MEASURES TO WHICH SAMPLING APPLIES—Continued

NQF #	Measure ID	Measure
1656	TOB–3 and TOB–3a	Tobacco Use Treatment Provided or Offered at Discharge and the subset measure Tobacco Use Treatment at Discharge.
1659	IMM–2	Influenza Immunization.
0647	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
0648	N/A	Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care).
N/A	N/A	Screening for Metabolic Disorders.

In section V.F.1. of this final rule, we are finalizing our proposal to require reporting on measures as a yearly count rather than by quarter. Because The Joint Commission/CMS Global sampling guidelines specify sampling by quarter, we proposed to modify their sampling guidelines by multiplying the ''number of cases in the initial patient population'' and the ''number of cases to be sampled'' by 4. In addition, since we require all IPFs to report data on all chart-abstracted measures even when the population size for a given measure is small or zero (78 FR 50901), we have modified the table to require reporting regardless of the number of cases. Thus, we proposed the following sampling guidelines for the measures above:

TABLE 26—NUMBER OF RECORDS REQUIRED TO BE SAMPLED

Number of cases in initial patient population	Number of records to be sampled
≥6,117.	1,224.
3,057–6,116	20% of initial patient population.
609–3,056	609.
0–608	All cases.

We stated our belief that this will simplify processes and procedures for IPFs because uniform requirements will promote streamlined procedures and reporting. We also stated our belief that the proposal will decrease burden by allowing IPFs to identify a single, initial patient population for all of the measures specified in Table 25 from which to calculate the sample size. Furthermore, we stated that we do not believe this approach will reduce quality improvement. Sampling calculations ensure that enough data are represented in the sample to determine accurate measure rates. Therefore, even with sampling, we stated that we believe that CMS, IPFs, and the public would be able to differentiate those IPFs who perform well on measures from those who do not.

Therefore, we proposed to allow The Joint Commission/CMS Global Initial Patient Population sampling, with limited methodology changes as described above, for the measures in Table 25 beginning with the FY 2018 payment determination. We welcomed public comments on this proposal. The comments we received and our responses are set forth below.

Comment: Many commenters supported this proposal, stating that it would make the abstraction process less burdensome for providers.

Response: We thank commenters for their support.

Comment: Some commenters suggested that changing the sampling requirements for HBIPS measures increases burden for providers since IPFs are required to submit HBIPS data to The Joint Commission using the HBIPS sampling methodology and suggested aligning the sampling methodology with the HBIPS methodology. These commenters also noted that misalignment between CMS and The Joint Commission may result in consumer confusion since both publicly report data.

Response: We do not agree that this proposal increases burden. Most of our measures (IMM–2, TOB–1, TOB–2/2a, and SUB–1) currently require sampling per The Joint Commission/CMS Global Initial Patient Population guidelines. Only HBIPS–5 is required to be reported to The Joint Commission using a different sampling methodology. Therefore, we believe that, overall, allowing uniform sampling for the measures discussed in Table 25 will greatly decrease burden, specifically because some of these measures (the transition and metabolic screening measures) currently do not allow sampling at all. In addition, we note that, if providers believe using this optional sampling is too burdensome, we are not requiring them to do so.

We appreciate the comment that the public may be confused if numbers are reported differently in different programs. We note, however, that this confusion would be limited to HBIPS–5, the only measure that uses a different sampling methodology from The Joint Commission/CMS Global Initial Patient Population sampling, and we believe, even in this case, the public can understand that reporting requirements, and their results, vary by program and organization.

Comment: Commenters stated that the sampling tables were developed by The Joint Commission to ensure that most healthcare organizations would be able to obtain a sample size large enough to distinguish meaningful differences from the national average, and adopting a uniform methodology could cause over-sampling for measures with large populations and under-sampling for those with small populations, affecting the ability of providers to monitor measures where their patient populations are heterogeneous.

Response: We will monitor the results of this proposal to see if it causes the inability to distinguish meaningful differences between providers and will make appropriate adjustments if we believe this is the case.

Comment: One commenter noted that the HBIPS measure set and the SUB and TOB measure sets use different population criteria for sampling and asked CMS to clarify its proposal.

Response: As we explained in the proposed rule (80 FR 25056), we proposed to allow IPFs to use The Joint Commission/CMS Global Initial Patient Population guidelines for the measures in Table 25, which includes these measures. Thus, for both sampling and population purposes, IPFs may use The Joint Commission/CMS Global Initial Patient Population guidelines found at *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228773989482.*

Comment: Many commenters suggested that CMS convene TEPs to identify the best ways to reduce reporting burden.

Response: We will also consider convening a TEP to discuss ways to diminish provider burden in the future.

For the reasons stated above, we are finalizing our proposal to allow The Joint Commission/CMS Global Initial Patient Population sampling for the measures in Table 25 beginning with the FY 2018 payment determination.

G. Public Display and Review Requirements

We did not propose any changes to the public display and review requirements for the FY 2018 payment determination and subsequent years and refer readers to the FY 2014 IPPS/LTCH PPS final rule (78 FR 50897 through 50898) for more information.

H. Form, Manner, and Timing of Quality Data Submission

1. Procedural and Submission Requirements

We did not propose any changes to the procedural and submission requirements for the FY 2018 payment determination and subsequent years and refer readers to the FY 2014 IPPS/LTCH PPS final rule (77 FR 50898 through 50899) for more information on these previously finalized requirements.

2. Change to the Reporting Periods and Submission Timeframes

In the FY 2014 IPPS/LTCH PPS final rule (78 FR 50901), we finalized requirements for reporting periods and submission timeframes for the IPFQR Program measures. We are making one change to these requirements, as discussed above in section V.F.1. of this final rule. Specifically, we are no longer requiring that measure rates be reported quarterly and by age; we will only require an aggregate, yearly number beginning with the FY 2017 payment determination.

3. Population and Sampling

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53657 through 53658) and FY 2014 IPPS/LTCH PPS final rule (78 FR 58901 through 58902), we finalized policies for population, sampling, and minimum case thresholds. We are making one change to these policies, as discussed above in section V.F.3. of this final rule. Specifically, we will allow uniform sampling on certain measures beginning with the FY 2018 payment determination.

4. Data Accuracy and Completeness Acknowledgement (DACA) Requirements

We did not propose any changes to the DACA requirements and refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53658) for more information on these requirements.

I. Reconsideration and Appeals Procedures

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53658 through 53660), we adopted a reconsideration process, later codified at § 412.434, by which IPFs can request a reconsideration of their payment update reduction if an IPF believes that its annual payment update has been incorrectly reduced for failure to meet all IPFQR Program requirements. We did not propose any changes to the Reconsideration and Appeals Procedure and refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53658 through 53660) and the FY 2014 IPPS/LTCH PPS final rule (78 FR 50953) for further details on the reconsideration process.

J. Exceptions to Quality Reporting Requirements

We did not propose any changes to the exceptions to quality reporting requirements and refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53659 through 53660), where we initially finalized the policy as ''Waivers from Quality Reporting,'' and the FY 2015 IPF PPS final rule (79 FR 45978), where we re-named the policy as ''Exceptions to Quality Reporting Requirements'' for more information.

VI. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

- Effective for FY 2016 IPF PPS update, we adopted a 2012-based IPF-market basket. However, we revised the proposed 2012-based IPF market basket based on public comments. Specifically, we revised the methodology for calculating the Wages and Salaries and the Employee Benefits cost weights.
- We adopted an updated FY 2016 LRS of 75.2 percent, which increased from the proposed LRS of 74.9 percent largely due to the methodological changes made to the 2012-based IPF market basket based on public comments. We are implementing the LRS as proposed, in full in FY 2016.
- Effective for FY 2016 IPF PPS update, we adopted a 2012-based IPF market basket. We adjusted the 2012-based IPF market basket update for FY 2016 (currently estimated to be 2.4 percent) by a reduction for economy-wide productivity (currently estimated to be 0.5 percentage point) as required by section 1886(s)(2)(A)(i) of the Social Security Act (the Act), and further reduced by 0.2 percentage point as required by section 1886(s)(2)(A)(ii) of the Act, resulting in a final estimated market basket update of 1.7 percent.
- We updated the IPF per diem rate from $728.31 to $743.73. Providers that failed to report quality data for FY 2016 payment will receive a final FY 2016 per diem rate of $729.10.
- We updated the electroconvulsive therapy (ECT) payment per treatment from $313.55 to $320.19. Providers that failed to report quality data for FY 2016 payment would receive a FY 2016 ECT payment per treatment of $313.89.
- We updated the fixed dollar loss threshold amount from $8,755 to $9,580 in order to maintain outlier payments that are 2 percent of total estimated IPF PPS payments.
- We finalized that the national urban and rural cost-to-charge ratio (CCR) ceilings for FY 2016 will be 1.7339 and 1.9041, respectively, and the national median CCR will be 0.4650 for urban IPFs and 0.6220 for rural IPFs.

All other payment policy proposals are being implemented as proposed. We are implementing the IPF Quality Reporting Program proposals as proposed, except for the following changes: Due to concerns with the timeline required to operationalize the Transition Record with Specified Elements Received by Discharged Patients, Timely Transmission of Transition Record, and Screening for Metabolic Disorders measures, we are only requiring that facilities report the last two quarters of data for the first year of public reporting. That is, for the FY 2018 payment determination, facilities must only report data from July 1, 2016–December 1, 2016 for these measures. Beginning with the FY 2019 payment determination, IPFs must report all four quarters of data or face a payment reduction.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to publish a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval.

To fairly evaluate whether an information collection should be approved by OMB, PRA section 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our burden estimates.
- The quality, utility, and clarity of the information to be collected.

• Our effort to minimize the information collection burden on the affected public, including the use of automated collection techniques.

In our May 1, 2015, proposed rule, we solicited public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs). While comments were received on the proposed rule, none of those comments were related to the PRA or to the ICRs. All of this final rule's information collection requirements and burden estimates are unchanged from what was set out in the proposed rule.

A. Wage Estimates

We estimate that reporting data for the IPFQR Program measures can be accomplished by staff with a mean hourly wage of $16.42 per hour.[114] Under OMB Circular A–76, in calculating direct labor, agencies should not only include salaries and wages, but also ''other entitlements'' such as fringe benefits.[115] This Circular provides that the civilian position full fringe benefit cost factor is 36.25 percent. Therefore, using these assumptions, we estimate an hourly labor cost of $22.37 ($16.42 base salary + $5.95 fringe). The following table presents the mean hourly wage, the cost of fringe benefits (calculated at 36.25 percent of salary), and the adjusted hourly wage.

TABLE 27—OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hour)	Fringe benefit (at 36.25% in $/hour)	Adjusted hourly wage ($/hour)
Medical Records and Health Information Technician	29–2071	16.42	5.95	22.37

The BLS is ''the principal Federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy.'' [116] Acting as an independent agency, the Bureau provides objective information for not only the government, but also for the public. The Bureau's National Occupational Employment and Wage Estimates describes Medical Records and Health Information Technicians as those responsible for organizing and managing health information data. Therefore, we believe it is reasonable to assume that these individuals would be tasked with abstracting clinical data for these measures. In addition, the Hospital IQR Program uses this wage to calculate its burden estimates.

B. ICRs Regarding the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program

We refer readers to the FY 2015 IPF PPS final rule (79 FR 45978 through 45980) for a detailed discussion of the burden for the program requirements that we have previously adopted. Below, we discuss only the changes in burden resulting from the provisions in this final rule. Although we are finalizing provisions that impact both the FY 2017 and FY 2018 payment determinations, all of these new elements begin to apply to facilities in FY 2016. For example, data collection for the measures begins in FY 2016, and the changes to the reporting requirements take effect beginning with reporting that is required in the summer of FY 2016. For purposes of calculating burden, we will attribute the costs to the year in which these costs begin; for the purposes of all of the provisions in this final rule, that year is FY 2016.

1. Changes in Time Required To Chart-Abstract Data Based on Reporting Requirements

As discussed in section V.F. of this final rule, we are finalizing the following 3 changes regarding how facilities should report data for IPFQR Program measures: (1) Beginning with the FY 2017 payment determination, measures must be reported as a single yearly count rather than by quarter and age; (2) beginning with the FY 2017 payment determination, aggregate population counts must be reported as a single yearly number rather than by quarter; and (3) beginning with the FY 2018 payment determination, uniform sampling is allowed for certain measures.

We believe that these changes will lead to a decrease in burden since facilities are required to enter one aggregate number for both the numerator and denominator for each measure and will be allowed to pull one sample used to calculate the measures specified in Table 25 of this final rule. Consequently, we believe that the time required to chart-abstract data for these measures would be reduced by 20 percent. Previously, we estimated 15 minutes to chart-abstract data for each case (79 FR 45979). Because of our proposed changes to sampling and reporting data, we are revising the figure and now estimate 12 minutes (0.20×15 minutes), a change of -3 minutes or -0.05 hour.

2. Estimated Burden of IPFQR Program

In section V. of this final rule, we are finalizing our proposal to adopt the following 5 measures:

• TOB–3—Tobacco Use Treatment Provided or Offered at Discharge and the subset measure TOB–3a Tobacco Use Treatment at Discharge (National Quality Forum (NQF) #1656);

• SUB–2—Alcohol Use Brief Intervention Provided or Offered and the subset measure SUB–2a Alcohol Use Brief Intervention (NQF #1663);

• Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) (NQF #0647);

• Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care) (NQF #0648); and

• Screening for Metabolic Disorders.

In the same section, we are also finalizing our proposal to remove the following 3 measures:

• HBIPS–4: Patients Discharged on Multiple Antipsychotic Medications;

• HBIPS–6: Post-Discharge Continuing Care Plan (NQF #0557); and

• HBIPS–7: Post-Discharge Continuing Care Plan Transmitted to the Next Level of Care Provider Upon Discharge (NQF #0558).

We believe that approximately 1,617 [117] IPFs will participate in the IPFQR Program for requirements occurring in FY 2016 and subsequent years. Based on data from CY 2013, we believe that each facility will submit measure data on approximately 431 [118] cases per year. Although we note that,

[114] *http://www.bls.gov/ooh/healthcare/medical-records-and-health-information-technicians.html.*

[115] *http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction.*

[116] *http://www.bls.gov/bls/infohome.htm.*

[117] In the FY 2015 IPF PPS final rule we estimated 1,626 IPFs and are adjusting that estimate by -9 to account for more recent data.

[118] In the FY 2015 IPF PPS final rule we estimated 556 cases per year and are adjusting that estimate by -125 to account for more recent data.

as finalized in section V. of this final rule, for the Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care), Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care), and the Screening for Metabolic Disorders measures, we are only requiring facilities to report data for two quarters for the FY 2018 payment determination, we believe it is best to estimate the burden for the full year of reporting as this will be the requirement going forward. Therefore, we estimate that adopting 5 measures and removing 3 measures (for a net result of 2 measures) will result in an increase in burden of 172.4 hours per facility (2 measures × (431 cases/measure × 0.20 hours/case)) or 278,770.80 hours across all IPFs (172.4 hours/facility × 1,617 facilities). The increase in costs is approximately $3,856.59 per IPF ($22.37/hour × 172.4 hours) or $6,236,102.80 across all IPFs (278,770.80 hours × $22.37/hour).

Consistent with our estimates in the FY 2015 IPF PPS final rule (79 FR 45979), we believe the estimated burden for training personnel on this final rule's revised data collection and submission requirements is 2 hours per facility or 3,234 hours (2 hours/facility × 1,617 facilities) across all IPFs. Therefore, the cost for this training is $44.74 ($22.37/hour × 2 hours) for each IPF or $72,344.58 ($22.37/hour × 3,234 hours) for all facilities.

Finally, IPFs must submit to CMS aggregate population counts for Medicare and non-Medicare discharges by age group, and diagnostic group, and sample size counts for measures for which sampling is performed. As noted above, we are adopting 5 new measures beginning with the FY 2018 payment determination. However, because, as further described above, we are eliminating reporting this non-measure data by quarter for all measures, we believe that the addition of 5 measures leads to a net negligible change in burden associated with non-measure data collection.

C. Summary of Annual Burden Estimates

TABLE 28—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS UNDER OMB CONTROL NUMBER 0938–1171

[CMS–10432]

Preamble section(s)	Proposed action	Respondents	Responses (per respondent)	Burden per response (hours)*	Total annual burden (hours)	Labor cost of reporting ($/hour)	Total cost ($)
V.C.	Remove HBIPS–4	1,617	862 (431 cases/yr x 2 measures).	0.20	278,770.80	22.37	6,236,102.80
V.	Remove HBIPS–6 and HBIPS–7.						
V.	Add NQF #1656, #1663, #0647, #0648, and Screening for Metabolic Disorders.						
	Training		1	2	3,234		72,344.58
Total		1,617	863	2.2	282,004.8	22.37	6,308,447.38

D. ICRs Regarding the Hospital and Health Care Complex Cost Report (CMS–2552–10)

This rule would not impose any new or revised collection of information requirements associated with CMS–2552–10 (as discussed under preamble section III.A.3.a.i.). Consequently, the cost report does not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The report's information collection requirements and burden estimates are approved by OMB under control number 0938–0052.

E. Submission of PRA-Related Comments

We submitted a copy of this final rule to OMB for its review of the rule's information collection and recordkeeping requirements. The requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS' Web site at *www.cms.hhs.gov/Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please identify the rule (CMS–1627–F) and submit your comments to the OMB desk officer via one of the following transmissions:

Mail: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: 202–395–5806 or, Email: *OIRA_submission@omb.eop.gov,* ICR-related comments are due August 31, 2015.

VIII. Regulatory Impact Analysis

A. Statement of Need

This final rule updates the prospective payment rates for Medicare inpatient hospital services provided by IPFs for discharges occurring during FY 2016 (October 1, 2015, through September 30, 2016). We are applying the final 2012-based IPF market basket increase of 2.4 percent, less the productivity adjustment of 0.5 percentage point as required by 1886(s)(2)(A)(i) of the Act, and further reduced by 0.2 percentage point as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act. In this final rule, we are adopting a 2012-based IPF market basket and updating the IPF labor-related share; adopting new OMB CBSA delineations for the FY 2016 IPF Wage Index; and phasing out the rural adjustment for 37 rural providers which will become urban providers as a result of the new CBSA delineations. Additionally, this rule reminds providers of the October 1, 2015 implementation of the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM/PCS) for the IPF prospective payment system, updates providers on the status of IPF PPS refinements, and

finalizes new quality reporting requirements for the IPFQR Program.

B. Overall Impact

We have examined the impact of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for a major rules with economically significant effects ($100 million or more in any 1 year). This final rule is not designated as economically ''significant'' under section 3(f)(1) of Executive Order 12866.

We estimate that the total impact of these changes for FY 2016 payments compared to FY 2015 payments will be a net increase of approximately $75 million. This reflects an $85 million increase from the update to the payment rates, as well as a $10 million decrease as a result of the update to the outlier threshold amount. Outlier payments are estimated to decrease from 2.2 percent in FY 2015 to 2.0 percent of total estimated IPF payments in FY 2016.

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or having revenues of $7.5 million to $38.5 million or less in any 1 year, depending on industry classification (for details, refer to the SBA Small Business Size Standards found at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*), or being nonprofit organizations that are not dominant in their markets.

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA.

As shown in Table 29, we estimate that the overall revenue impact of this final rule on all IPFs is to increase Medicare payments by approximately 1.5 percent. As a result, since the estimated impact of this final rule is a net increase in revenue across almost all categories of IPFs, the Secretary has determined that this final rule will have a positive revenue impact on a substantial number of small entities. MACs are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this final rule would not have an adverse impact on the rural hospitals based on the data of the 277 rural units and 65 rural hospitals in our database of 1,617 IPFs for which data were available. Therefore, the Secretary has determined that this final rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately $144 million. This final rule will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of $144 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. As stated above, this final rule would not have a substantial effect on state and local governments.

C. Anticipated Effects

We discuss the historical background of the IPF PPS and the impact of this final rule on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem base rate and ECT payment per treatment to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

As discussed in section III.D.1.e. of this final rule, we are using the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal per diem base rate and ECT payment per treatment. Therefore, the budgetary impact to the Medicare program of this final rule will be due to the final market basket update for FY 2016 of 2.4 percent (see section III.A.4. of this final rule) less the productivity adjustment of 0.5 percentage point required by section 1886(s)(2)(A)(i) of the Act; further reduced by the ''other adjustment'' of 0.2 percentage point under sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act; and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2016 impact will be a net increase of $75 million in payments to IPF providers. This reflects an estimated $85 million increase from the update to the payment rates and a $10 million decrease due to the update to the outlier threshold amount to set total estimated outlier payments at 2.0 percent of total estimated payments in FY 2016. This estimate does not include the implementation of the required 2 percentage point reduction of the market basket increase factor for any IPF that fails to meet the IPF quality reporting requirements (as discussed in section VIII.C.4. below).

2. Impact on Providers

To understand the impact of the changes to the IPF PPS on providers, discussed in this final rule, it is necessary to compare estimated

payments under the IPF PPS rates and factors for FY 2016 versus those under FY 2015. We determined the percent change of estimated FY 2016 IPF PPS payments to FY 2015 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount; the updated wage index data; the changes to wage index CBSAs; the changes to rural adjustment payments resulting from changes in rural or urban status, due to CBSA changes; the final labor-related share; and the final market basket update for FY 2016, as adjusted by the productivity adjustment according to section 1886(s)(2)(A)(i), and the ''other adjustment'' according to sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act.

To illustrate the impacts of the FY 2016 changes in this final rule, our analysis begins with a FY 2015 baseline simulation model based on FY 2014 IPF payments inflated to the midpoint of FY 2015 using IHS Global Insight Inc.'s most recent forecast of the market basket update (see section III.A.4. of this final rule); the estimated outlier payments in FY 2015; the CBSA delineations for IPFs based on OMB's MSA definitions after June 2003; the FY 2014 pre-floor, pre-reclassified hospital wage index; the FY 2015 labor-related share; and the FY 2015 percentage amount of the rural adjustment. During the simulation, total outlier payments are maintained at 2 percent of total estimated IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount;
- The FY 2015 pre-floor, pre-reclassified hospital wage index without the revised OMB delineations;
- The FY 2015 updated CBSA delineations, based on OMB's February 28, 2013 Bulletin No. 13–01, as described in section III.D.1.c. of this final rule, with the final blended FY 2016 IPF wage index;
- The FY 2016 rural adjustment, accounting for changes to rural or urban status due to the updated CBSA delineations, including the phase-out of the rural adjustment for the IPFs changing from rural to urban status, as described in section III.D.1.d;
- The final FY 2016 labor-related share;
- The final market basket update for FY 2016 of 2.4 percent less the productivity adjustment of 0.5 percentage point reduction in accordance with section 1886(s)(2)(A)(i) of the Act and further reduced by the ''other adjustment'' of 0.2 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act.

Our final comparison illustrates the percent change in payments from FY 2015 (that is, October 1, 2014, to September 30, 2015) to FY 2016 (that is, October 1, 2015, to September 30, 2016) including all the changes in this final rule.

TABLE 29—IPF IMPACT FOR FY 2016

[Percent change in columns 3–9]

Facility by type	Number of IPFs	Outlier	Wage index [1]	CBSA [2]	Change in rural adjustment [3]	Labor-related share (75.2) [4]	IPF market basket update [5]	Total percent change [6]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
All Facilities	1,617	−0.2	0.0	0.0	0.0	0.0	1.7	1.5
Total Urban	1,275	−0.2	0.0	0.0	0.0	0.2	1.7	1.7
Total Rural	342	−0.2	0.1	−0.2	0.2	−1.1	1.7	0.4
Urban unit	845	−0.3	0.0	0.0	0.0	0.2	1.7	1.6
Urban hospital	430	−0.1	0.0	0.1	0.0	0.1	1.7	1.8
Rural unit	277	−0.2	0.1	−0.2	0.2	−1.1	1.7	0.3
Rural hospital	65	−0.1	0.1	−0.3	0.2	−1.0	1.7	0.5
CBSA Change:								
Urban to Urban	1,238	−0.2	0.0	0.0	0.1	0.2	1.7	1.7
Rural to Rural	338	−0.2	0.0	−0.2	0.1	−1.1	1.7	0.2
Urban to Rural	4	−0.7	2.4	−0.2	13.2	−0.9	1.7	15.7
Rural to Urban	37	−0.1	0.1	2.8	−4.1	−0.9	1.7	−0.7
By Type of Ownership:								
Freestanding IPFs:								
Urban Psychiatric Hospitals:								
Government	125	−0.2	0.1	0.0	0.0	0.1	1.7	1.7
Non-Profit	102	−0.1	0.4	0.1	0.0	0.4	1.7	2.5
For-Profit	203	0.0	−0.3	0.1	0.0	0.0	1.7	1.4
Rural Psychiatric Hospitals:								
Government	35	−0.1	0.2	−0.1	0.4	−0.8	1.7	1.2
Non-Profit	11	−0.4	−0.6	0.0	0.1	−0.3	1.7	0.4
For-Profit	19	0.0	0.1	−0.5	0.1	−1.3	1.7	−0.1
IPF Units:								
Urban:								
Government	128	−0.5	−0.2	−0.1	0.0	0.3	1.7	1.3
Non-Profit	547	−0.3	0.2	0.0	−0.1	0.3	1.7	1.8
For-Profit	170	−0.2	−0.3	0.0	0.0	0.0	1.7	1.3
Rural:								
Government	70	−0.2	−0.1	−0.3	0.0	−1.4	1.7	−0.3
Non-Profit	143	−0.2	0.2	−0.2	0.3	−1.0	1.7	0.7
For-Profit	64	−0.3	0.0	−0.2	0.2	−1.3	1.7	0.2
By Teaching Status:								
Non-teaching	1,427	−0.2	0.0	0.0	0.0	−0.1	1.7	1.4
Less than 10% interns and residents to beds	103	−0.3	0.2	−0.1	0.0	0.5	1.7	2.0

TABLE 29—IPF IMPACT FOR FY 2016—Continued

[Percent change in columns 3–9]

Facility by type	Number of IPFs	Outlier	Wage index [1]	CBSA [2]	Change in rural adjustment [3]	Labor-related share (75.2) [4]	IPF market basket update [5]	Total percent change [6]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
10% to 30% interns and residents to beds	61	−0.5	0.4	−0.1	0.1	0.5	1.7	2.1
More than 30% interns and residents to beds	26	−0.5	0.5	0.0	0.1	0.9	1.7	2.7
By Region:								
New England	108	−0.3	0.8	0.0	0.0	0.8	1.7	3.1
Mid-Atlantic	242	−0.2	0.2	−0.1	0.0	0.6	1.7	2.2
South Atlantic	240	−0.1	−0.3	0.0	−0.1	−0.4	1.7	0.7
East North Central	259	−0.2	0.0	0.0	0.1	−0.2	1.7	1.4
East South Central	160	−0.2	−0.6	0.0	−0.1	−1.1	1.7	−0.2
West North Central	140	−0.3	0.0	0.0	0.0	−0.4	1.7	1.2
West South Central	243	−0.2	−0.5	0.0	−0.1	−0.8	1.7	0.2
Mountain	102	−0.2	0.4	0.0	0.1	0.2	1.7	2.2
Pacific	123	−0.3	0.5	0.0	0.1	1.4	1.7	3.4
By Bed Size:								
Psychiatric Hospitals:								
Beds: 0–24	81	−0.1	0.0	0.2	−0.3	−0.7	1.7	0.7
Beds: 25–49	74	−0.1	−0.3	0.3	−0.1	−0.1	1.7	1.4
Beds: 50–75	87	−0.1	0.0	0.0	0.1	0.0	1.7	1.6
Beds: 76+	253	0.0	0.0	0.0	0.0	0.1	1.7	1.8
Psychiatric Units:								
Beds: 0–24	667	−0.3	0.0	0.0	0.0	−0.3	1.7	1.0
Beds: 25–49	294	−0.3	0.0	0.1	0.0	0.0	1.7	1.5
Beds: 50–75	105	−0.2	0.1	0.0	0.0	0.2	1.7	1.8
Beds: 76+	56	−0.3	−0.1	−0.2	0.1	0.5	1.7	1.7

[1] Includes a FY 2016 IPF wage index, current CBSA delineations, and a labor-related share of 0.69294.

[2] Includes a 50/50 FY 2016 blended IPF wage index, new CBSA delineations, and a labor-related share of 0.69294.

[3] Includes a 50/50 FY 2016 blended IPF wage index, new CBSA delineations, a labor-related share of 0.69294, and a rural adjustment. Providers changing from urban to rural status will receive a 17 percent rural adjustment, and providers changing from rural to urban status will receive 2/3 of the 17 percent rural adjustment in FY 2016. For those changing from urban to rural status, the total impact shown is affected by outlier threshold increasing, which results in smaller outlier payments as part of total payments. For those changing from rural to urban status, the outlier threshold is being lowered by 2/3 of 17 percent, which results in more providers being eligible for outlier payments, increasing the outlier portion of their total payments.

[4] Includes a 50/50 FY 2016 blended IPF wage index, new CBSA delineations, a labor-related share of 0.752, and a rural adjustment.

[5] This column reflects the payment update impact of the 2012-based IPF market basket update of 2.4 percent, a 0.5 percentage point reduction for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act, and a 0.2 percentage point reduction in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act.

[6] Percent changes in estimated payments from FY 2015 to FY 2016 include all of the changes presented in this final rule. The products of these impacts may be different from the percentage changes shown due to rounding effects.

3. Results

Table 29 displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from HCRIS:

- Facility Type
- Location
- Teaching Status Adjustment
- Census Region
- Size

The top row of the table shows the overall impact on the 1,617 IPFs included in this analysis.

In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 2.2 percent in FY 2015. Thus, we are adjusting the outlier threshold amount in this final rule to set total estimated outlier payments equal to 2 percent of total payments in FY 2016. The estimated change in total IPF payments for FY 2016, therefore, includes an approximate 0.2 percent decrease in payments because the outlier portion of total payments is expected to decrease from approximately 2.2 percent to 2.0 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of Table 26), across all hospital groups, is to decrease total estimated payments to IPFs by 0.2 percent. The largest decrease in payments is estimated to reflect a 0.7 percent decrease in payments for IPFs that change from urban to rural status under the new CBSA delineations.

In column 4, we present the effects of the budget-neutral final update to the IPF wage index. This represents the effect of using the most recent wage data available without taking into account the revised OMB delineations, which are presented separately in the next column. That is, the impact represented in this column is solely that of updating from the FY 2015 IPF wage index to the FY 2016 IPF wage index without any changes to the OMB delineations. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4. However, there will be distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be 2.4 percent for IPFs changing from urban to rural status, and the largest decrease in payments to be 0.6 percent for rural non-profit freestanding IPFs and IPFs in the East South Central region.

In column 5, we present the effects of the new OMB delineations and the finalized transition to the new delineations using the transitional IPF wage index. The FY 2016 IPF final transitional wage index is a blended wage index using 50 percent of the IPF's FY 2016 wage index based on the new OMB delineations and 50 percent of the IPF's FY 2016 wage index based on the OMB delineations used in FY 2015. In the aggregate, since these final updates to the wage index are applied in a budget-neutral manner, we do not estimate that these final updates would affect overall estimated payments to IPFs. However, we estimate that these final updates would have distributional effects. We estimate the largest increase in payments would be 2.8 percent for IPFs changing from rural to urban status and the largest decrease in payments would be 0.5 percent for rural for-profit freestanding IPFs.

In column 6, we present the effects of the changes to the rural adjustment under the new CBSA delineations. Four urban IPFs would be newly designated as rural IPFs and would now receive a full 17 percent rural adjustment. We estimate that the largest increase in payments would be to these four newly rural IPFs. Note that each column's simulations include both regular and outlier payments; as regular payments increase, outlier payments decrease to maintain outlier payments at 2 percent of total payments. As such, the increase to total IPF payments is estimated to be 13.2 percent. There are also 37 rural IPFs which would be newly designated as urban IPFs, where we finalized a phase-out of their rural adjustment over 3 years. These 37 newly urban providers will receive ⅔ of the 17 percent rural adjustment in FY 2016, ⅓ of the 17 percent rural adjustment in FY 2017, and no rural adjustment for FY 2018 and subsequent years. As the regular payments for these 37 providers decrease, their outlier payments increase to maintain outlier payments at 2 percent of total payments. We estimate that the largest decrease in payments would be 4.1 percent for these 37 newly urban providers.

In column 7, we present the estimated effects of the final labor-related share. The final update to the IPF labor-related share is made in a budget-neutral manner and therefore will not affect total estimated IPF PPS payments. However, it will affect the estimated distribution of payments among providers. For example, we estimate the largest increase in payments will be 1.4 percent to IPFs in the Pacific region. We estimate the largest decrease in payments will be 1.4 percent to rural IPF governmental units.

In column 8, we present the estimated effects of the update to the IPF PPS payment rates of 1.7 percent, which are based on the 2012-based IPF market basket update of 2.4 percent, less the productivity adjustment of 0.5 percentage point in accordance with section 1886(s)(2)(A)(i), and further reduced by 0.2 percentage point in accordance with section 1886(s)(2)(A)(ii) and 1886(s)(3)(D).

Finally, column 9 compares our estimates of the total changes reflected in this final rule for FY 2016 to the payments for FY 2015 (without these changes). This column reflects all finalized FY 2016 changes relative to FY 2015. The average estimated increase for all IPFs is approximately 1.5 percent. This estimated net increase includes the effects of the final 2.4 percent market basket update reduced by the productivity adjustment of 0.5 percentage point, as required by section 1886(s)(2)(A)(i)of the Act and further reduced by the ''other adjustment'' of 0.2 percentage point, as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act. It also includes the overall estimated 0.2 percent decrease in estimated IPF outlier payments as a percent of total payments from the update to the outlier fixed dollar loss threshold amount. Since we are making the updates noted in columns 4 through 7 in a budget-neutral manner, they will not affect total estimated IPF payments in the aggregate. However, they will affect the estimated distribution of payments among providers.

Overall, urban IPFs are estimated to experience a 1.7 percent increase in payments in FY 2016 and rural IPFs are estimated to experience a 0.4 percent increase in payments in FY 2016. The largest estimated decrease in payments is 0.7 percent for rural IPFs that transition to urban status as a result of the new OMB delineations. As noted previously, we are finalizing our proposal to mitigate the effects of the loss of the rural adjustment to these 37 providers by phasing the adjustment out over 3 years. The largest payment increase is estimated at 15.7 percent for IPFs that transition from urban to rural status (thereby gaining the 17 percent rural adjustment), followed by a 3.4 percent increase for IPFs in the Pacific region.

4. Effects of Updates to the IPFQR Program

As discussed in section V. of this final rule and in accordance with section 1886(s)(4)(A)(i) of the Act, we will implement a 2 percentage point reduction in the FY 2018 market basket update for IPFs that have failed to comply with the IPFQR Program requirements for FY 2018, including reporting on the required measures. In section V. of this final rule, we discuss how the 2 percentage point reduction will be applied. For FY 2015, of the 1,725 IPFs eligible for the IPFQR Program, 31 IPFs (1.8 percent) did not receive the full market basket update because of the IPFQR Program; 10 of these IPFs chose not to participate and 21 did not meet the requirements of the program. We anticipate that even fewer IPFs would receive the reduction for FY 2016 as IPFs become more familiar with the requirements. Thus, we estimate that this policy will have a negligible impact on overall IPF payments for FY 2016.

Based on the proposals we finalized in this rule, we estimate a total increase in burden of 174.4 hours per IPF or 282,004.80 hours across all IPFs, resulting in a total increase in financial burden of $3,901.33 per IPF or $6,308,447.38 across all IPFs. As discussed in section VII. of this final rule, we will attribute the costs associated with the finalized proposals to the year in which these costs begin; for the purposes of all the changes made in this final rule, that year is FY 2016. Further information on these estimates can be found in section VII. of this final rule.

We intend to closely monitor the effects of this quality reporting program on IPFs and help facilitate successful reporting outcomes through ongoing stakeholder education, national trainings, and a technical help desk.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2016 IPF PPS, but we continue to expect that paying prospectively for IPF services would enhance the efficiency of the Medicare program.

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule, but implementing a 2012-based IPF market basket with some methodological changes to the calculations of Wages and Salaries and Employee Benefit

costs, based on public comments; finalizing the updated labor-related share as proposed; finalizing a transitional wage index to implement new OMB CBSA designations as proposed; and implementing a phase-out of the rural adjustment as proposed for the 37 providers changing from rural to urban status as a result of the updated OMB CBSA delineations used in the FY 2016 IPF PPS transitional wage index. We considered implementing the new OMB designations for the FY 2016 IPF PPS wage index without a blend, but wanted to mitigate any negative effects of CBSA changes on IPFs. Additionally, we considered abruptly ending the rural adjustment for the 37 IPF providers which changed from rural to urban status as a result of the OMB CBSA changes. However, we wanted to provide relief from the effects of OMB's new CBSA delineations to the 37 providers which changed from rural to urban status. We also considered whether to allow a phase-in of the updated LRS, but decided that the impact of full implementation did not warrant a phase-in, especially given that we are also implementing a transitional wage index and a phase-out of the rural adjustment for those IPFs which changed status from rural to urban under the new CBSAs. Additionally, for the IPFQR program, alternatives were not considered because the program, as designed, best achieves quality reporting goals for the inpatient psychiatric care setting, while minimizing associated reporting burdens on IPFs. Section V. of this final rule discusses other benefits and objectives of the program.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 30 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions implemented in this final rule. The costs for data submission presented in Table 30 are calculated in section VI, which also discusses the benefits of data collection. This table provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this final rule and based on the data for 1,617 IPFs in our database. Furthermore, we present the estimated costs associated with updating the IPFQR program. The increases in Medicare payments are classified as Federal transfers to IPF Medicare providers.

TABLE 30—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Change in Estimated Transfers from FY 2015 IPF PPS to FY 2016 IPF PPS:	
Category	Transfers
Annualized Monetized Transfers	$75 million.
From Whom to Whom?	Federal Government to IPF Medicare Providers.
FY 2016 Costs to Updating the Quality Reporting Program for IPFs:	
Category	Costs
Annualized Monetized Costs for IPFs to Submit Data (Quality Reporting Program).	$6.31 million.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), sec. 124 of Pub. L. 106–113 (113 Stat. 1501A–332), sec. 1206 of Pub. L. 113–67, and sec. 112 of Pub. L. 113–93.

■ 2. Section 412.428 is amended by revising paragraph (e) to read as follows:

§ 412.428 Publication of Updates to the inpatient psychiatric facility prospective payment system.

* * * * *

(e) Describe the ICD–10–CM coding changes and DRG classification changes discussed in the annual update to the hospital inpatient prospective payment system regulations.

* * * * *

Dated: July 27, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: July 27, 2015.

Sylvia M. Burwell,

Secretary, Department of Health & Human Services.

Note: The following addendum will not publish in the Code of Federal Regulations.

Addendum—FY 2016 Final Rates and Adjustment Factors

PER DIEM RATE

Federal Per Diem Base Rate	$743.73
Labor Share (0.752)	559.28
Non-Labor Share (0.248)	184.45

PER DIEM RATE APPLYING THE 2 PERCENTAGE POINT REDUCTION

Federal Per Diem Base Rate	$729.10
Labor Share (0.752)	548.28
Non-Labor Share (0.248)	180.82

Fixed Dollar Loss Threshold Amount: $9,580.

Wage Index Budget-Neutrality Factor: 1.0041.

FACILITY ADJUSTMENTS

Rural Adjustment Factor	1.17.
Teaching Adjustment Factor	0.5150.
Wage Index	Pre-reclass Hospital Wage Index (FY2015).

COST OF LIVING ADJUSTMENTS (COLAS)

Area	Cost of living adjustment factor
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23
City of Juneau and 80-kilometer (50-mile) radius by road	1.23
Rest of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.19
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

PATIENT ADJUSTMENTS

ECT—Per Treatment	$320.19

PATIENT ADJUSTMENTS—Continued

ECT—Per Treatment Applying the 2 Percentage Point Reduction	313.89

VARIABLE PER DIEM ADJUSTMENTS

	Adjustment factor
Day 1—Facility Without a Qualifying Emergency Department	1.19
Day 1—Facility With a Qualifying Emergency Department	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98

VARIABLE PER DIEM ADJUSTMENTS—Continued

	Adjustment factor
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

AGE ADJUSTMENTS

Age (in years)	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

DRG ADJUSTMENTS

MS–DRG	MS–DRG Descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	

COMORBIDITY ADJUSTMENTS

Comorbidity	Adjustment factor
Developmental Disabilities	1.04
Coagulation Factor Deficit	1.13
Tracheostomy	1.06
Eating and Conduct Disorders	1.12
Infectious Diseases	1.07
Renal Failure, Acute	1.11
Renal Failure, Chronic	1.11
Oncology Treatment	1.07

COMORBIDITY ADJUSTMENTS—Continued

Comorbidity	Adjustment factor
Uncontrolled Diabetes Mellitus	1.05
Severe Protein Malnutrition	1.13
Drug/Alcohol Induced Mental Disorders	1.03
Cardiac Conditions	1.11
Gangrene	1.10

COMORBIDITY ADJUSTMENTS—Continued

Comorbidity	Adjustment factor
Chronic Obstructive Pulmonary Disease	1.12
Artificial Openings—Digestive & Urinary	1.08
Severe Musculoskeletal & Connective Tissue Diseases	1.09

COMORBIDITY ADJUSTMENTS—Continued

Comorbidity	Adjustment factor
Poisoning	1.11

[FR Doc. 2015–18903 Filed 7–31–15; 4:15 pm]

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Part III

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedures for Clothes Washers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2013–BT–TP–0009]

RIN 1904–AC97

Energy Conservation Program: Test Procedures for Clothes Washers

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

ACTION: Final rule.

SUMMARY: On April 25, 2014, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) to amend the test procedures for clothes washers. That proposed rulemaking serves as the basis for this final rule. DOE is issuing a final rule revising its test procedures for clothes washers established under the Energy Policy and Conservation Act. The final rule amends the current procedures, incorporating changes that will take effect 30 days after the final rule publication date. These changes will be mandatory for representations starting 180 days after publication. These amendments codify test procedure guidance that DOE has issued in response to frequently asked questions, clarify additional provisions within the test procedures, provide improved organization of each section, and correct formatting errors in DOE's clothes washer test procedures. DOE has determined that these amendments will not affect measured energy use.

DATES: The effective date of this rule is September 4, 2015. The final rule changes will be mandatory for representations made on or after February 1, 2016.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0009*. All documents in the docket are listed in the 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. The regulations.gov Web page will contain simple 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*.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Johanna Hariharan, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Hariharan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background

A. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles,[2] which includes residential clothes washers (RCW). (42 U.S.C. 6292(a)(7)) Part C of title III [3] established the Energy Conservation Program for Certain Industrial Equipment, which includes commercial clothes washers (CCW). (42 U.S.C. 6311(1)(H)) Both RCWs and CCWs are the subject of this rulemaking.

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Pub. L. 114–11 (Apr. 30, 2015).

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

B. Background

DOE test procedures for clothes washers are codified at appendices J1 and J2 to 10 CFR part 430 subpart B (''appendix J1'' and ''appendix J2''). DOE most recently amended the test procedures for clothes washers on March 7, 2012 (''March 2012 final rule''). 77 FR 13888. The March 2012 final rule amended certain provisions in appendix J1 and also established the clothes washer test procedure codified in appendix J2. DOE proposed additional clarifying revisions to both appendix J1 and appendix J2 in a notice of proposed rulemaking published on April 25, 2014 (''April 2014 NOPR''). 79 FR 23061.

As of March 7, 2015, manufacturers of RCWs are required to make representations of energy efficiency using appendix J2, as established by the March 2012 final rule. 77 FR 32308 (May 31, 2012) and 77 FR 59719 (October 1, 2012).

EPCA requires CCWs to be tested using the same test procedures applicable to residential clothes washers. (42 U.S.C. 6314(a)(8)) On December 3, 2014, DOE published a final rule adopting appendix J2, to be used to determine compliance with any future revised energy conservation standards for CCWs. 79 FR 71624. On December 15, 2014, DOE published a final rule amending the CCW energy conservation standards, which become effective January 1, 2018. 79 FR 74492. Manufacturers of CCWs must use appendix J1 to demonstrate compliance with the current standards established by the January 2010 final rule. (10 CFR 431.156(b)) Beginning January 1, 2018, manufacturers must use appendix J2 to demonstrate compliance with the amended energy conservation standards effective on the same date. (10 CFR 431.156(c))

C. General Test Procedure Rulemaking Process

EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. (42 U.S.C. 6293(b)) EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)). Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

With respect to this rulemaking, DOE has determined that the amendments it is adopting will not change the measured energy use of clothes washers compared to the current test procedure.

II. Summary of the Final Rule

This final rule codifies clarifications and technical amendments to the current DOE test procedures for clothes washers at appendix J1 and appendix J2. The final rule also amends the reporting and verification requirements for RCWs. DOE has determined that the amendments described in section III would not alter the measured efficiency of clothes washers. The amendments either codify guidance interpreting DOE's existing regulations, provide further clarification of the relevant test procedure provisions, provide improved organization of each section, or correct formatting errors in DOE's clothes washer test procedures.

III. Discussion

A. General Comments

As previously mentioned, DOE proposed additional clarifying revisions to both appendix J1 and appendix J2 in the April 2014 NOPR. 79 FR 23061 (Apr. 25, 2014). DOE received several general comments in response to this proposal.

The Association of Home Appliance Manufacturers (AHAM) requested that DOE publish a final rule quickly because the introduction of test procedure amendments when compliance is already underway (as required beginning March 7, 2015) [4] could cause confusion and added burden for manufacturers. (AHAM, No. 4 at p. 2) [5] AHAM also stated that DOE must present its analysis to show that the proposed changes would not alter the measured efficiency of clothes washers, per 42 U.S.C. 6293(e). *Id.* Furthermore, AHAM disagrees with DOE's conclusion that none of the proposed changes in the April 2014 NOPR would alter measured efficiency of clothes washers. *Id.*

General Electric (GE) stated that it supports all of AHAM's comments, except regarding the issue of sanitization cycles, as discussed further in section III.G.2 of this final rule. (GE, No. 6 at p. 1) Whirlpool also stated that it supports all of AHAM's comments, except AHAM's comments on the issue of test cloth loading instructions for front-loading clothes washers, as discussed further in section III.F of this final rule. (Whirlpool, No. 7 at p. 2) Throughout this final rule, reference to AHAM's written comments should be considered reflective of GE and Whirlpool's positions as well, aside from the exceptions mentioned above.

An anonymous commenter expressed support for DOE's proposal, stating that the proposal will enable testers to deliver more accurate results by streamlining the test procedure and clarifying certain confusing or unclear aspects. (Anonymous, No. 2 at p. 1)

Throughout this rule, DOE addresses concerns raised by interested parties in the specific instances where interested parties stated that the proposed changes in the April 2014 NOPR would alter the measured efficiency of clothes washers. In each case, DOE either performed additional testing and analysis to justify its conclusion that a particular amendment would not impact measured efficiency, or altered the amendment in response to the concerns raised, so that the final amendment, as codified by this final rule, will not impact the measured efficiency of clothes washers.

B. Introductory Text

In the April 2014 NOPR, DOE proposed revising the introductory text after the appendix headings in both appendix J1 and appendix J2 to clarify the proper use of appendices J1 and J2 for making representations of energy efficiency, including certifying compliance with DOE energy conservation standards. 79 FR 23061 (April 25, 2014).

DOE test procedures for clothes washers are set forth in appendices J1 and J2 in 10 CFR part 430 subpart B. In the April 2014 NOPR, DOE proposed a number of amendments to both

[4] March 7, 2015 is the compliance date of the amended energy conservation standards that address standby and off mode energy consumption for RCWs. 77 FR 32308 (May 31, 2012) and 77 FR 59719 (Oct. 1, 2012).

[5] A notation in this form provides a reference for information included in the docket for this rulemaking, which is maintained at *www.regulations.gov*. This notation indicates that the commenter's statement preceding the reference can be found in document number 4 in the docket, and appears at page 2 of that document.

appendices, some of which are made final by this rule. Pursuant to 42 U.S.C. 6293(c), manufacturers must make representations of energy efficiency using any amendments DOE adopts in a final test procedure rule beginning 180 days after the rule is prescribed or established. Therefore, beginning 180 days after this final rule is published in the **Federal Register**, manufacturers must make representations of energy efficiency pursuant to appendix J1 or appendix J2 as modified through such amendments.

As of March 7, 2015, manufacturers of RCWs are no longer authorized to use appendix J1. In particular, compliance with DOE's amended standards for RCWs and corresponding use of appendix J2 for all representations by RCW manufacturers, including certifications of compliance, was required as of March 7, 2015. 77 FR 32308 (May 31, 2012) and 77 FR 59719 (October 1, 2012).

AHAM stated that it does not oppose changes to appendix J1 for CCWs; however, AHAM requests that DOE expressly state that RCWs will not need to comply with the revised appendix J1. (AHAM, No. 4 at p. 2) Alliance Laundry Systems (ALS) supports DOE's proposal to amend the note at the beginning of both appendix J1 and appendix J2 test procedures. (ALS, No. 5 at p. 5)

DOE received no comments objecting to its proposal to amend the introductory text of both appendix J1 and appendix J2. Therefore, for the reasons stated above, this final rule amends the introductory text in both appendix J1 and appendix J2 to clarify their use. As described in the Background section of this notice, the current energy conservation standards for CCWs are based on the MEF and WF metrics as measured using appendix J1. Therefore, appendix J1 will remain effective for CCWs until January 1, 2018, the effective date of the amended energy conservation standards for CCWs, which are based on appendix J2. 79 FR 74491 (Dec. 15, 2014). Since RCWs were required to use appendix J2 beginning March 7, 2015, appendix J1 will be used only for CCWs between March 7, 2015 and January 1, 2018.

C. Clothes Container Capacity Measurement

1. Capacity Measurement in Appendix J1

Section 3.1 of appendix J1 contains procedures for measuring the clothes container capacity. The capacity measurement procedure involves filling the clothes container with water and determining the volume based on the weight of the added water divided by the water density. Section 3.1.4 specifies that the clothes container be filled manually with water to its ''uppermost edge.''

In the April 2014 NOPR, DOE proposed codifying the clarifications and illustrations contained in the July 6, 2010 guidance document.[6] 79 FR 23061, 23063 (Apr. 25, 2014). The guidance document clarifies the definition of the uppermost edge of the clothes container for the purpose of performing capacity measurements and provides detailed descriptions and illustrations of the boundary defining the uppermost edge of the clothes container for both top-loading and front-loading clothes washers.

For top-loading vertical-axis clothes washers, DOE's guidance document defines the uppermost edge of the clothes container as the highest point of the innermost diameter of the tub cover. For front-loading horizontal-axis clothes washers, the guidance document specifies filling the clothes container with water to the highest point of contact between the door and the door gasket. If any portion of the door or the door gasket would occupy the measured volume when the door is closed, that volume must be excluded from the measurement. DOE's guidance document also provides illustrations of the boundary defining the uppermost edge of the clothes container for both top-loading and front-loading clothes washers.[7] DOE proposed in the April 2014 NOPR to incorporate some of these illustrations into appendix J1 as the following: (1) Figure 3.1.4.1, displaying the maximum fill level for top-loading vertical-axis clothes washers; (2) Figure 3.1.4.2, displaying example cross-sections of tub covers showing the highest horizontal plane defining the uppermost edge of the clothes container for top-loading clothes washers; and (3) Figure 3.1.4.3, showing the maximum fill volumes for the clothes container capacity measurement of horizontal-axis clothes washers.

The April 2014 NOPR also further clarified the appropriate water fill levels for front-loading horizontal-axis clothes washers with concave door shapes and top-loading horizontal-axis clothes washers. 79 FR 23063. In the April 2014 NOPR, DOE proposed defining the capacity measurement for front-loading horizontal-axis clothes washers with concave door shapes as any space above the plane defined by the highest point of contact between the door and the door gasket, if that area could be occupied by clothing during washer operation. *Id.* Similarly, for top-loading horizontal-axis clothes washers, the water fill volume would include any space above the plane of the door hinge, if that area could be occupied by clothing during washer operation. *Id.* This additional clarification is consistent with the illustrations for these clothes washer types provided in DOE's guidance document.

AHAM supports the incorporation of DOE's existing guidance and illustrations for the capacity measurement in appendix J1. (AHAM, No. 4 at p. 4) AHAM does not oppose DOE's proposal to further clarify the water fill levels. *Id.*

ALS also supports DOE's proposal to incorporate the illustrations from DOE's existing guidance in appendix J1. (ALS, No. 5 at p. 3)

DOE received no comments objecting to its proposal to incorporate the capacity measurement clarifications described in its July 6, 2010 guidance document into appendix J1. Therefore, for the reasons discussed above, DOE incorporates these clarifications into section 3.1.4 of appendix J1 in this final rule.

2. Capacity Measurement in Appendix J2

Section 3.1.4 of appendix J2 specifies the maximum allowable water fill levels for determining the capacity of top-loading and front-loading clothes washers. In the April 2014 NOPR, DOE proposed clarifying the description of the maximum fill volume for front-loading clothes washers in appendix J2. 79 FR 23063.

For front-loading horizontal-axis clothes washers, section 3.1.4 currently specifies filling the clothes container to the ''uppermost edge that is in contact with the door seal.'' DOE intended this language to clarify the text in DOE's July 6, 2010 guidance document interpreting appendix J1, but did not intend for the measured capacity values to differ. Since publishing the March 2012 final rule, DOE became aware of front-loading clothes washer door geometries with complex curvatures that may not have an easily discernible ''uppermost edge'' in contact with the door seal.

In the April 2014 NOPR, DOE proposed revising the definition to provide additional clarity by referencing the ''highest point of contact'' rather than the ''uppermost edge,'' in order to

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[6] The July 6, 2010 guidance document on residential clothes washers is located at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/clotheswashers_faq1_2010-07-06.pdf* (''Guidance Document,'').

[7] *See* April 2014 NOPR, 79 FR 23061, 23091; Guidance Document, *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/clotheswashers_faq1_2010-07-06.pdf.*

clearly identify the geometric boundary between the door and the door gasket for a wider range of front-loading clothes washer geometries. 79 FR 23063. DOE intended for the measured capacity of a front-loading clothes washer using the proposed revised language to be equivalent to the measured capacity using the current front-loading capacity language in section 3.1.4 of appendix J2. *Id.* at 23063–64. The proposed amendments to appendix J2 also included the following illustrations: (1) Figure 3.1.4.1, showing the boundary defining the uppermost edge of the clothes container for top-loading vertical-axis clothes washers; and (2) Figure 3.1.4.2, showing the boundaries defining the maximum fill volumes for the clothes container capacity measurement of horizontal-axis clothes washers. *Id.*

AHAM does not oppose DOE's proposal to amend the appendix J2 description of the maximum fill volume for front-loading clothes washers using the same language as the proposed amendments to appendix J1, and as specified in existing capacity measurement guidance under appendix J1. (AHAM, No. 4 at p. 4) AHAM also does not oppose DOE's proposal to incorporate illustrations of the boundary defining the uppermost edge of the clothes container for top-loading vertical-axis clothes washers and the boundaries defining the fill volumes for horizontal-axis clothes washers. (AHAM, No. 4 at p. 4)

ALS supports DOE's proposal to add illustrations showing the maximum fill level for top-loading vertical-axis washers and the maximum fill volume for horizontal-axis washers in appendix J2. (ALS, No. 5 at p. 3)

DOE received no comments objecting to its proposal to incorporate the revised description of the maximum fill volume for front-loading clothes washers in appendix J2, as well as the illustrations of the boundaries defining the uppermost edge of the clothes container for top-loading vertical-axis clothes washers and the maximum fill volume for horizontal-axis clothes washers. Therefore, for the reasons discussed above, DOE incorporates these changes into newly renumbered section 3.1.4 of appendix J2 in this final rule.

3. Capacity Rounding Requirements

In both appendix J1 and appendix J2, the measured capacity is the basis for determining the test load sizes specified in Table 5.1. The table provides test load sizes for capacity ranges in increments of 0.10 cubic feet. The precision of the capacity ranges in Table 5.1 implies that the capacity of the clothes container must be measured to the nearest 0.01 cubic foot for the purpose of determining load size. However, manufacturers typically report capacity to the nearest 0.1 cubic foot in DOE certification reports and in retail advertisements.

In the April 2014 NOPR, DOE proposed clarifying that manufacturers must measure capacity to the nearest 0.01 cubic foot for the purpose of determining load size and for calculating the efficiency values that manufacturers must report pursuant to 10 CFR 429.20(b). 79 FR 23061, 23064. (April 25, 2014). DOE proposed adding this clarification in both appendices, in a new section 3.1.7 following the calculation of capacity in section 3.1.5. *Id.*

The proposed amendments also specified in a new section at 10 CFR 429.20(c) that capacity must be reported to the nearest 0.1 cubic foot for the purpose of DOE certification reports for RCWs.

Finally, DOE proposed clarifying in a new paragraph at 10 CFR 429.20(a)(3) that the certified capacity of any clothes washer basic model shall be the mean of the capacities of the units in the sample for the basic model. 79 FR 23064. DOE proposed this amendment for clarity, stating that it believes this is consistent with current practice because the existing test procedure and sampling plan require testing at least two units and measuring the drum capacity individually for each. *Id.*

AHAM and ALS support DOE's proposal to clarify measuring capacity to the nearest 0.01 cubic foot for the purposes of the test procedure measurement and the downstream calculations in the test procedure, and to report capacity to the nearest 0.1 cubic foot for certification purposes. (AHAM, No. 4 at p. 4; ALS, No. 5 at p. 3) AHAM and ALS also support DOE's proposal that the certified capacity of any clothes washer basic model shall be the mean of the capacities of the units in the sample for the basic model. (AHAM, No. 4 at p. 4; ALS, No. 5 at p. 1)

DOE received no comments objecting to its proposed clarifications regarding clothes container capacity rounding requirements, including the revised certification requirement. Therefore, for the reasons discussed above, DOE incorporates these clarifications in this final rule.

4. Plastic Sheet Material

Section 3.1.2 of both appendix J1 and appendix J2 specifies lining the inside of the clothes container with a 2 mil thickness (0.051mm) plastic sheet before filling the clothes container with water. DOE is aware that common industry practice is to use a large 2 mil plastic bag, rather than a plastic sheet, for lining the clothes container because the shape of the plastic bag more easily conforms to the geometry of the clothes container. DOE therefore proposed in the April 2014 NOPR to amend section 3.1.2 of both appendix J1 and appendix J2 to allow the use of either a 2 mil thickness plastic sheet or plastic bag to line the inside of the clothes container. 79 FR 23064. DOE reasoned that the measured capacity of the clothes washer would be the same regardless of whether a plastic sheet or plastic bag is used, provided that the thickness of either the plastic sheet or plastic bag is 2 mil. *Id.*

AHAM and ALS support the use of a plastic bag for measuring capacity, stating that they believe a plastic bag provides the most accurate measurement method. (AHAM, No. 4 at p. 4, 5; ALS, No. 5 at p. 3) AHAM added that it prefers that DOE no longer permit the use of a plastic sheet to perform the capacity measurement, to help reduce variation in the test procedure. (AHAM, No. 4 at p 4, 5) ALS also objected to DOE's continued allowance of ''plastic sheet material'' for the capacity measurement, stating that it results in an inaccurate measurement due to the significant folding that occurs with the flat sheet. (ALS, No. 5 at p. 3)

DOE has conducted numerous capacity measurements of both top-loading and front-loading clothes washers using a flat plastic sheet, and has obtained the same measured capacity as each model's certified capacity value. Therefore, DOE's experience has shown that it is possible to perform the capacity measurement correctly and accurately using a flat plastic sheet. However, DOE acknowledges that the use of a flat plastic sheet can be more difficult than using a plastic bag. Using a flat plastic sheet requires careful attention to minimize the number of folds and to ensure that none of the folds encapsulate any trapped air, which could reduce the measured capacity.

Due to the challenges observed by DOE in using a flat plastic sheet, and considering the comments received in response to the April 2014 NOPR, this final rule amends section 3.1.2 of both appendix J1 and appendix J2 to require the use of only a 2 mil thickness plastic bag to line the inside of the clothes container. This final rule does not allow manufacturers to use a plastic sheet to perform measurements under appendix J1 and J2.

5. Shipping Bolts

Front-loading clothes washers are typically designed with large bolts, inserted through the back of the clothes washer, that secure the wash drum to prevent movement of the drum during shipping. These ''shipping bolts'' must be removed prior to operating the clothes washer. Alternatively, on some front-loading clothes washers, the drum is secured using other forms of bracing hardware that are intended to be removed prior to operating the clothes washer.

Section 3.1.1 of appendix J2 currently specifies that the shipping bolts must remain in place during the capacity measurement procedure to support the wash drum and prevent it from sagging downward as the drum is filled with water. In the April 2014 NOPR, DOE proposed to add a reference to ''other forms of bracing hardware'' in section 3.1.1 of both appendix J1 and appendix J2. 79 FR 23061, 23064. (Apr. 25, 2014).

In addition, DOE became aware of front-loading clothes washer designs that do not use shipping bolts or other forms of bracing hardware to support the wash drum during shipping. Therefore, in the April 2014 NOPR, DOE also proposed amendments to section 3.1.1 of both appendix J1 and J2 to describe how a laboratory should measure the capacity of this type of clothes washer. The proposed amendments would allow a laboratory to support the wash drum by other means if necessary, including temporary bracing or support beams. The amendments would require that any temporary bracing or support beams, if used, must keep the wash drum in a fixed position, relative to the geometry of the door and door seal components, that is representative of the position of the wash drum during normal operation. DOE also proposed to require that the method used avoid any damage to the unit that would affect the results of the energy and water testing. DOE further proposed to require that test reports fully document the method used to support the wash drum, and, pursuant to 10 CFR 429.71, that the manufacturer retain such documentation as part of its test records. 79 FR 23064.

ALS supports DOE's proposed clarifications regarding shipping bolts used on front-loading washers. (ALS, No. 5 at p. 3)

AHAM supports DOE's clarification that the purpose of shipping bolts or other forms of bracing hardware remaining in place is to support the wash drum and prevent it from sagging downward as the drum is filled with water. (AHAM, No. 4 at p. 5) AHAM does not oppose DOE's proposed description of how a laboratory should proceed in cases where shipping bolts or other forms of bracing hardware are not used to support the drum during shipping. (AHAM, No. 4 at p. 5) AHAM stated that if DOE intended manufacturers to indicate whether shipping bolts or other forms of bracing hardware are used, AHAM would oppose such reporting requirement as unnecessarily adding to the certification reporting and recordkeeping burden. Instead, AHAM stated that DOE should require reporting only when something other than what is shipped with the unit is used for testing. (AHAM, No. 4 at p. 5)

DOE received no comments objecting to its proposed clarifications regarding the use of shipping bolts or other forms of bracing hardware during the clothes container capacity measurement. Therefore, for the reasons discussed above, DOE incorporates these clarifications in section 3.1.1 of both appendix J1 and appendix J2 in this final rule.

In the April 2014 NOPR, DOE intended that manufacturers would need to fully document the method used to support the wash drum, and retain such documentation as part of its test records, only in cases where temporary bracing or support beams are required to keep the wash drum in a fixed position on front-loading clothes washer designs that do not use shipping bolts or other forms of bracing hardware to support the wash drum during shipping. The final rule provides this clarification in section 3.1.1 of both appendix J1 and appendix J2.

D. Hot and Cold Water Supply Test Conditions

Section 2.3.1 of both appendix J1 and appendix J2 specifies that the temperature of the hot water supply must not exceed 135 °F and the cold water supply must not exceed 60 °F for clothes washers in which electrical energy or water energy consumption are affected by the inlet water temperature (for example, water heating clothes washers or clothes washers with thermostatically controlled water valves). This specification does not provide a lower bound for the hot and cold water supply temperatures. In contrast, section 2.3.2 of both test procedures specifies a hot water supply temperature of 135 °F ± 5 °F and a cold water supply temperature of 60 °F ± 5 °F for clothes washers in which electrical energy and water energy consumption are not affected by the inlet water temperature.

On clothes washers with thermostatically controlled mixing valves, the supply water temperatures directly affect the relative quantities of hot and cold water consumption during a wash cycle. DOE has observed that the large majority of clothes washers on the market now use thermostatically controlled mixing valves or other similar technologies for precisely controlling the wash water temperatures. DOE's engineering analysis during the most recent energy conservation standards rulemaking for RCWs indicated that precise temperature control will be required to achieve the higher efficiency levels established by the May 31, 2012 direct final rule. (77 FR 32308).

To improve consistency and repeatability of test results, DOE proposed in the April 2014 NOPR to establish a lower bound of 130 °F for the hot water supply and 55 °F for the cold water supply for clothes washers in which electrical energy or water heating energy consumption are affected by the inlet water temperature. This would provide an allowable range of five degrees on the hot and cold water supplies (*i.e.,* 130–135 °F and 55–60 °F, respectively). In its proposal, DOE stated the amendment applied to both appendix J1 and appendix J2 (with section 2.3.1 in appendix J2 renumbered to 2.2.1). 79 FR 23064.

In the April 2014 NOPR, DOE noted that the proposed five-degree temperature tolerance is a tighter tolerance than is required for clothes washers in which electrical energy and water energy consumption are not affected by the inlet water temperature; however, DOE noted that the water supply temperature affects the outcome of the MEF or Integrated Modified Energy Factor (IMEF) results when testing clothes washers with thermostatically controlled water valves more significantly than for clothes washers without such valves. DOE requested comment on the potential test burden associated with maintaining a tolerance of five degrees on the hot and cold water supply temperature for clothes washers in which electrical energy and water energy consumption are affected by the inlet water temperature.

AHAM supports DOE's proposal to establish a lower bound of 130 °F for the hot water supply and 55 °F for the cold water supply for clothes washers in which electrical energy or water energy consumption are affected by inlet water temperature. Additionally, AHAM suggested that, with regard to water supply temperature, DOE no longer differentiate between clothes washers

with thermostatically controlled water valves and those without, and that the proposed tighter temperature tolerance should apply to all types of clothes washers. AHAM added that third-party laboratories will not likely know whether a machine is thermostatically controlled, and therefore will maintain the stricter five-degree tolerance during testing anyway. Thus, applying the same five-degree temperature tolerance to all types of clothes washers should not impact laboratories. AHAM also suggested that DOE add language to explicitly state that 135 °F and 60 °F are the target inlet temperatures, which would further clarify the test procedure and reduce testing variation. (AHAM, No. 4 at pp. 5–6)

ALS supports DOE's proposal regarding the hot and cold water supply conditions. ALS stated that it has equipment capable of controlling water temperature to within the proposed five-degree total tolerance for clothes washers, which are affected by supply water temperature. (ALS, No. 5 at p. 4) For added consistency, ALS proposed that the five-degree tolerance also should apply to clothes washers that are not affected by water supply temperature. (ALS, No. 5 at p. 4)

The California Investor Owned Utilities (CA IOUs) support DOE's proposal to maintain a tolerance of five degrees on both the hot and cold water supply temperatures for clothes washers in which electrical energy or water energy consumption are affected by inlet water temperature. (CA IOUs, No. 3 at p. 5)

DOE agrees with AHAM that a third-party laboratory is unlikely to know whether a clothes washer is thermostatically controlled and therefore is likely to maintain the tighter five-degree tolerance for all clothes washer tests. DOE also agrees with AHAM and ALS that applying the tighter five-degree tolerance to all types of clothes washers would provide increased consistency of test results, with minimal or no additional test burden, since laboratories typically maintain a five-degree tolerance already. Therefore, this final rule amends both appendix J1 and appendix J2 to require maintaining a five-degree temperature range on the hot and cold water supplies (*i.e.,* 130–135 °F and 55–60 °F, respectively) for all types of clothes washers. This final rule also amends appendix J1 (section 2.3) and appendix J2 (newly renumbered section 2.2) to specify that 135 °F is the target temperature for the hot water supply and 60 °F is the target temperature for the cold water supply.

E. Test Cloth Standard Extractor RMC Test Procedure

Sections 2.6.5 through 2.6.7 of both appendix J1 and appendix J2 contain the procedures for performing the standard extractor remaining moisture content (RMC) test to evaluate the moisture absorption and retention characteristics and to develop a unique correction curve for each new lot of test cloth. In the April 2014 NOPR, DOE proposed moving the contents of sections 2.6.5 through 2.6.7 in both appendices to a new appendix J3 as a standalone test method for measuring the moisture absorption and retention characteristics of new energy test cloth lots to improve the clarity and overall logical flow of the test procedure. 79 FR 23061, 23065 (Apr. 25, 2014).

AHAM does not oppose, and ALS supports, DOE's proposal to relocate the contents of sections 2.6.5 through 2.6.7 in both appendix J1 and appendix J2 to a new appendix J3 as a standalone test method for measuring the moisture absorption and retention characteristics of the new energy test cloth lots. (AHAM, No. 4 at p. 6; ALS, No. 5 at p. 4)

DOE received no comments objecting to its proposal to create a new appendix J3 as a standalone test method for measuring the moisture absorption and retention characteristics of new energy test cloth lots. Therefore, this final rule incorporates this change and establishes a new appendix J3 test procedure. Accordingly, this final rule also removes the standard extractor RMC procedure from appendices J1 and J2 and amends section 2.6.4.6 in appendix J1 and newly renumbered section 2.7.5 in appendix J2 to reference the standard extractor RMC procedure now provided in appendix J3.

F. Test Cloth Loading Instructions

Section 2.8.3 of both appendix J1 and appendix J2 specifies loading the energy test cloths into the clothes washer by grasping them in the center, shaking them to hang loosely, and then ''put[ting] them into the clothes container'' prior to activating the clothes washer. These instructions apply to both top-loading and front-loading clothes washers. DOE proposed in the April 2014 NOPR to provide additional specificity for the test cloth handling and loading instructions to improve the overall clarity and consistency of test cloth loading procedures. As proposed, the amendments would apply to both appendix J1 and appendix J2 (section 2.8.3 would be renumbered to 2.9.2 in appendix J2 per the proposed amendments). 79 FR 23065.

DOE proposed amending test cloth loading instructions by conforming them to a modified version of the loading instructions for towels and pillowcases provided in the AHAM HLW–1–2010 test method, *Performance Evaluation Procedures for Household Appliances.* [8] Like DOE's current test cloth loading instructions, the AHAM procedure involves grasping the towel/pillowcase in the center and shaking it so that it hangs loosely. The AHAM procedure further describes placing the towels/pillowcases into the drum with alternating orientations. It also provides sketches illustrating each step in the loading process. DOE's proposed amendments included similar illustrations. The proposed amendments also specified testing according to any additional loading instructions provided by the manufacturer regarding the placement of clothing within the clothes container. 79 FR 23065.

ALS supports DOE's proposal to add more specificity to the test cloth loading instructions in both appendix J1 and appendix J2. (ALS, No. 5 at p. 4)

AHAM and Whirlpool agree with DOE's proposed loading instructions for top-loading clothes washers. (AHAM, No. 4 at p. 6; Whirlpool, No. 7 at p. 2) AHAM did not comment on DOE's proposed loading instructions for front-loading clothes washers, but stated that DOE should specify a loading procedure for both top and front-loading machines. (AHAM, No. 4 at p. 6) AHAM suggested that DOE should investigate the impacts of the proposed test cloth loading instructions on measured water and energy use. AHAM further suggested that DOE strike the word ''additional'' from the proposed language stating, ''Follow any additional manufacturer loading instructions provided to the user regarding the placement of clothing within the clothing container.'' AHAM stated that this would clarify that if the manufacturer's recommendations to the consumer differ from the test procedure's loading instructions, the manufacturer's recommendation should be followed. (AHAM, No.4 at pp. 2–3, 6–7)

DOE agrees with AHAM's suggestion that if the manufacturer's recommendations for loading the clothes washer differ from the test procedure's loading instructions, the manufacturer's recommendation should be followed. Therefore, this final rule amends the test cloth loading

[8] DOE referenced AHAM HLW–1–2010 in the April 2014 NOPR. AHAM has since updated its test method as HLW–1–2013. The loading instructions for towels and pillowcases are the same in both versions. HLW–1–2013 is available at *http://www.aham.org/ht/d/Store/name/MAJOR/pid/5132.*

instructions to require following any manufacturer loading instructions provided to the user regarding the placement of clothing within the clothes container. In the absence of any manufacturer loading instructions provided to the user, DOE's detailed loading instructions, as amended by this final rule, must be followed.

DOE received no comments objecting to its proposal to provide additional specificity for the test cloth handling and loading instructions for top-loading clothes washers. Therefore, for the reasons described above, this final rule amends the test procedures by providing greater detail regarding test cloth handling and loading instructions for top-loading clothes washers, including the accompanying illustrations as proposed in the April 2014 NOPR.

Whirlpool opposed amending the current test cloth loading procedure for front-loading clothes washers. Whirlpool stated that DOE's proposed method of stacking the cloths in a front-loader would not accomplish DOE's goal of adding more consistency to the test procedure. Whirlpool believes that whether the cloths are stacked as noted in AHAM HLW–1–2010 or loaded at random the way a consumer would load the machine at home, the cloths in both cases will ultimately be mixed together randomly within several tumbles of any front-load washer drum, thereby producing relatively insignificant variation between the two loading methods. Whirlpool added that adopting the proposed test cloth loading instructions for front-load washers would add unnecessary test burden by extending the amount of time it takes to perform the test, in exchange for no meaningful benefits. (Whirlpool, No. 7 at p. 2)

In response to Whirlpool's comment, DOE conducted additional investigations into the proposed changes to the test cloth loading instructions for front-loading clothes washers. DOE performed comparative testing on two front-loading clothes washers: One with baseline efficiency and one with max-tech efficiency. On each clothes washer, DOE conducted 10 cycles using the procedure described in the current test procedure, and 10 cycles using the revised procedure described in the proposed amendments.

For the test runs corresponding to the current test procedure, DOE loaded each cloth individually according to instructions provided in section 2.8.3 of appendix J1 and appendix J2: ''Load the energy test cloths by grasping them in the center, shaking them to hang loosely, and then put them into the clothes container prior to activating the clothes washer.'' Each cloth was loaded loosely into the drum without being placed in any particular orientation, resulting in a random arrangement of cloths inside the drum.

For the test runs corresponding to the revised procedure proposed in the April 2014 NOPR, DOE loaded each cloth lengthwise, from front to back, using alternating orientations for adjacent pieces of cloth. The clothes were loaded evenly across the width of the clothes container, completing each cloth layer across its horizontal plane before adding a new layer.

During each cycle, DOE measured total water consumption, machine electrical energy consumption, remaining moisture content, cloth loading time, and total cycle time (excluding cloth loading time). Table III–1 summarizes the results by providing the range, average, and standard deviation for total water consumption (in gallons), machine electrical energy (in kilowatt-hours (kWh)), and remaining moisture content (expressed as a percentage). Table III–2 summarizes the measured loading times and cycles times associated with each method.

DOE provides the full results of these tests in a separate test report accompanying this final rule, which is available in the regulations.gov docket for this rulemaking.

TABLE III–1—COMPARISON OF TOTAL WATER CONSUMPTION, MACHINE ELECTRICAL ENERGY, AND REMAINING MOISTURE CONTENT FOR FRONT-LOADING CLOTHES WASHERS

Washer type	Loading method	Total water consumption (gal)		Machine electrical energy range (kWh)		Remaining moisture content range (%)	
		Range	Avg; SD	Range	Avg; SD	Range	Avg; SD
Baseline	Current Method	15.4–17.3	16.5; 0.49	0.13–0.15	0.14; 0.01	44–48	47; 1.0
	Proposed Method	15.8–17.2	16.5; 0.49	0.13–0.15	0.14; 0.01	46–48	47; 0.5
Max-Tech	Current Method	11.9–12.9	12.3; 0.32	0.12–0.14	0.13; 0.00	34–36	35; 0.5
	Proposed Method	9.4–13.3	11.9; 1.10	0.12–0.14	0.13; 0.01	31–40	35; 2.5

TABLE III–2—COMPARISON OF LOADING TIMES AND CYCLE TIMES FOR FRONT-LOADING CLOTHES WASHERS

Washer type	Loading method	Loading time (mm:ss)		Wash cycle time (min)		Average total time (min)
		Range	Avg	Range	Avg	
Baseline	Current Method	3:38–5:15	4:08	59–75	63	67
	Proposed Method	4:31–5:12	4:49	57–72	62	67
Max-Tech	Current Method	4:39–5:20	5:04	48–56	53	58
	Proposed Method	5:40–6:15	6:00	48–56	53	59

The results of this testing indicate that the proposed revised loading method for front-loading clothes washers improved the consistency of machine electrical energy, water consumption, and RMC for the baseline unit, as compared to the current loading method in the appendix J2 test procedure. However, the proposed revised loading method resulted in less overall consistency of these three parameters for the max-tech unit.

The proposed revised loading method required approximately one additional minute of time to load the cloths for both clothes washers. The proposed revised loading method resulted in a decrease in wash cycle time of one minute for the baseline clothes washer, but no change in wash cycle time for the max-tech clothes washer. DOE considers an overall time difference of one minute to be negligible, given the total cycle time of approximately one hour.

Based on the results of this testing, DOE concludes that the proposed revised loading method may provide more consistent test results for some front-loading clothes washer models, but less consistent results for other models. Additional tests would need to be performed on a wider range of units to further verify these conclusions. Accordingly, DOE agrees that the data collected do not support adopting a change to the instructions for loading front-loading clothes washer models. For these reasons, this final rule maintains the loading instructions provided in the current appendix J2 test procedure for front-loading clothes washers. As stated above, this final rule amends the loading instructions in newly renumbered section 2.9.2 of appendix J2 for top-loading clothes washers by providing greater detail regarding test cloth handling and the loading procedure, including the accompanying illustrations as proposed in the April 2014 NOPR.

G. Energy Test Cycle

1. Warm Rinse Cycles

Section 1.7 of appendix J1 defines the energy test cycle as (A) the cycle recommended by the manufacturer for washing cotton or linen clothes, including all wash/rinse temperature selections and water levels offered in that cycle, and (B) for each other wash/rinse temperature selection or water level available on that basic model, the portion(s) of other cycle(s) with that temperature selection or water level that, when tested pursuant to these test procedures, will contribute to an accurate representation of the energy consumption of the basic model as used by consumers.

DOE published guidance on September 21, 2010, to clarify that the energy test cycle should include the warm rinse of the cycle most comparable to the cottons and linens cycle if warm rinse is not available on the cottons and linens cycle.[9] In the April 2014 NOPR, DOE proposed codifying this guidance by incorporating this clarification into section 1.7(B) of appendix J1 (redesignated as section 1.8(B) due to the proposed addition of a new entry in the list of definitions before the energy test cycle definition). 79 FR 23065.

In the April 2014 NOPR, DOE tentatively determined that a parallel clarification regarding a warm rinse cycle is unnecessary in appendix J2. 79 FR 23065. Section 1.13(B) in appendix J2 requires including the warm rinse cycle if it is not available on the cycle recommended for washing cotton or linen clothes but is available on an alternative cycle selection.

AHAM does not oppose DOE's inclusion of the 2010 warm rinse guidance in appendix J1. (AHAM, No. 4 at p. 7) ALS supports DOE's proposal to codify the warm rinse guidance only in appendix J1. (ALS, No. 5 at p. 6)

DOE received no comments objecting to its proposal to amend appendix J1 to codify the September 2010 guidance regarding the inclusion of warm rinse. Therefore, this final rule amends the definition of ''energy test cycle'' in newly renumbered section 1.8 of appendix J1 to clarify that the energy test cycle should include the warm rinse of the cycle most comparable to the cottons and linens cycle if warm rinse is not available on the cottons and linens cycle. DOE confirms its prior determination that a parallel clarification for appendix J2 is unnecessary.

2. Sanitization Cycles

As described in the previous section, part (A) of the energy test cycle in appendix J1 includes all temperature selections available on the cycle recommended by the manufacturer for washing cotton or linen clothing. Part (B) of the energy test cycle in appendix J1 includes other temperature selections available on other cycles that ''will contribute to an accurate representation of the energy consumption of the basic model as used by consumers.''

Section 3.3 of appendix J1 defines the ''Extra Hot Wash'' as a cycle with a maximum wash temperature of greater than 135 °F for water-heating clothes washers. DOE is aware that on some clothes washers, an extra-hot temperature selection is available only on a separate sanitization cycle. In the April 2014 NOPR, DOE proposed amending the energy test cycle definition in appendix J1 to clarify that for such clothes washers, the sanitization cycle should be included in the energy test cycle if the cycle is recommended by the manufacturer for washing clothing and if doing so would contribute to an accurate representation of the energy consumption as used by consumers. 79 FR 23061, 23065 (Apr. 25, 2014). If the extra-hot temperature selection is available only on a sanitization cycle not recommended by the manufacturer for washing clothing (*e.g.,* a cycle intended only for sanitizing the wash drum), such a cycle would not be required for consideration as part of the energy test cycle. *Id.*

As described in the April 2014 NOPR, DOE tentatively determined that a parallel clarification regarding the inclusion of sanitization cycles is unnecessary in appendix J2. The methodology for determining the extra-hot wash temperature selection in appendix J2 requires including such a setting if it is available on the clothes washer and is recommended by the manufacturer for washing clothing. *Id.*

GE supports DOE's proposal that the sanitization cycle be included for testing in appendix J1 if the extra-hot temperature selection is only available in a sanitization cycle. (GE, No. 6 at p. 1)

ALS has no position on DOE's proposal to include the sanitization cycle as part of the energy test cycle in appendix J1. (ALS, No. 5 at p. 4)

AHAM opposes DOE's proposal to amend appendix J1's requirements to include a sanitization cycle in the energy test cycle for clothes washers with an extra-hot temperature selection that is available only on a sanitization cycle, if the cycle is recommended by the manufacturer for washing clothes and if doing so would contribute to an accurate representation of the energy consumption as used by consumers. AHAM stated that DOE's proposal will result in decreased MEF for some basic models, and that the sanitization cycle should not be included in the energy test cycle under appendix J1. (AHAM, No. 4 at p. 3, 7–8)

In its comments, AHAM stated that cycles such as a sanitization cycle have a special use and are not likely to be used often by consumers. AHAM stated that DOE presented no consumer use data to justify its proposal that the sanitization cycle should be included. AHAM presented a summary of data from a recent study[10] conducted by Northwest Energy Efficiency Alliance (NEEA) that measured laundry energy use over a month's time across 50 residential sites. The results of the field study indicated that the consumer usage rate of the sanitization cycle fell within the range of 1.31% and 15.38%, depending on which assumptions were used to analyze the data.[11] AHAM

[9] See DOE's guidance document at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/clotheswasher_faq_2010-09-21.pdf.*

[10] ''Dryer Field Study.'' Northwest Energy Efficiency Alliance. November 19, 2014. Available online at *https://www.neea.org/docs/default-source/reports/neea-clothes-dryer-field-study.pdf.*

[11] The calculation of 1.31% assumes that the sanitization option was available on all 50 clothes washers and could be selected for all 1,376 wash cycles conducted across the 50 sites. The calculation of 15.38% assumes that the sanitization option was available only on the units where a sanitization cycle was recorded at least once. AHAM stated that the field data do not list the available cycle options for the participating units in

Continued

believes that these usage levels would not justify the burden of adding the sanitization cycle to the energy test cycle. In addition, AHAM stated that, to its knowledge, manufacturers are not recommending consumers use sanitization cycles to wash normally soiled cotton or linen clothes. Given the impact on measured efficiency that DOE's proposal would have, AHAM commented that DOE should avoid this issue with regards to appendix J1. Finally, AHAM commented that if DOE proceeds, over its objection, then DOE must adjust the standard in accordance with the change in measured efficiency that would result from inclusion of the sanitization cycle. (AHAM, No. 4 at p. 3, 7–8)

In consideration of AHAM's comments, DOE reiterates and affirms the following test procedure principles as described in prior rulemaking documents. On November 9, 2011, DOE published a supplemental notice of proposed rulemaking (''November 2011 SNOPR'') for its clothes washer test procedures. 76 FR 69869. In the November 2011 SNOPR, DOE stated that it had observed that the extra-hot wash and warm rinse temperature combinations are locked out of the ''Normal'' setting [12] on some clothes washer models that offer such selections. DOE understood that, in cases where certain wash/rinse combinations are locked out of the Normal setting, some manufacturers were only testing the temperature selections available on the Normal setting, despite being able to access other wash/rinse temperature selections on other settings. 76 FR 69870. DOE further stated that testing only the wash temperature selections available in the Normal setting may neglect part (B) of the energy test cycle definition, which requires manufacturers to switch out of the Normal setting to a different setting that allows the other temperature combinations to be selected and tested, if such testing ''will contribute to an accurate representation of energy consumption as used by consumers.'' *Id.* at 69871. Because the temperature selections typically locked out of the Normal setting are those that use greater quantities of hot water and thus have higher water heating energy consumption, excluding them from the energy test cycle could increase (*i.e.,* improve) a clothes washer's MEF rating. *Id.* at 69870– 71. Wash/rinse temperature combinations that are locked out of the Normal setting should also be included in the energy test cycle, under the assumption that a consumer will switch to one of the alternate cycles to obtain that wash/rinse temperature combination. 76 FR 69875. DOE affirms these principles as applied to the issue of extra-hot wash temperature selections in this final rule.

As noted in the November 2011 SNOPR, the temperature use factors (TUFs) in Table 4.1.1 of appendix J1 were developed to represent consumer selection of different temperature options available on a clothes washer. Each TUF represents the frequency with which consumers select a particular temperature option on machines offering that temperature option. Therefore, the energy test cycle should include any temperature combination for which a TUF has been developed.

DOE interprets the results of the NEEA laundry study, as summarized by AHAM, as being consistent with the TUF for extra-hot wash, as codified in appendix J1. The extra-hot wash TUF of 5% falls within the range of 1.31% to 15.38% as indicated by the NEEA study. The results of the NEEA study suggest that although a sanitization cycle may be considered a specialty feature, consumers select this extra-hot wash feature at a frequency consistent with the extra-hot wash TUF codified in the test procedure.

With regards to AHAM's statement that manufacturers do not recommend that consumers use sanitization cycles to wash normally soiled cotton or linen clothes, DOE notes that part (B) of the energy test cycle pertains to wash/rinse temperatures not available on the cycle that is recommended for washing cotton and linen clothes. Part (B) of the definition is intended to apply to wash/rinse temperature selections on cycles other than the cycle recommended for washing cotton and linen clothes, if doing so will contribute to an accurate representation of the energy consumption of the model as used by consumers. The results of the NEEA study support DOE's conclusion that, for clothes washers offering an extra-hot temperature selection only on a separate sanitization cycle, including the sanitization as part of the energy test cycle, with a 5% TUF weighting, accurately represents the energy consumption of the model as used by consumers.

Furthermore, as discussed in DOE's warm rinse guidance document, DOE understands that some manufacturers may be relying on proprietary data about consumers' use of each wash/rinse temperature selection when applying part (B) of the energy test cycle to determine the energy consumption of such models. The Department's test procedure, however, cannot rely on proprietary data to which only the manufacturer has access. The procedure must be standardized, administrable, and enforceable. In the August 27, 1997 final rule that codified the appendix J1 test procedure, DOE explained that the clarification provided by part (B) of the energy test cycle definition was made primarily to address the issue of machines that ''locked out'' various wash/rinse temperatures from the Normal cycle, thereby excluding representative energy use from the test procedure measurement. 62 FR 45484, 45496. Incorporating the ''locked out'' temperature options in accordance with the temperature use factors allows DOE to develop a testing standard that is clear, administrable, and standardized across all manufacturers and models.

Finally, because RCW manufacturers were required to use appendix J2 beginning March 7, 2015, the amendments to appendix J1 apply only to CCWs. DOE is not aware of any current models of CCWs listed in its compliance certification database [13] that offer extra-hot wash temperatures greater than 135 °F. Therefore, DOE has determined that this amendment will not change the measured MEF or WF values of any CCW models currently on the market that are covered by DOE standards.

In summary, after consideration of all comments and data submitted on this topic, DOE concludes that on clothes washers with an extra-hot temperature selection available only on a sanitization cycle that is recommended by the manufacturer for washing clothing, inclusion of the sanitization cycle in the energy test cycle is consistent with the intent of the test procedure and the 5 percent TUF is consistent with the consumer usage data described above.. Therefore, this final rule amends the energy test cycle definition in newly renumbered section 1.8 of appendix J1 by clarifying that if an extra-hot temperature selection is available only on a sanitization cycle, the sanitization cycle should be included in the energy test cycle if the cycle is recommended by the manufacturer for washing clothing. The amendment also removes the clause ''and if doing so would contribute to an accurate representation of the energy consumption as used by consumers''

the study; therefore, determining an exact percentage for how often a certain cycle was selected was not possible.

[12] Here, DOE uses the term ''Normal setting'' to describe the cycle recommended by the manufacturer for washing cotton or linen clothes.

[13] DOE's compliance certification database for commercial clothes washers is available at *http://www.regulations.doe.gov/certification-data/CCMS-79222370561.html.*

because, as discussed above, the available data indicates that including such a cycle contributes to an accurate representation of energy consumption as used by consumers. The amendment further clarifies that if the extra-hot temperature selection is available only on a sanitization cycle not recommended by the manufacturer for washing clothing (*e.g.,* a cycle intended only for sanitizing the wash drum), such a cycle is not required for consideration as part of the energy test cycle. DOE confirms its prior determination that a parallel clarification for appendix J2 is unnecessary.

3. Default Cycle Settings

Testing a clothes washer according to appendix J1 or appendix J2 requires selecting specific wash/rinse temperatures and wash water fill levels for the wash cycles used to determine energy and water consumption. In addition, specific spin speeds must be selected for the wash cycle(s) used to determine the remaining moisture content. Other than these settings, the test procedure does not instruct the user to change any other optional settings during testing.

In the April 2014 NOPR, DOE proposed amending appendix J1 by modifying section 1.7(B) (redesignated as 1.8(B)) to clarify the requirement to use the manufacturer default settings for any cycle selections, except for: (1) The temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content. 79 FR 23061, 23066 (Apr. 25, 2014). Specifically, DOE proposed to require that the manufacturer default settings be used for wash conditions such as agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water-heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. *Id.* DOE also proposed to require that any optional wash cycle feature (other than wash/rinse temperature, water fill level selection, or spin speed on cycle selections used to determine remaining moisture content) that is activated by default on the wash cycle under testing be included for testing unless the manufacturer instructions recommend not selecting this option for washing normally soiled cotton or linen clothes. *Id.*

In addition, DOE proposed amending appendix J2 to add a new section 3.2.7 to address the use of default cycle settings in the same manner as the modification proposed for appendix J1. *Id.*

AHAM supports DOE's proposal to clarify in both appendix J1 and appendix J2 the requirement to use manufacturer default settings for cycle selections except for the temperature selection, the wash water fill levels, and, if necessary, the spin speeds on wash cycles used to determine remaining moisture content. (AHAM, No. 4 at p. 8)

AHAM also proposed that DOE further require that clothes washers with mechanical switches be tested either (1) with each switch in the position the manufacturer recommends in the use and care guide for the cottons and linens cycle or (2) if the manufacturer does not recommend a switch position, with the switch in its most energy/water intensive position. AHAM stated that this approach is consistent with current practice in manufacturer laboratories. (AHAM, No. 4 at p. 8)

ALS supports DOE's proposal to specify using the manufacturer default settings for any cycle selections in both appendix J1 and appendix J2. ALS stated that this is consistent with how ALS and the rest of the industry conduct testing. (ALS, No. 5 at p. 4)

DOE received no comments objecting to its proposal to clarify the use of manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content.

As described above, DOE proposed clarifying that any optional wash cycle feature that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions *recommend not selecting this option* for washing normally soiled cotton or linen clothes (emphasis added). DOE has observed that clothes washer user manuals typically do not recommend *against* selecting certain options for washing normally soiled cotton clothing. Rather, descriptions in the user manual most often provide recommendations *for* selecting certain options for washing normally soiled cotton clothing. Therefore, this final rule modifies the wording of DOE's proposal as follows: ''Any optional wash cycle feature or setting . . . that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing.''

In response to AHAM's comments, DOE has considered AHAM's proposal to provide further clarification for clothes washers with mechanical switches. To inform its decision, DOE investigated the control panels of 31 clothes washer models with mechanical switches, representing seven different brands on the market. DOE believes that this sample of models represents nearly the entire market for clothes washers with mechanical control switches.

Based on this market survey, DOE identified the following ten parameters that are controlled by mechanical switches or dials on one or more clothes washer models: Load size, wash/rinse temperature, soil level, fabric type, rinse settings, spin settings, fabric softener, pre-soak, stain treatment, and specialty chemical dispense. Of these ten parameters, the test procedure provides specific instructions for setting load size, wash/rinse temperature, and spin settings.

Of the remaining seven parameters, DOE intends for this amendment to clarify that the soil level and fabric type settings should be those recommended for washing normally-soiled cotton [14] clothing, as described further below. This would provide clarity for any soil level or fabric type settings.

Of the remaining five parameters (rinse settings, fabric softener, pre-soak, stain treatment, and specialty chemical dispense), DOE observes that in almost all cases, the manufacturer does not provide recommendations for, or against, the use of these five parameters with respect to the level of soiling or fabric material on which they should be used; *i.e.,* these five parameters are selected independently from other settings that are recommended for washing normally soiled cotton clothing. As summarized above, AHAM suggested that if a switch position is not recommended for the cottons and linens cycle, DOE should require the most energy/water intensive position to be used for the test. DOE's product survey indicates that in almost all cases, the switches or dials for these remaining five parameters would thus be tested in their most energy intensive positions, if DOE were to adopt AHAM's suggested wording.

Although the inclusion of more energy- and water-consumptive features for testing would ultimately encourage more efficient overall performance, DOE has two major concerns with this aspect of AHAM's proposal: First, AHAM has

[14] As described in the Normal Cycle Definition section of this notice, the final rule removes the reference to ''linen clothing'' in the Normal cycle definition in appendix J2.

not presented any information to indicate whether testing in the most energy intensive position would provide a more accurate representation of consumer usage than testing in the default or as-shipped position. Second, DOE's experience working with third-party laboratories conflicts with AHAM's assertion that this approach is consistent with current practice in manufacturer laboratories. In DOE's experience, third-party laboratories typically test clothes washers with the switches for these five remaining parameters (rinse settings, fabric softener, pre-soak, stain treatment, and specialty chemical dispense) in the default, or as-shipped, position. DOE has observed that these switches are mostly commonly shipped in the ''off'' position, or in a position other than the most energy intensive position.

DOE has also observed that mechanical switches and dials are used almost exclusively on baseline or near-baseline products.[15] DOE thus concludes that amending the test procedure to require that these parameters be tested in the most energy intensive position could negatively impact the measured efficiency of a substantial portion of baseline products. Since the intent of the amendments in this final rule is to provide clarification only, without impacting measured efficiency, DOE rejects AHAM's suggestion to require testing mechanical switches in the most energy intensive position if a switch position is not recommended for the cottons and linens cycle.

In addition, the notion of a ''default'' setting may apply more appropriately to clothes washers with electronic control panels than clothes washers with mechanical switches or dials. On most clothes washers with electronic controls, when the user selects a particular cycle (*e.g.,* Normal, Cottons, or Whites), the control panel automatically activates the pre-programmed settings recommended for all the other optional cycle parameters. On clothes washers with mechanical switches or dials, however, selecting a particular cycle (*e.g.,* Normal, Cottons, or Whites) does not automatically activate the other optional cycle parameters (*e.g.,* rinse settings, fabric softener, pre-soak, stain treatment, and specialty chemical dispense), each of which, if available on the machine, would have its own mechanical switch or dial that would need to be manually set by the end user. Given that the notion of a ''default'' setting does not apply to mechanical switches and knobs, DOE believes that the ''as-shipped'' position of a mechanical switch or knob represents the equivalent of a default setting.

In some cases, however, the mechanical switch or dial position recommended to be used for normally soiled cotton clothing may not be the as-shipped position. For example, a soil level dial may offer light, normal, and heavy soil selections—in which case, the ''normal'' setting would be selected for testing, even if the product was shipped in the ''light'' position.

For these reasons, DOE has determined that the test procedure must clarify that mechanical switches or dials for any optional settings must be in the position recommended by the manufacturer for washing normally soiled cotton clothing. DOE believes this clarification is consistent with AHAM's suggestion to further clarify for clothes washers with mechanical switches that testing take place with the switch in the position the manufacturer recommends in the use and care guide for the cottons and linens cycle. If the manufacturer instructions do not recommend a particular switch or dial position to be used for washing normally soiled cotton clothing, the switch or dial must remain in its ''as-shipped'' position.

In summary, based on the reasons described above, this final rule adds the following clarification to newly created section 1.8(C) in appendix J1 and newly renumbered section 3.2.7 in appendix J2:

''For clothes washers with electronic control systems, use the manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content. Specifically, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water-heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, or spin speed on cycle selections used to determine remaining moisture content) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing.

For clothes washers with control panels containing mechanical switches or dials, any optional settings, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content, must be in the position recommended by the manufacturer for washing normally soiled cotton clothing. If the manufacturer instructions do not recommend a particular switch or dial position to be used for washing normally soiled cotton clothing, the setting switch or dial must remain in its as-shipped position.''

4. Energy Test Cycle Definition

As noted in the April 2014 NOPR, appendix J1 uses the term ''energy test cycle'' in two different ways. In some instances, ''energy test cycle'' refers to the complete set of wash/rinse temperature selections required for testing. In other instances, ''energy test cycle'' refers to the single wash cycle under test. DOE did not propose changing its usage of the term ''energy test cycle'' in appendix J1. DOE determined that in each instance where the term ''energy test cycle'' is used, the specific meaning of the term can be determined through context. 79 FR 23061, 23066 (Apr. 25, 2014).

In appendix J2, however, DOE proposed to simplify the definition of the term ''energy test cycle'' so that it refers only to the complete set of wash/rinse temperature selections required for testing. 79 FR 23066. DOE further proposed defining the individual wash/rinse temperature selections required for testing under a new definition for ''Normal cycle,'' in conjunction with a new flow chart methodology as provided in the April 2014 NOPR and described further below. The provisions within parts (D) and (E) of the current energy test cycle definition would be moved to sections 3.2.7 and 3.2.8, respectively. *Id.*

In instances where the test procedure currently uses the term ''energy test cycle'' to refer to an individual wash cycle, DOE proposed to use the generic term ''wash cycle'' or other similar terminology as appropriate for each instance. 79 FR 23066. DOE also proposed to improve overall clarity by providing the full wash/rinse temperature designation (*e.g.* ''Cold Wash/Cold Rinse'') throughout the test procedure. *Id.*

ALS strongly objects to DOE's proposal to amend the energy test cycle definition in appendix J2, stating that

[15] DOE defines a ''baseline product'' as one that just meets the minimum efficiency standard.

this is not a subtle change. ALS believes it is too late for DOE to make this change, and that such a change may lead to more confusion regarding how to test clothes washers. (ALS, No. 5 at p. 6, 7)

DOE interprets the full context of ALS's comment as applying to the revised definition of the Normal cycle, as described in the next section, which serves the purpose of the current definition of the energy test cycle in appendix J2. DOE addresses all comments regarding the details of the Normal cycle definition in the next section of this notice.

DOE received no other comments objecting to its proposal to provide greater consistency in its usage of the term ''energy test cycle'' such that when used, it refers only to the entire set of wash/rinse temperature selections required for testing. Therefore, this final rule implements this change as it was proposed in the April 2014 NOPR.

5. Normal Cycle Definition

DOE proposed adding a new definition in appendix J2 for ''Normal cycle,'' defined as ''the cycle selection recommended by the manufacturer as the most common consumer cycle for washing a full load of normally to heavily soiled cotton clothing. For machines where multiple cycle settings meet this description, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.'' 79 FR 23066.

DOE noted in the April 2014 NOPR that it first adopted a definition of ''Normal cycle'' for clothes washer testing in appendix J, which incorporated the general approach to calculating the energy consumption of automatic clothes washers contained in AHAM's standard HLW–2EC for clothes washers at the time. 42 FR 25329, 25330 (May 17, 1977); 42 FR 49802, 49808 (Sept. 28, 1977). Over time, machine labeling and literature evolved to the point that the term ''normal'' as previously defined no longer captured all of the control settings most consumers would typically choose in operating the machine to wash their laundry. (See, *e.g.,* 75 FR 57556, 57575 (Sept. 21, 2010)). Further, the range of cycle options and terminology on the control panels have changed such that many machines no longer refer to a ''Normal'' cycle, instead relying upon other terms. This evolution may have resulted in inaccurate representations of the energy usage of these machines due to differing interpretations regarding the appropriate test cycle. 79 FR 23061, 23066 (Apr. 25, 2014).

In order to add clarity and ensure consistent selection of the appropriate cycle for energy testing, DOE proposed adding a ''Normal cycle'' definition in newly designated section 1.25 and, for simplicity, to reference the term in the new energy test cycle flowcharts. DOE noted that it would consider manufacturer literature and markings on the machine when determining the Normal cycle of any particular unit. DOE specifically sought comment on this definition and whether it adequately covers the cycle setting most commonly chosen by users of washing machines.

DOE received numerous comments from interested parties regarding its proposed definition for Normal cycle. DOE categorized each comment according to the specific element of the Normal cycle to which it pertains, and provides responses to all comments in the following subsections.

a. General Comments

AHAM strongly opposes DOE's proposal to add a new definition for Normal cycle in appendix J2. AHAM believes that this new definition could change the cycle selections that would be tested. (AHAM, No. 4 at p. 9)

ALS states that the new paragraph 1.25 ''Normal Cycle'' that has been added seems out-of-place because it is not in close proximity to the ''Energy Test Cycle'' definition. (ALS, No. 5 at p. 7)

DOE notes that the creation of the Normal cycle definition is a separate issue from the actual wording of the Normal cycle definition, and notes that the majority of concerns expressed by interested parties related to the wording of the definition. DOE proposed adding a new definition for Normal cycle so that the new energy test cycle flowcharts, described later in this notice, can simply reference ''the Normal cycle'' rather than using the full text of the definition each time it is referenced in the flowcharts. DOE determined that because of the complex wording required in some of the flowchart diagrams, referencing the full text of the Normal cycle definition would render some of the flowchart boxes incomprehensible. Thus, a simpler phrase is required.

For these reasons, this final rule adds a definition of Normal cycle, which is referenced for simplicity in the new flowchart diagrams. The Normal cycle definition was proposed as newly created section 1.25 of appendix J2 because DOE re-sorted the list of definitions in appendix J2 in alphabetical order. 79 FR 23066. DOE maintains the alphabetical sorting of definitions in this final rule.

As explained further in the following subsections, DOE has revised the wording of the Normal cycle to address many of the concerns that were raised by interested parties.

b. Element #1: Most Common Consumer Cycle

AHAM opposes DOE's proposal to change ''cottons and linens'' to ''most commonly used cycle.'' [16] AHAM believes it is impossible for manufacturers to know which cycle is the most commonly used. AHAM added that, should DOE proceed with adding the definition of Normal cycle, DOE should remove the reference to ''most commonly used cycle'' from the definition. (AHAM, No. 4 at p. 9)

ALS opposes the definition of Normal cycle because the definition of ''most common consumer cycle'' could also refer to ''regular'' or ''permanent press'' cycles. ALS questions whether DOE conducted a consumer survey to arrive at the conclusion that Normal cycle is the most common consumer cycle. (ALS, No. 5 at p. 7)

The CA IOUs support DOE's proposed updated definition for Normal cycle in order to adequately describe the most commonly chosen settings by users of washing machines, for testing and rating purposes. (CA IOUs, No. 3 at p. 3)

DOE's test procedures are required to produce results that are representative of an average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE's intent in its proposal was to specify the cycle that the *manufacturer recommends* as the most common cycle for everyday use, as would be described in the user manual, product literature, or product labeling. DOE understands that this may be different than the cycle that would be most commonly selected during actual consumer use, and that manufacturers may not necessarily know which cycles are most commonly used by consumers. Without such consumer usage data, DOE can only assume that the cycle that the manufacturer recommends as the most common cycle for everyday use corresponds to the cycle most commonly used by consumers during actual use. The proposed phrasing was intended to prevent a manufacturer from recommending one setting to the consumer as the most common setting for everyday use, but using a different, less energy-intensive setting for DOE testing purposes. Using such a cycle for

[16] DOE notes that the proposed wording of this provision was ''most common consumer cycle for washing a full load of normally to heavily soiled cotton clothing.'' 79 FR 23062, 23082.

DOE testing purposes would not provide test results that represent the average use cycle or period of use on such a clothes washer.

To clarify the intent of this element of the Normal cycle definition, this final rule refers to the cycle recommended by the manufacturer for ''normal, regular, or typical use,'' rather than ''most common consumer cycle.'' DOE believes this revised wording will eliminate the possible interpretation that determining the Normal cycle requires knowing the cycle most commonly used by consumers during actual use. This wording is consistent with the intent of the current test procedure to produce test results that measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle, as required by EPCA. In addition, the final rule clarifies that the manufacturer recommendation is determined by considering manufacturer instructions, control panel labeling, and other markings on the clothes washer.

In summary, this final rule revises Element #1 of the Normal cycle definition as, ''. . . the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use . . .''

c. Element #2: Full Load

AHAM opposes DOE's proposal to specify that the Normal cycle is to wash a ''full load,'' stating that the average load has the highest load usage factor in the test procedure based on consumer use data. (AHAM, No. 4 at p. 10)

ALS questions why the Normal cycle only refers to ''washing a full load.'' ALS notes that the test procedure specifies minimum, average, and maximum load sizes, and the load usage factors favor the average load size. ALS also commented that ''full load'' is a new term not defined, which ALS believes adds confusion. (ALS, No. 5 at p. 8)

DOE's intent in its proposal was to specify that the cycle used for testing must not be a cycle for which the recommended maximum load size is less than a full load. DOE has observed multiple clothes washer models that provide maximum load size recommendations for each available cycle on the machine. Because the DOE test procedure approximates consumer usage habits by requiring minimum, average, and maximum load sizes, the cycle used for DOE testing purposes must not be a cycle for which the recommended load size is less than a full load, which the DOE maximum load size is designed to represent. The proposed phrasing was intended to prevent a manufacturer from certifying its product using a cycle that is only recommended for partial loads, and would thus use less water and energy than a cycle intended for washing up to a full load of clothing. Using such a cycle for DOE testing purposes would not provide test results that represent the average use cycle or period of use on such a clothes washer.

To clarify the intent of this element of the Normal cycle definition, this final rule changes the wording of this element from ''. . . for washing a full load . . .'' to ''. . . for washing up to a full load . . .'' DOE believes that this revised wording will address the concerns raised by interested parties by clarifying that the chosen cycle is intended for all load sizes, up to and including the maximum load size.

DOE considered ALS' suggestion to provide a definition for ''full load.'' DOE believes, after due consideration, that quantifying the definition of ''full load'' could cause ambiguity or create an avenue for circumvention, because manufacturers' maximum design loads may not correspond exactly with the maximum load sizes defined in the DOE test procedure. DOE believes that the term ''full load'' is widely understood by the industry and consumers to mean a load size that takes advantage of the whole usable capacity of the clothes washer.

In summary, this final rule revises Element #2 of the Normal cycle definition as, ''. . . for washing up to a full load. . . .''

d. Element #3: Normally to Heavily Soiled

AHAM opposes DOE's proposal to change ''normally soiled'' to ''normally to heavily soiled'' because this change will introduce ambiguity, and thus variation, into the test procedure. AHAM added that if DOE proceeds with adding the new definition of Normal cycle, it should strike ''or heavily soiled'' from the definition. (AHAM, No. 4 at p. 9)

ALS commented that the phrase ''normally to heavily soiled cotton clothing'' presents issues because of the many special cycles available on today's clothes washers, such as ''Sturdy,'' ''Jeans,'' or ''Heavy Duty,'' which may also be cited in user instructions as cycles to be used for ''normally to heavily-soiled'' garments. (ALS, No. 5 at p. 8)

DOE's intent in its proposal was to specify a range of soil levels in order to distinguish which cycle should be selected in cases with overlapping ranges of recommended soil levels for different cycles. This phrasing was also intended to provide clarity in cases where the manufacturer's recommended soil levels do not include an indication for ''normally soiled'' clothing. For example, a manufacturer may only provide options for ''light'' and ''heavy'' soil levels.

DOE notes that the phrase ''normally soiled'' is not currently referenced in either appendix J1 or appendix J2; however, based on stakeholder comments submitted for this rulemaking and throughout the historical record of clothes washer test procedure rulemakings, DOE believes there is widespread acknowledgement among the industry that the DOE test procedure is intended for measuring the cycle recommended for washing ''normally soiled'' clothing. By inference, the phrase ''normally'' is indicative of average or typical conditions. DOE believes that this is consistent with the historical intent of the DOE clothes washer test procedure.

Upon further examination of clothes washer product manuals, DOE acknowledges that the phrase ''normally to heavily soiled'' could, in some cases, expand the scope of wash cycles that would be considered part of the DOE test cycle. Thus, applying the criteria ''normally to heavily soiled'' could result in a change in cycle selections on some models, which would consequently change the measured efficiency.

In consideration of concerns expressed by interested parties, and after further additional research as described above, this final rule revises the wording of Element #3 of the Normal cycle definition to reference ''normally soiled'' clothing rather than ''normally to heavily soiled'' clothing.

e. Element #4: Cotton Clothing

AHAM opposes DOE's proposal to change the wording from ''cottons and linens'' to simply ''cotton.'' AHAM believes that this change could impact the cycle selected because of the removal of the word ''linen.'' (AHAM, No. 4 at p. 9)

DOE's intent in its proposal was to narrow the range of possible cycles that could be considered for testing by eliminating reference to ''linen clothing'' and instead refer only to ''cotton clothing.'' DOE notes that the current energy test cycle definition refers to the cycle recommended for washing cotton and linen *clothing* (emphasis added). DOE has observed numerous clothes washer user manuals that contain cycles recommended for

washing ''linens'' or ''household linens,'' terms that refer to items such as bed sheets, pillowcases, towels, tablecloths, etc. Such items are distinctly different from linen clothing and are not intended for consideration by the DOE test procedure.

DOE is not aware of any clothes washer models for which the phrase ''cotton clothing'' would result in a different cycle selection for DOE testing than would be selected under the current phrase ''cotton *or* linen clothing'' (emphasis added). A different cycle selection would only occur if the cycle used for DOE testing purposes was a cycle intended for linen clothing, but not cotton clothing.

For these reasons, this final rule implements the proposed wording of Element #4 of the Normal cycle definition to refer to ''cotton clothing.''

f. Element #5: If Multiple Cycles Meet This Description

ALS objects to the proposed new requirement to test other cycles that ''meet this description (of Normal cycle),'' stating that there are a variety of other cycle names that meet the proposed new definition. ALS also noted that the new wording of the Normal cycle differs from the existing Part B of the energy test cycle definition, which essentially includes testing the TUFs that are available on the washer, but not available on the cycle selection described in Part A of the definition (so that one might need to test an additional TUF found in another cycle, but not have to test that whole cycle and use it in place of the other). (ALS, No. 5 at p. 8)

ALS further commented that the following sentence should not be used in the definition: ''For machines where multiple cycle settings meet this description, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.'' (ALS, No. 5 at p. 8) ALS stated that it could be irreparably harmed by the proposed definition of Normal cycle because there are other cycles that could be tested under this proposal that would have lower IMEF or MEF values, and which would not comply with the 2015 minimum standard. ALS added that its large investment in development of products for the 2015 minimum standards could be stranded, and ALS could incur significant sales and income losses due to lost sales of RCWs in the U.S. (ALS, No. 5 at p. 8)

In its proposal, DOE intended to provide a final criterion that would be used to determine the DOE test cycle in cases where multiple cycles meet all the other criteria provided in the Normal cycle definition. For example, DOE has observed that on some clothes washers, the cycle names and descriptions correspond to the color of clothing rather than to the soil level or fabric type (for example, ''Colors'' and ''Whites'', or ''Darks'' and ''Brights''). On such a clothes washer, both cycles could be recommended for washing normally soiled cotton clothing. Therefore, to provide clarity and certainty, a final criterion is needed to determine which of the two or more cycles must be selected as the DOE test cycle.

DOE did not intend in its proposal to include the consideration of all the cycles on a clothes washer that may be recommended for washing cotton clothing. DOE acknowledges that many clothes washers contain alternate cycles intended for washing cotton clothing that would result in a lower MEF or IMEF value compared to the cycle considered as the energy test cycle under the current test procedure. Rather, the intent of the proposal was to include for consideration only those cycles that satisfy every individual element (*i.e.* Elements #1 through 4 as described above) of the proposed Normal cycle definition.

In consideration of concerns expressed by interested parties, and to provide further clarity regarding the intent of this final criterion, this final rule revises the wording of Element #5 of the Normal cycle definition as follows: ''For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.'' Based on its survey of clothes washers on the market, DOE expects that for the large majority of clothes washer models, the cycle selection required under this element of the Normal cycle definition will be the same as the cycle selection used for certification under the current energy test cycle definition.

Finally, DOE notes that determination of the ''Normal cycle'' under this new definition corresponds to Part A of the current energy test cycle definition. Part B of the current energy test cycle definition, which involves individual wash/rinse temperatures not available in the Normal cycle, is executed through the new flowchart diagrams, which provide explicit instructions for testing additional wash/rinse temperatures available on other cycles.

g. Summary

In summary, this final rule incorporates the following revised wording for the Normal cycle in newly renumbered section 1.25 of appendix J2: ''Normal cycle means the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.'' DOE believes that this revised definition reduces any potential ambiguity associated with selecting the cycle for testing that best fulfills the intent of DOE's test procedure.

DOE also notes that this definition is similar in nature to the Normal cycle definition for dishwashers, which is defined as ''the cycle type, including washing and drying temperature options, recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes.'' (10 CFR part 430, subpart B, Appendix C1, section 1.12).

This final definition of Normal cycle narrows the scope of potential cycles that could be considered for selection under the current definition of energy test cycle in appendix J2. By clarifying and narrowing the scope of allowable cycle selections, DOE understands that for a very small number of individual models, the revised Normal cycle definition may exclude a cycle selection that is permitted under the apparently ambiguous current definition of the energy test cycle. In these rare cases, the current regulations would permit more than one cycle to be considered the energy test cycle, rendering the test procedure unreproducible. Furthermore, the cycle selected as the energy test cycle will only change on such models if the manufacturer previously chose to test a different cycle than the one that is required as a result of the revised Normal cycle definition. Based on its survey of the market, DOE expects that for the large majority of clothes washer models, the cycle selection required under the revised Normal cycle definition will be the same as the cycle selection used for certification under the current energy test cycle definition. For the small segment of clothes washer models with more than one cycle that

could be selected as the energy test cycle under the current definition, only a subset of models will be impacted by the narrowing of the definition of the Normal cycle. In addition, because any cycle that could previously be selected as the energy test cycle under the current definition would be a cycle designed for washing cotton or linen clothes, DOE expects that any such alternate cycle previously selected would have energy and water consumption patterns very similar to the cycle required by the revised Normal cycle definition. Therefore, DOE concludes that the revised Normal cycle definition will not impact measured efficiency.

6. Determining the Energy Test Cycle With New Flowcharts

In conjunction with the simplified energy test cycle definition and new Normal cycle definition, DOE proposed in the April 2014 NOPR a new approach to determining the wash/rinse temperature selections required for testing in appendix J2. 79 FR 32061, 23066. DOE proposed to translate the current methodology for determining the energy test cycle into a set of flowcharts that would be used to determine each wash/rinse temperature selection for testing. In its proposal, DOE stated that the binary nature of each decision box within the flowcharts would provide increased clarity and ease in determining which wash/rinse temperature settings to use for testing. DOE proposed to include these flowcharts within newly renumbered section 2.12 in appendix J2. *Id.*

As described in its proposal, DOE intended for the cycle selections as determined using the new energy test cycle flowcharts to be the same as the cycle selections as determined using the current energy test cycle definition in appendix J2. DOE requested comment on whether discrepancies exist when determining the wash/rinse temperature selections using the proposed flowcharts compared to using the current energy test cycle definition. If discrepancies exist, DOE requested that interested parties provide specific examples of cycle setting configurations that would lead to the discrepancies. DOE also requested comment on whether the methodology presented in the flowcharts could result in an efficiency rating that is unrepresentative of how a particular clothes washer would be used by consumers. 79 FR 23066.

Because the proposed flowcharts would incorporate more precise definitions of warm and cold rinse temperatures, DOE also proposed to clarify the definition of ''cold rinse'' in appendix J2 so that it means the coldest rinse temperature available on the machine, as indicated to the user on the clothes washer control panel. *Id.* The phrase, ''as indicated to the user on the clothes washer control panel'' would prevent the unintended consequence of a wash/rinse temperature designation being excluded from the energy test cycle if the rinse portion of the cycle included a small amount of hot water (thus raising the rinse temperature slightly higher than the coldest rinse available on the machine), but was indicated on the control panel as being a cold rinse paired with the selected wash temperature. *Id.*

Finally, DOE proposed to move the current section 2.13 of appendix J2, *Energy consumption for the purpose of certifying the cycle selection(s) to be included in Part (B) of the energy test cycle definition,* to newly created section 3.10, renamed as *Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle.* 79 FR 23066.

AHAM stated that it appreciates DOE's attempt to clarify the test procedure and does not oppose the proposed set of flowcharts that testers would use to determine each wash/rinse temperature selection to be used for testing. AHAM added that as manufacturers begin to use the new flowcharts, they may discover ambiguities or discrepancies, in which case they or AHAM will seek clarification. (AHAM, No. 4 at p. 10)

However, as described in the previous section, AHAM opposes DOE's proposed definition for Normal cycle, and thus proposes that DOE revise the flowcharts to be consistent with the existing energy test cycle section and terminology, and not include a definition for, or reference to, the Normal cycle. (AHAM, No. 4 at p. 10)

ALS suggested that the reference to ''Normal cycle'' in the flow charts be removed and replaced with the ''cycle selection recommended by the manufacturer for washing cotton or linens''. (ALS, No. 5 at p. 7) ALS supports DOE's proposal to clarify the cold rinse definition by adding the text, ''as indicated to the user on the clothes washer control panel.'' (ALS, No. 5 at p. 6)

As described in the previous section, this final rule incorporates a revised definition of ''Normal cycle'' that DOE believes provides improved clarity over the version presented in the April 2014 NOPR and addresses many of the concerns raised by interested parties. In addition, this final rule maintains the reference to the Normal cycle in the flowchart diagrams to reduce the complexity of wording throughout the flowchart boxes, as described earlier.

DOE received no comments objecting to its proposal to include a set of flowcharts that would be used to determine each wash/rinse temperature selection to be used for testing. Therefore, this final rule amends appendix J2 to include these flowcharts in newly renumbered section 2.12, with additional revisions as follows.

In the April 2014 NOPR, DOE proposed Figure 2.12.2 in appendix J2 to show the flowchart for determining Hot Wash/Cold Rinse. 79 FR 23061, 23087. Since publishing the April 2014 NOPR, DOE has determined that the wording of the proposed flowchart for determining Hot Wash/Cold Rinse would result in a change in cycle selection for clothes washers offering only two wash temperature selections (*e.g.,* Cold and Hot), where both temperature selections are available in the Normal cycle. Under the current appendix J2 test procedure, both settings would be tested using the Normal cycle, pursuant to part (A) of the energy test cycle definition in section 1.13. Since such a clothes washer only offers two wash temperature selections, only the Cold and Hot TUFs apply, and both would be fulfilled under part (A) of the energy test cycle definition. Therefore, no testing would need to be performed on any alternate cycles under part (B) of the definition. However, the proposed flowchart for Hot Wash/Cold Rinse would have required evaluating the Hot setting on all cycles available on the clothes washer and choosing the one with the highest energy consumption. The path through the April 2014 proposed flowchart would have been as follows:

1. Does the Normal cycle contain more than two available wash temperature selections with a cold rinse? Answer: No.

2. Does the clothes washer offer more than one available wash temperature selection with a cold rinse, among all cycle selections available on the clothes washer, with a wash temperature less than or equal to 135 °F? Answer: Yes.

3. Result: Hot Wash/Cold Rinse is the temperature setting with a cold rinse that provides the hottest wash temperature less than or equal to 135 °F among all cycle selections available on the clothes washer. 79 FR 23087.

This final rule revises the Hot Wash/Cold Rinse flow chart so that the evaluation of the flowchart would result in testing both the Cold and Hot temperature selections using the Normal cycle on such a clothes washer.

This final rule also revises the wording of the Cold Wash/Cold Rinse flowchart to clarify the procedure for clothes washers with multiple wash temperature selections in the Normal cycle that do not use any hot water for any of the water fill levels or test load sizes required for testing. In the April 2014 NOPR proposed flowchart, DOE used the wording ''If multiple *cold wash* temperature selections in the Normal cycle do not use any hot water . . .'' (emphasis added). 79 FR 23086. By using the phrase ''cold wash temperature selections,'' DOE believes it may have unintentionally implied that the word ''cold'' must be included in the control panel label in order for a cold-water-only wash temperature selection to be considered for inclusion as the Cold Wash/Cold Rinse. Manufacturers may use a variety of descriptive terms to label their cold-water-only temperature selections (*e.g.,* ''Ecowash'', ''Energy Saver'', etc.), which may not include the word ''cold.'' DOE's intent is that any cold-water-only wash temperature selection in the Normal cycle must be considered for inclusion as the Cold Wash/Cold Rinse temperature selection, regardless of its control panel label. Therefore, this final rule removes the word ''cold'' from this phrase in the flowchart so that its reads as follows: ''If multiple *wash* temperature selections in the Normal cycle do not use any hot water . . .'' (emphasis added).

Furthermore, for clothes washers with multiple cold-water-only wash temperature selections, Cold Wash/Cold Rinse is the cold wash temperature selection, paired with a cold rinse, with the highest energy consumption, as measured according to section 3.10 of appendix J2, and the other cold wash temperature selections are excluded from testing. This final rule clarifies in the Cold Wash/Cold Rinse flowchart that any such cold-water-only cycles that are excluded from testing as the Cold Wash/Cold Rinse are also excluded from consideration as the Hot Wash/Cold Rinse and Warm Wash/Cold Rinse.

DOE did not receive any comments objecting to its proposal to clarify the definition of cold rinse or to move the current section 2.13 of appendix J2, *Energy consumption for the purpose of certifying the cycle selection(s) to be included in Part (B) of the energy test cycle definition,* to newly created section 3.10, to rename that section ''Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle,'' and to revise the text of newly created section 3.10 to reflect the new method for determining the appropriate energy test cycle selection(s) using the flowcharts in newly renumbered section 2.12. Therefore, this final rule adopts these changes as proposed.

Finally, this final rule also modifies the wording in the flowchart boxes to make use of bullet points rather than complex sentences with multiple commas and semicolons. DOE believes that the use of bullet points provides improved clarity for interpreting each flowchart box.

H. Wash Time Setting

DOE proposed in the April 2014 NOPR to move the wash time setting provisions from section 2.10 of appendix J2 to a new section 3.2.5, which DOE believes is a more appropriate location in the amended test procedure since the wash time must be set prior to each individual wash cycle during testing. 79 FR 23067.

ALS supports DOE's proposal to relocate the provisions for wash time setting from section 2.10 to new section 3.2.5, so that the provisions are located in a more logical location corresponding to the sequence in which they would be performed during testing. (ALS, No. 5 at p. 9)

DOE received no comments objecting to its proposal to move the wash time setting provisions from section 2.10 of appendix J2 to newly revised section 3.2.5. Therefore, for the reasons described above, this final rule implements this change.

This final rule also implements a clarification to the procedure for setting the wash time on clothes washers for which the wash time is not prescribed by the wash cycle that is being tested. In such circumstances, the test procedure specifies setting the wash time at the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations. DOE has become aware that in some cases, the allowable selection of wash times on such clothes washers may not be completely continuous, such that one dial position may provide a wash time just under 70 percent of the maximum, while the next dial position may provide a wash time just over 70 percent of the maximum. This final rule clarifies that if 70 percent of the maximum wash time is not available on a dial with a discreet number of wash time settings, the next-highest setting greater than 70 percent must be chosen. This clarification applies to section 2.10 of appendix J1 and newly renumbered section 3.2.5 of appendix J2. DOE's experience with third-party laboratory testing suggests that this approach is already commonly used among the industry.

I. Standby and Off Mode Testing

In the April 2014 NOPR, DOE proposed clarifications to the standby and off-mode power testing provisions in appendix J2. 79 FR 23067. In addition to minor wording clarifications in sections 3.9 and 3.9.1 of appendix J2, the proposed clarifications were as follows:

1. Testing Sequence

DOE proposed clarifying that combined low-power mode testing in section 3.9 of appendix J2 should be performed after completing an energy test cycle, after removing the test load, and without disconnecting the electrical energy supply to the clothes washer between completion of the energy test cycle and the start of combined low-power mode testing. This clarification would preclude performing combined low-power mode testing directly after connecting the clothes washer to the electrical energy supply, because such testing may not yield a value representative of the standby or off-mode power consumption after a clothes washer's first active mode wash cycle and all subsequent wash cycles. 79 FR 23067. DOE believes this clarification would ensure that the results of the combined low-power mode testing accurately represent the conditions most likely to be experienced in a residential setting, since the period of time after the clothes washer has been installed, but before its first active mode wash cycle, is likely to be short.

AHAM and ALS support DOE's proposal to clarify how low-power mode testing in appendix J2 should be performed. (AHAM, No. 4 at p. 10; ALS, No. 5 at p. 9) AHAM agrees that this proposal would seem to be consistent with how consumers will use a clothes washer. AHAM added, however, that it could not fully evaluate DOE's proposal without reviewing test data. (AHAM, No. 4 at p. 11)

DOE received no comments objecting to its proposal that combined low-power mode testing in appendix J2 be performed after completing an energy test cycle, after removing the test load, and without disconnecting the electrical energy supply to the clothes washer between completion of the energy test cycle and the start of combined low-power mode testing. Therefore, for the reasons stated above, this final rule incorporates this amendment in newly designated section 3.9.1 of appendix J2.

2. Door Position

In response to the April 2014 NOPR, AHAM sought clarification on whether the combined low-power mode testing is to be conducted with the clothes washer door open or closed. (AHAM, No. 4 at p. 11, 12) AHAM believes it is clear, based on the nature of the test procedure sequence, that the door would be opened and closed before the low-power mode portion of the test is performed. AHAM requested that DOE expressly state in the test procedure, or issue guidance, that the low-power mode portion of the test is to be conducted with the door closed. AHAM believes this is consistent with current practice. (AHAM, No. 4 at p. 11, 12) AHAM added that it is not aware of any consumer use data indicating that consumers leave the door open for an extended period of time after running the active mode cycle.

DOE confirms that the intent of its test procedure is to perform the low-power mode portion with the door closed. DOE also confirms through its experience with third-party test laboratories that performing the low-power mode portion with the door closed is consistent with current practice. This final rule adds this clarification to newly designated section 3.9.1 of appendix J2.

3. Default Settings

In the April 2014 NOPR, DOE proposed clarifying that combined low-power mode testing should be performed without changing the control panel settings used for the energy test cycle completed prior to combined low-power mode testing. 79 FR 23067. In its proposal, DOE noted that the test procedure currently requires using the manufacturer default settings for any wash cycle performed within the energy test cycle. The proposed clarification would preclude parties conducting low-power mode testing from activating or deactivating any optional control panel displays or other features not activated by default on the clothes washer when it is not being used to perform an active mode wash cycle. DOE stated that this clarification would ensure that the results of the combined low-power mode testing accurately represent the conditions most likely to be experienced in a residential setting. 79 FR 23067.

AHAM and ALS support DOE's proposal to require performing combined low-power mode testing without changing the control panel settings used for the energy test cycle completed prior to combined low-power mode testing. (AHAM, No. 4 at p.11; ALS, No. 5 at p. 9) AHAM agreed that consumers are not likely to change their control panel settings after the active mode ends. (AHAM, No. 4 at p. 11)

DOE received no comments objecting to its proposal to require performing combined low-power mode testing without changing the control panel settings used for the energy test cycle completed prior to combined low-power mode testing. Therefore, for the reasons stated above, this final rule incorporates this amendment in newly designated section 3.9.1 of appendix J2.

4. Network Mode

EPCA, as amended by the Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007), requires test procedures to include provisions for measuring standby and off mode energy consumption, taking into consideration the most current versions of the International Electrotechnical Commission (IEC) Standards 62301 and 62087.[17] [18] The most current version of IEC Standard 62301 is Edition 2.0, issued in 2011 (''IEC 62301). In addition to defining off mode and standby mode, IEC 62301 also defines ''network mode'' as any product mode ''where the energy-using product is connected to a mains power source and at least one network function is activated (such as reactivation via network command or network integrity communication), but where the primary function is not active.'' (See section 3.7 of IEC 62301).

DOE considered network mode as part of the March 2012 final rule. In the final rule, DOE explained that it was unaware of any clothes washers on the market with network mode capabilities at that time. Consequently, DOE could not thoroughly evaluate any network mode provisions, as would be required to justify incorporating network mode into DOE's test procedures at that time. DOE noted that although an individual appliance may consume some small amount of power in network mode, the potential exists for energy-related benefits that more than offset this additional power consumption if the appliance can be controlled by the ''smart grid'' to consume power during non-peak periods (often referred to as ''demand-response'' capabilities). The March 2012 final rule did not incorporate network mode provisions due to the lack of available data that would be required to justify their inclusion. 77 FR 13888, 13899–900.

In response to the April 2014 NOPR, the CA IOUs recommended that DOE incorporate a definition, test procedure, and reporting requirements for network mode. (CA IOUs, No. 3 at p. 1) The CA IOUs urged DOE to adopt the technical definition of network mode, and the test procedure for measuring the energy consumption of network mode, as prescribed by the IEC Standard 62301 Final Draft International Standard (FDIS).[19] (CA IOUs, No. 3 at p. 2) The CA IOUs stated that if it is not possible for DOE to incorporate the network mode definition and associated test procedure in this rulemaking, that EPA should incorporate it into the future ENERGY STAR test method for clothes washers with connectivity. (CA IOUs, No. 3 at p. 2)

The CA IOUs also proposed that DOE develop definitions for connectivity in demand response transactions. (CA IOUs, No. 3 at p. 4, 5) The CA IOUs recommended that DOE develop a test method for demand response functionality to rate and measure the load reduction potential in terms of peak demand reduction, and potential energy-cost reduction for reporting purposes. (CA IOUs, No. 3 at p. 4, 5)

The CA IOUs also presented information on five clothes washer models from three manufacturers that offer various network mode features in both top-loading and front-loading products. (CA IOUs, No. 3 at p. 2) The CA IOUs referenced comments from the previous clothes washer test procedure rulemaking by the Appliance Standards Awareness Project (ASAP), Natural Resource Defense Council (NRDC), and American Council for an Energy Efficient Economy (ACEEE) [20] suggesting that Network Mode could consume power continuously in the range of 2–5 watts, translating to an additional 18 to 44 kWh annually. The CA IOUs encouraged DOE to develop a test method to rate the energy consumed by network mode, and incorporate it into the product's performance rating. (CA IOUs, No. 3 at p. 3)

DOE surveyed the market and confirms that multiple clothes washer models available on the market offer wireless network connectivity to enable features such as remote monitoring and control via smartphone, as well as

[17] IEC standards are available online at *www.iec.ch.*

[18] IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment and is not relevant to clothes washers.

[19] IEC 62301 version FDIS was developed and issued in 2010 prior to the issuance of the Second Edition.

[20] ACEEE, NRDC, ASAP. Comment Letter for Test Procedure for Residential Clothes Washers (December 2010): *http://www.appliance-standards.org/sites/default/files/Comments%20on%20the%20Clothes%20Washers%20Test%20Procedures%20NOPR-%20December%206,%202010_0.pdf.*

limited demand response features available through partnerships with a small number of local electric utilities. As suggested by the CA IOUs, the addition of network mode into the DOE test procedure may result in additional measured energy consumption that, when incorporated into the overall IMEF metric, would change the measured efficiency of the product. Because this final rule provides only clarifying edits, which would not alter the measured efficiency of a clothes washer, DOE defers further consideration of network mode and demand-response test methods for a future test procedure rulemaking.[21]

5. Clarified Procedure for Performing Inactive and Off Mode Power Measurements

Section 1.28 of appendix J2 defines ''standby mode'' as any mode in which the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions that may persist for an indefinite period of time: (1) A function that facilitates the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; or (2) continuous functions, including information or status displays (including clocks) or sensor-based functions. The definition also clarifies that a timer is a continuous clock function (which may or may not be associated with a display) that provides regular, scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

Section 1.15 of appendix J2 defines ''inactive mode'' as a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Section 1.24 of appendix J2 defines ''off mode'' as a mode in which the clothes washer is connected to a mains power source and is not providing any active mode or standby function, and where the mode may persist for an indefinite period of time. The definition further states that an indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

Section 3.9 of the current appendix J2 provides the instructions for measuring ''combined low-power mode'' power, which is defined in section 1.8 of appendix J2 as the aggregate of available modes other than active washing mode, including inactive mode, off mode, delay start mode, and cycle finished mode. Specifically, section 3.9 requires the measurement of average inactive mode and/or average off mode power, which in combination provide a representative measure of the average power consumption in all possible low-power modes on the clothes washer. Section 3.9.1 instructs the testing party to measure average inactive mode power, if the clothes washer has an inactive mode. Similarly, section 3.9.2 instructs the testing party to measure average off mode power, if the clothes washer has an off mode. These sections thus require the testing party to determine whether the clothes washer has an inactive mode, an off mode, or both.

Section 4.4 of appendix J2 provides the calculation of per-cycle low-power mode energy consumption based on the measurements performed under section 3.9. If a clothes washer has either inactive mode or off mode (but not both), the measured average power is multiplied by 8,465, representing the combined annual hours for inactive mode and off mode. If a clothes washer has both inactive mode and off mode, each of the two average power measurements are multiplied by one-half of 8,465 (*i.e.* 4,232.5), and the results are summed. This represents an estimate that such a clothes washer would spend half of its low-power mode hours in inactive mode, and the other half of its low-power mode hours in off mode. The calculations performed in section 4.4, therefore, also depend on the testing party's determination in section 3.9 as to whether the clothes washer has an inactive mode, an off mode, or both.

After publishing appendix J2, DOE received questions from interested parties regarding how to distinguish between inactive mode and off mode. On October 7, 2014, and December 8, 2014, DOE issued draft guidance clarifying the difference between inactive mode and off mode for clothes washers, clothes dryers, and dishwashers with various types of on/off switches and control panels.[22] [23]

For a clothes washer with a ''hard'' on/off switch or electromechanical dial that physically breaks the connection to the mains power supply, DOE stated in the draft guidance document that it considers the clothes washer to be in off mode when the switch or dial is in the ''off'' position, as long as no standby mode or active mode functions are provided. Pursuant to the definition of off mode, an indicator light that illuminates to indicate that the switch or dial is in the off position is not considered a standby mode or active mode function. DOE considers the clothes washer to be in off mode when such an indicator is active in the absence of other standby mode functions.

For a clothes washer with an electronic, or ''soft,'' on/off button or switch that does not physically break the connection to the mains power supply, DOE stated in the draft guidance document that it considers the clothes washer to be in standby mode when the button or switch is indicated as being in the ''off'' position. DOE also stated in the draft guidance that it considers the internal control panel component that detects the press of the electronic power button to be an internal sensor that facilitates the activation or deactivation of other modes (including active mode); therefore, the product would be in standby mode when the electronic button or switch is indicated as being in the ''off'' position. Because of its capability to detect the press of the electronic power button, this internal sensor differs from a hard on/off switch, which does not provide any such sensing capabilities but may include an indicator to show that the product is in off mode. Off mode as defined in appendix J2 would not apply to a product with an electronic power button, unless the clothes washer also has a hard on/off switch or dial that physically breaks the connection to the mains power supply and the clothes washer does not activate any standby mode or active mode features when the hard on/off switch is in the ''off'' position.

AHAM agreed with DOE's draft guidance that clothes washers with a hard on/off switch or electromechanical dial that physically breaks the connection to the mains power supply

[21] Information on ENERGY STAR test methods for clothes washers is available at *https://www.energystar.gov/certified-products/detail/453/partners?fuseaction=products_for_partners.showClothesWashRes.*

[22] DOE's draft guidance for clothes washers, clothes dryers, and dishwashers with a ''hard'' on/off switch or electromechanical dial that physically breaks the connection to the mains power supply is available at DOE's Guidance and Frequently Asked Questions Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/homeappliancemechonoffswitch-faq-2014-10-7.pdf.* Comments submitted by interested parties can be viewed in the docket located at *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-GUID-0046.*

[23] DOE's draft guidance for clothes washers, clothes dryers, and dishwashers with an electronic or ''soft'' on/off switch that does not physically break the connection to the mains power supply is available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/aham_offmode_faq_2014-12-2.pdf.* Comments submitted by interested parties can be viewed in the docket located at *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-GUID-0056.*

are considered to be in off mode when the switch or dial is in the ''off'' position. (AHAM, No. 2 to Docket EERE–2014–BT–GUID–0046, p.1). AHAM also agreed with DOE's draft guidance that clothes washers with an electronic or soft on/off switch that does not physically break the connection to the mains power supply are considered to be in standby mode when the switch or dial is in the ''off'' position. (AHAM, No. 4 to Docket EERE–2014–BT–GUID–0046, p.1).

Intertek Electrical (''Intertek'') commented that the ''off'' state on some appliances is achieved through a software/firmware action rather than a hard on/off switch, and that it is not clear whether the product is providing any active mode or standby function while in the ''off'' state. (Intertek, No. 3 to Docket EERE–2014–BT–GUID–0046, p.1).

UL Verification Services, Inc. (''UL'') commented on the difficulty for an independent third-party laboratory to determine if the on/off button is a hard switch or a soft switch. (UL, No. 5 to Docket EERE–2014–BT–GUID–0046, p.1). UL stated that if the third-party laboratory is unable to obtain this information from the manufacturer, the next best option is to review the product's electrical schematic. According to UL, however, the schematic is located on most clothes washers somewhere inside the machine, such as behind the console. *Id.* UL questioned whether a third-party laboratory could remove the console during testing to determine if the switch is a hard switch or soft switch. Alternatively, if the machine must not be disassembled, UL questioned whether DOE could specify another method to determine the type of switch. *Id.* UL suggested, for example, that the power consumption of a hard switch should be essentially zero watts unless an ''off'' indicator is activated. UL questioned whether a minimum power consumption threshold could be used to determine if the machine is in standby mode or off mode. *Id.*

DOE's draft guidance documents clarify that it considers soft switches to be associated with standby mode and hard switches to be associated with off mode when in the ''off'' position. DOE agrees with UL, however, that distinguishing between a hard switch and soft switch may not be possible without information from the manufacturer or access to the product's electrical schematic. Similarly, an independent third-party laboratory may find it difficult or impossible to determine whether a clothes washer provides any standby mode functions when the product appears, to the end user, to be in the ''off'' state.

To eliminate the need to distinguish between standby mode and off mode based on the position of a switch and internal functions of the clothes washer, or between hard switches and soft switches, this final rule clarifies the test provisions for measuring inactive mode [24] and off mode. Currently, section 3.9.1 and section 3.9.2 of appendix J2 provide separate symbol designations for the inactive mode and off mode power measurements: P_{ia} and P_o, respectively. If a clothes washer has either inactive mode or off mode (but not both), the average power consumption of the available mode is measured and labeled as either P_{ia} or P_o, accordingly. As described above, labeling the measurement as either P_{ia} or P_o requires a determination of the type of switch on the control panel and whether any standby functions are provided by the clothes washer when the switch is in the ''off'' position. Regardless of whether the average low-power measurement is designated as P_{ia} or P_o, however, section 4.4 of appendix J2 applies the total 8,465 annual hours to the measurement, as described above. If both inactive mode and off mode are available on the clothes washer, section 4.4 applies 4,232.5 hours to each of the two average power measurements.

In this final rule, DOE clarifies the testing methodology in section 3.9 of appendix J2 and the calculations in section 4.4 of appendix J2 by relabeling the symbols used for the combined low-power mode measurements. This final rule relabels these symbols P_{ia} and P_o as $P_{default}$ and P_{lowest}, respectively, and the assignment of each symbol to its respective measurement is based on observable and measureable characteristics of the clothes washer rather than the control panel switch type or internal functionality of the clothes washer. In addition, this final rule revises the wording of the testing instructions in section 3.9 of appendix J2 to clarify how the procedure corresponds to the sequence of events as they would be performed during testing. This revised procedure produces test results that yield the same measured energy as in section 3.9 of the current procedure for all clothes washer types currently on the market.

The revised wording splits the current text of section 3.9 in appendix J2 into two newly designated subsections, 3.9.1 and 3.9.2, to provide further clarity. As described previously in this notice, the newly designated section 3.9.1 includes the requirement to perform combined low-power mode testing: (1) After completion of an active mode wash cycle included as part of the energy test cycle; (2) after removing the test load; (3) without changing the control panel settings used for the active mode wash cycle; (4) with the door closed; and (5) without disconnecting the electrical energy supply to the clothes washer between completion of the active mode wash cycle and the start of combined low-power mode testing.

Newly designated section 3.9.2 states that for a clothes washer that takes some time to automatically enter a stable inactive/off mode state from a higher power state, as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301, allow sufficient time for the clothes washer to automatically reach the default inactive/off mode state before proceeding with the test measurement. The revised wording replaces the term ''lower power state'' currently used in section 3.9 of the test procedure with ''default inactive/off mode state,'' which clarifies that the lower power state that the clothes washer reaches by default may be either an inactive mode or an off mode.

The amendments in this final rule move the procedural instructions for performing the power measurement, with revised labeling, into newly added section 3.9.3 of appendix J2. These instructions now state that once the stable inactive/off mode state has been reached, the default inactive/off mode power, $P_{default}$, in watts, is measured and recorded following the test procedure for the sampling method specified in Section 5, Paragraph 5.3.2 of IEC 62301.

For clothes washers with electronic controls that offer an optional switch, dial, or button that can be selected by the end user to achieve a lower-power state than the default inactive/off mode state,[25] including clothes washers with both an inactive mode and off mode as contemplated in the current test procedure, newly added section 3.9.4 of appendix J2 requires that, after performing the measurement in section 3.9.3, the switch, dial, or button be activated to the position resulting in the lowest power consumption and the measurement procedure described in section 3.9.3 be repeated. The average power consumption is measured and recorded as the lowest-power standby/off mode power, P_{lowest}, in watts.

Section 4.4 of appendix J2 applies annual hours to the average power measurement(s) performed in section

[24] Inactive mode is the only type of standby mode required to be measured in appendix J2.

[25] Such a feature could be labeled on the control panel as a ''master power'' or ''vacation mode'' feature, for example.

3.9 of appendix J2, consistent with the current test procedure. For those clothes washers with a single low-power mode average power consumption measurement (newly labeled as $P_{default}$), the calculation applies the total 8,465 annual hours to this measurement. For those clothes washers with two average power measurements (newly labeled as $P_{default}$ and P_{lowest}), section 4.4 applies 4,232.5 hours to each of the two measurements.

The revised section 3.9, including newly added sections 3.9.3 and 3.9.4, provides a clearer set of procedural instructions for performing the combined low-power mode measurements required in section 3.9 of the current test procedure. Under the revised section 3.9, the same sequence of measurements are performed as the current section 3.9, thus yielding the same combined low-power mode average power measurement(s) for clothes washers with standby mode, off mode, or both. Further, the same annual hours as are currently specified are applied to the average power measurement(s) in section 4.4 of appendix J2. Therefore, DOE has determined that these amendments to section 3.9 and section 4.4 of appendix J2 will not impact the measured efficiency of clothes washers.

6. Multiple Inactive Modes

In the April 2014 NOPR, DOE stated that some residential appliances, including clothes washers, could have multiple modes that meet the definition of inactive mode currently provided in section 1.15 of appendix J2 (redesignated as section 1.16). 79 FR 23067. DOE notes that it is currently unaware of any such clothes washers on the market, but believes that future clothes washers could be designed to have multiple inactive modes. DOE proposed clarifying that inactive mode is the lowest-power standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display. DOE stated that specifying use of the lowest-power mode would clarify potential ambiguity regarding which inactive mode to use for testing if multiple inactive modes exist on a clothes washer. 79 FR 23067.

AHAM stated that it does not oppose DOE's proposal to clarify the definition of inactive mode. (AHAM, No. 4 at p. 11) AHAM added, however, that it could not fully evaluate DOE's conclusion without viewing test data. *Id.*

ALS supports DOE's proposed clarifications to the standby and off-mode power testing regarding multiple possible inactive modes. (ALS, No. 5 at p. 9)

DOE's revisions in this final rule to the combined low-power mode measurement provisions, as described in the previous section, clarify the measurement procedure for clothes washers that have multiple inactive modes. Therefore, DOE has determined that amending the definition of inactive mode as proposed in the April 2014 NOPR is not warranted. This final rule makes no changes to the definition of inactive mode in appendix J2.

J. Fixed Water Fill Control Systems

Section 1.2 of appendix J1 defines adaptive water fill control system as ''a clothes washer water fill control system which is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring consumer intervention or actions.''

Section 1.9 of appendix J1 defines manual water fill control system as ''a clothes washer water fill control system which requires the consumer to determine or select the water fill level.''

The water fill settings, load sizes, and load usage factors (LUFs) used for testing depend upon the type of water fill control system available on the clothes washer, as defined in Table 2.8 and Table 4.1.3 of both appendix J1 and appendix J2. For clothes washers with manual water fill control systems, the minimum and maximum load sizes are tested using the minimum and maximum water fill settings, respectively, and the assigned LUF weightings of 28 and 72 percent, respectively. For clothes washers with adaptive water fill control systems, the minimum, average, and maximum load sizes are tested using the water fill levels as determined by the clothes washer for each load size, and the assigned LUF weightings of 14, 74, and 12 percent, respectively.

As stated in the April 2014 NOPR, DOE is aware of clothes washers that have fixed water levels for all load sizes and no water fill selector or water fill control settings available to the user. 79 FR 23067. As with adaptive water fill control systems, fixed water fill control systems do not require user action to determine the water fill level. Therefore, DOE proposed that a clothes washer with a fixed water fill control system be tested in the same manner as a clothes washer with an adaptive water fill control system—*i.e.,* using the minimum, average, and maximum load sizes. *Id.*

In the April 2014 NOPR, DOE proposed amendments that would (1) add a definition for ''fixed water fill control system,'' (2) add a definition for ''automatic water fill control system,'' which would include both fixed water fill control systems and adaptive water fill control systems, and (3) amend the definition of ''adaptive water fill control system'' to clarify that it is considered a type of automatic water fill control system. Additionally, where appropriate, DOE proposed replacing instances of ''adaptive water fill control system'' throughout the test procedure with ''automatic water fill control system,'' to indicate that such testing provisions apply to both adaptive water fill control systems and fixed water fill control systems. DOE proposed these amendments for both appendix J1 and appendix J2.

AHAM does not oppose DOE's proposal to add definitions for ''fixed water fill control system'' and ''automatic water fill control system'' and to amend the definition for ''adaptive water fill control system.'' (AHAM, No. 4 at p. 12) AHAM also does not oppose DOE's proposal to clarify in both appendix J1 and appendix J2 that a clothes washer with a fixed water fill control system be tested in the same manner as a clothes washer with an adaptive water fill system, *i.e.,* using the minimum, average, and maximum load sizes. (AHAM, No. 4 at p. 12)

ALS supports DOE's proposed approach for addressing ''fixed water fill control systems,'' although for appendix J2 only. ALS objects to DOE's proposed approach for addressing ''fixed water fill control systems'' in appendix J1, and noted that its existing CCW models containing a fixed water fill level were certified and tested based on testing only the minimum and maximum load sizes (corresponding to the procedure for manual water fill control systems), and not with minimum, average, and maximum load sizes. ALS stated that DOE's proposal would produce a minor change in MEF and WF. (ALS, No. 5 at p. 4)

DOE received no comments objecting to its proposal to add definitions for fixed water fill control system, automatic water fill control system, and to amend the definition of adaptive water fill control system in appendix J2.

To investigate the concerns raised by ALS regarding the proposed clarification to appendix J1, DOE conducted testing on two baseline top-loading CCWs featuring fixed water fill control systems. For each model, DOE used the same minimum and maximum load size data as the basis for comparison between the manual fill and

adaptive fill results. The results are summarized in Table III–3. The results indicated that testing these models as adaptive fill machines (*i.e.,* using minimum, average, and maximum load sizes) produces a slightly more favorable MEF rating, in the range of 0.01–0.02 MEF, compared to the results when tested as manual water fill machines (*i.e.,* using only the minimum and maximum load sizes). However, testing these models as adaptive fill machines produces a less favorable WF rating, in the range of 0.2–0.3 WF, compared to the results when tested as manual water fill machines.

TABLE III–3

Unit No.	Tested as manual fill (min, max load sizes)		Tested as adaptive fill (min, avg, max load sizes)		Difference between adaptive and manual results	
	MEF	WF	MEF	WF	MEF [a]	WFWF [b]
Unit #1	1.65	7.7	1.66	8.0	+0.01	+0.3
Unit #2	1.67	8.1	1.69	8.3	+0.02	+0.2

[a] A higher MEF rating is more favorable.
[b] A higher WF rating is less favorable.

DOE first introduced water fill level distinctions in the original test procedure for clothes washers at appendix J to 10 CFR part 430 subpart B (''appendix J''), as proposed in the May 17, 1977 NOPR (''May 1977 NOPR'') and codified in the September 28, 1977 final rule (''September 1977 final rule''). 42 FR 25329 and 42 FR 49802. In the May 1977 NOPR, DOE explained that field usage data provided by Procter and Gamble (P&G) indicated that maximum fill is selected 72 percent of the time and minimum fill is selected 28 percent of the time. 42 FR 25329, 25331. These data formed the basis for the ''usage fill factors'' codified in section 4.3 of appendix J in the September 1977 final rule. 42 FR 49802, 49809.

Appendix J included testing provisions only for manual fill control systems that required the user to determine or select the water fill level, which included all top-loading and front-loading clothes washers on the market at the time. Under section 2.8 of appendix J, top-loading clothes washers were tested without a test load. Front-loading clothes washers were tested with a 3-pound minimum load and 7-pound maximum load for the minimum and maximum water fill levels, respectively. 42 FR 49808.

During a meeting on February 16, 1995, hosted by AHAM for non-industry stakeholders, AHAM presented a test procedure proposal that provided information for the subsequent development of DOE's test procedure at appendix J1.[26] (AHAM, No. 25 to Docket EE–RM–94–230A, pp. 1–42). AHAM's proposal included provisions for testing clothes washers with adaptive water control systems, which had recently become available on the market. (*Id.,* pp. 11–24). In its proposal, AHAM presented two sets of data from P&G: (1) Data showing that consumers manually select the maximum water fill 72 percent of the time and the minimum water fill level 28 percent of the time on clothes washers with manual water fill controls, and (2) data showing the distribution of actual clothing load sizes washed by consumers, which roughly corresponded to a normal (Gaussian) distribution centered around an average load size of 5.7 to 6.7 pounds, depending on the size of the washer. *Id.* The results from these two data sets led AHAM to conclude that, for clothes washers with manual water fill controls, consumers overuse the maximum water fill level and that automatically controlling the water fill level based on clothing load size (*i.e.,* by providing adaptive water fill controls) would produce energy savings. *Id.* at p. 20. AHAM also noted that an essential element of any adaptive control system is the removal of consumer judgment from some or all of the wash cycle selection process. *Id.* at p. 21.

For manual water fill clothes washers, AHAM recommended requiring the use of a fixed 3-pound minimum load size and a maximum load size that would vary with capacity, while maintaining the 28-percent and 72-percent LUFs, respectively. *Id.* at p. 24. For clothes washers with adaptive water fill controls, AHAM recommended requiring a third ''average'' load size, in addition to the minimum and maximum load sizes, and corresponding minimum, average, and maximum LUFs of 14, 74, and 12 percent, respectively.[27] These three load sizes and associated LUFs more closely approximated a normal (Gaussian) distribution of load sizes centered around the average load size, consistent with the P&G consumer usage data, and therefore, according to AHAM, provided a more accurate representation of the energy consumption of clothes washers with adaptive water fill controls. *Id.*

DOE incorporated these recommendations as part of a new DOE test procedure at appendix J1, established in a final rule on August 27, 1997.[28] 62 FR 45484, 45486–87. DOE maintained these load sizes, water fill levels, and LUFs in the new appendix J2 test procedure codified by the March 2012 final rule. 77 FR 13888, 13910–11.

As described above, the key distinction between manual water fill controls and adaptive water fill controls is whether consumer judgment is required to establish the water fill level. Any water fill control system that requires consumer judgment to manually select a water fill must be tested using the procedures in section 3.2.3.3 of appendix J2 for manual water fill control systems, in order to provide test results that are representative of consumer usage. Likewise, any water fill control system that does not require consumer judgment (*i.e.,* does not allow

[26] AHAM's presentation was originally submitted to Docket #EE–RM–94–230A as Comment #25. This presentation is available online at *www.regulations.gov* as part of Docket #EERE–2006–TP–0065, Comment #27: *http://www.regulations.gov/#!documentDetail;D=EERE-2006-TP-0065-0027*.

[27] AHAM also recommended including ''above average'' and ''below average'' load sizes for clothes washers that generate non-linear results between the minimum, average, and maximum load sizes. If these additional loads were required, the results of the ''below average'', ''average'', and ''above average'' load sizes would be averaged with equal weightings to represent a single ''average'' data point. (AHAM, No. 25 to Docket EE–RM–94–230A, pp. 21–23)

[28] The August 27, 1997 final rule rejected the use of additional ''below average'' and ''above average'' test loads for clothes washers that generate non-linear results between the minimum, average, and maximum load sizes. DOE explained that the additional test burden associated with the extra load sizes is not warranted for the potential improvement in accuracy of the final test results. 62 FR 45483, 45487.

or require the consumer to select the water fill level) must be tested using the procedures in section 3.2.3.2 of appendix J2 for adaptive water fill control systems, in order to provide test results that are representative of consumer usage. Clothes washers with ''fixed water fill controls'' do not allow or require the consumer to select a water fill level; therefore, clothes washers with ''fixed water fill controls'' must be tested using the procedures for adaptive water fill control systems (*i.e.,* using the minimum, average, and maximum load sizes and the water fill levels as determined by the clothes washer), in order to provide test results that are representative of consumer usage.

For these reasons, this final rule maintains DOE's initial proposal to (1) add a definition for ''fixed water fill control system,'' (2) add a definition for ''automatic water fill control system,'' which includes both fixed water fill control systems and adaptive water fill control systems, (3) amend the definition of ''adaptive water fill control system'' to clarify that it is considered a type of automatic water fill control system, and (4) where appropriate, replace instances of ''adaptive water fill control system'' throughout the test procedure with ''automatic water fill control system,'' to indicate that such testing provisions apply to both adaptive water fill control systems and fixed water fill control systems. These amendments apply to both appendix J1 and appendix J2.

The final rule provides a more technically precise description of ''fixed water fill control system'' than the definition proposed in the April 2014 NOPR. In the April 2014 NOPR, DOE proposed defining fixed water fill control system as ''a clothes washer automatic water fill control system that does not adjust the water fill level based on the size or weight of the clothes load placed in the clothes container.'' In this final rule, fixed water fill control system is defined as ''a clothes washer automatic water fill control system that automatically terminates the fill when the water reaches an appropriate level in the clothes container.'' A fixed water fill system typically uses a single water pressure sensor, located at the bottom of the clothes container, which is calibrated to trigger at the water pressure corresponding to the manufacturer's pre-determined water fill height for the clothes washer. During the water fill portion of the wash cycle, when the height of the water in the clothes container reaches the pre-determined water fill level, the pressure sensor triggers and shuts off the incoming water supply. The revised definition more accurately reflects this mechanical design of a fixed water fill control system.

In addition, the phrase ''water fill level'' in the proposed April 2014 NOPR definition could create confusion depending on whether the testing party interprets this phrase to mean the physical height of the water in the clothes container, or the total volume of water in the clothes container. While the physical height of the water may be the same for all load sizes with a fixed water fill control system, the total volume of water changes slightly based on the load size because the clothing itself takes up space in the clothes container. Specifically, with a fixed water fill control system, a large clothing load will result in a slightly lower volume of water than a small clothing load, because the additional volume occupied by the larger clothing load offsets some of the total water volume. The revised definition in this final rule avoids this potential ambiguity.

Finally, DOE's proposed definition in the April 2014 NOPR described a fixed water fill control system in terms of what it does not do, (*i.e.,* it does not adjust the water fill level based on the size or weight of the clothes load placed in the clothes container); whereas the revised definition describes what a fixed water fill system does, (*i.e.,* it automatically terminates the fill when the water reaches an appropriate level in the clothes container).

The final rule also slightly amends the definition of ''automatic water fill control system'' proposed in the April 2014 NOPR to clarify more explicitly that the key criteria is the lack of user action allowed or required to determine the water fill level. In this final rule, ''automatic water fill control system'' is defined as ''a clothes washer water fill control system that does not allow or require the user to determine or select the water fill level, and includes adaptive water fill control systems and fixed water fill control systems.''

K. Maximum Water Fill Levels on Electronic Manual Water Fill Control Systems

DOE has become aware of clothes washers with electronic manual water fill control systems where the maximum water fill level setting that can be selected on some cycle settings required for testing as part of the energy test cycle is less than the maximum water fill level setting available on the clothes washer.

For clothes washers with manual water fill control systems, Section 3.2.3.3 of appendix J1 and appendix J2 (newly renumbered as section 3.2.6.1 in appendix J2) requires setting the water fill selector to the maximum water level *available on the clothes washer* (emphasis added) for the maximum test load size, which is based on the clothes washer capacity and defined in Table 5.1 of both appendix J1 and appendix J2. Neither test procedure addresses how to proceed with testing if the maximum water fill level setting available on the clothes washer cannot be selected for one or more of the wash cycles settings required for testing under this provision. Therefore, a manufacturer may need to submit a petition for waiver, pursuant to 10 CFR 430.27, to establish an acceptable test procedure that can accommodate testing of the maximum water fill level setting on such a clothes washer. As described in 10 CFR 430.27, the petition process includes opportunities for public comment in direct response to the waiver petition. As soon as practicable after the granting of any waiver, DOE must publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. (10 CFR 430.27(l)) Any such NOPR would also offer an opportunity for interested parties to submit comments. This final rule does not contain any amendments regarding this potential issue.

L. Deep Rinse and Spray Rinse Definitions

Section 3.2.2 of appendix J2 states that total water consumption during the energy test cycle shall be measured, including hot and cold water consumption, during wash, deep rinse, and spray rinse. In the April 2014 NOPR, DOE proposed revising section 3.2.8 to include the entire active washing mode, and exclude any delay start or cycle finished modes, for each wash cycle tested. 79 FR 23061, 23067 (Apr. 25, 2014). Active washing mode is defined in section 1.2 as including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing. As described in the April 2014 NOPR, DOE believes that the proposed revision to 3.2.8 is clearer and more complete than the wording in the current 3.2.2 regarding the portions of the wash cycle to be included and measured for testing. Therefore, DOE proposed to delete section 3.2.2 from appendix J2 and to renumber the subsequent subsections accordingly. 79 FR 23067.

Furthermore, since section 3.2.2 is the only location within the test procedure where the terms ''deep rinse'' and ''spray rinse'' occur, DOE also proposed

to remove those two definitions from the section 1 of appendix J2. 79 FR 23067.

AHAM supports DOE's proposal to revise appendix J2 to include the entire active washing mode and exclude any delay start or cycle finished mode for each wash cycle tested. AHAM also supports DOE's proposal to remove the definitions for ''deep rinse'' and ''spray rinse'' from appendix J2. ALS also supports DOE's proposal to remove the definition of ''deep rinse cycle.''

DOE received no comments objecting to its proposal to revise section 3.2.8 of appendix J2 to include the entire active washing mode and exclude any delay start or cycle finished modes for each wash cycle tested, or to remove the definitions of deep rinse and spray rinse. Therefore, for the reasons stated above, this final rule incorporates these amendments in appendix J2.

M. Uniformly Distributed Warm Wash Temperatures

Section 1.17 of appendix J1 and section 1.32 of appendix J2 provide the definition of uniformly distributed warm wash temperature selections. Under this definition, a clothes washer has uniformly distributed warm wash temperature selections if (A) the warm wash temperatures have a linear relationship with all discrete warm wash selections when the water temperatures are plotted against equally spaced consecutive warm wash selections between the hottest warm wash and the coldest warm wash, and the mean water temperature of the warmest and the coldest warm selections coincide with the mean of the hot wash and cold wash water temperatures within ±3.8 °F; or (B) on a clothes washer with only one warm wash temperature selection, the warm wash temperature selection has a water temperature that coincides with the mean of the hot wash and cold wash water temperatures within ±3.8 14;°F. For clothes washers with uniformly distributed warm wash temperature selections, the reported values to be used for the warm wash setting are the arithmetic average of the measurements for the hot and cold wash selections. This is a ''shortcut'' calculation only; no testing is required.

DOE noted in the April 2014 NOPR that the criteria for determining whether the warm wash temperatures are uniformly distributed are based on water temperature only; total water consumption is not considered. 79 FR 23068. On a clothes washer with electronic control systems, a clothes washer's warm wash cycles could be programmed to use larger quantities of water than the cold wash and hot wash cycles, yet the data to be used to represent the warm wash cycle would be the average of the cold and hot wash cycles, rather than actual data from testing. 79 FR 23068. Since the warm wash temperature selection has the highest temperature use factor at 0.49, DOE proposed that the warm wash temperature selection(s) on such a clothes washer be tested. Therefore, DOE proposed to remove the definition of uniformly distributed warm wash temperature selections from both appendix J1 and appendix J2, and to remove any provisions within the test procedures pertaining to uniformly distributed warm wash temperature selections. *Id.*

In the April 2014 NOPR, DOE requested comment on any potential increase in test burden as a result of its proposal to eliminate the separate testing provisions for clothes washers with uniformly distributed warm wash temperatures. 79 FR 23068. DOE estimated that the resulting total testing time would be no greater than for clothes washers with the same number of warm wash temperature options, but with non-uniformly distributed temperatures, which DOE observed constitutes the majority of the market. *Id.*

The CA IOUs support DOE's proposal to remove the testing provisions for clothes washers with uniformly distributed wash temperatures. (CA IOUs, No. 3 at p. 5)

DOE received no comments objecting to its proposal to remove the definition of uniformly distributed warm wash temperature selections from both appendix J1 and appendix J2, and to remove the ''shortcut'' provisions within the test procedures pertaining to uniformly distributed warm wash temperature selections. Therefore, for the reasons stated above, this final rule incorporates these amendments into both appendix J1 and appendix J2.

N. Determining Extra-Hot Wash Temperature

Section 3.3 of both appendix J1 and appendix J2 defines Extra-Hot Wash as having a maximum wash temperature greater than 135 °F. Determining the maximum wash temperature requires measuring the water temperature during the wash cycle. DOE understands that, in practice, measuring the wash water temperature can be difficult due to factors such as the geometry of front-loading clothes container design, the increasing use of door locks, and, in high-efficiency clothes washers, the lack of a standing pool of wash water in which to measure the temperature.

In the April 2014 NOPR, DOE proposed adding guidance to section 3.3 of both appendix J1 and appendix J2 on one possible method for determining whether the maximum wash water temperature exceeds 135 °F. In the proposed method, non-reversible temperature indicator labels would be adhered to the inside of the clothes container to determine the maximum water temperature during an energy test cycle. 79 FR 23068. If the temperature indicator label method was used when testing a front-loading clothes washer, the label would be adhered along the inner circumference of the clothes container drum, midway between the front and the back of the clothes container. For a top-loading clothes washer, the label would be adhered along the inner circumference of the clothes container drum, as close to the bottom of the container as possible. *Id.*

DOE acknowledges that manufacturers may be able to use alternate methods for determining the maximum wash temperature during an energy test cycle; however, DOE is unaware of any other direct measurement methods that could be used by a third-party laboratory without requiring partial disassembly of the clothes washer or permanently altering the machine.

AHAM stated that it would need more information to evaluate DOE's proposal, including specifications for the labels that would be used to determine the maximum wash water temperature. Furthermore, AHAM suggested that DOE should not finalize its label approach until further study is done to demonstrate that the approach is repeatable and reproducible, and that the labels can be calibrated for accurate readings. Finally, AHAM stated that the temperature tolerance in the test procedure should correspond to the temperature tolerance in the measurement method. (AHAM, No. 4 at p. 12)

ALS stated that it is not aware of a source for waterproof, non-reversing temperature indicating labels that would remain adhered to the metal cylinder surface. Until more information is available regarding the source for such labels, their effectiveness, and their reliability, ALS does not support DOE's proposed wash water temperature measurement approach. (ALS, No. 5 at p. 5)

To address concerns raised in these comments, DOE investigated a non-reversible temperature label that provides temperature indicators in 5-degree increments between 105 °F and 120 °F and 10-degree increments between 120 °F and 160 °F. DOE is not

aware of any temperature labels from any manufacturer offering a temperature indicator of 135 °F.

For this final rule, DOE tested both top-loading and front-loading clothes washers using the methodology proposed in the April 2014 NOPR. DOE provides the results of these tests in a separate test report accompanying this final rule, which is available in the regulations.gov docket for this rulemaking.[29] The test report provides specific details regarding the temperature indicator labels that DOE tested.

DOE observed the following during these additional tests:

- The labels used for testing remained waterproof in all cases.
- The labels used for testing remained intact and adhered to the wash drum throughout the entire wash cycle, in both top-loading and front-loading clothes washers.
- Multiple labels tested in a single wash cycle demonstrated consistent maximum temperature readings.
- On front-loading clothes washers, labels placed adjacent to the wash drum baffles experienced less wear compared to labels located midway between two baffles.

DOE also performed testing to confirm the accuracy of these temperature indicators. Section 2.5.3 of appendix J1 and section 2.5.4 of appendix J2 specify an allowable error no greater than ±1 °F for a temperature measuring device over the range being measured. DOE's testing determined that the labels provide an average accuracy within ±1 °F for temperatures less than 120 °F, and an average accuracy within ±3 °F for temperatures 120 °F and greater. The calibrated temperatures recorded at the 140 °F indicator threshold ranged from 136.2 °F to 140.2 °F. Although the accuracy of the labels at 140 °F indicator threshold falls outside the range of ±1 °F, the pattern and range of activation temperatures observed by DOE suggests that activation of the 140 °F indicator on the label is sufficient to demonstrate that the maximum wash temperature exceeded 135 °F during the cycle under test.

DOE recognizes, however, that the 140 °F indicator may not activate at all wash temperatures greater than 135 °F and less than 140 °F. In such cases, other measurement techniques would still need to be used to identify an extra-hot wash temperature.

Based on these conclusions, this final rule amends section 3.3 of both appendix J1 and appendix J2 to allow (but not require) the use of a non-reversible temperature indicator label to confirm that an extra-hot wash temperature has been achieved during a wash cycle, provided that the label has been demonstrated to remain waterproof, intact, and adhered to the wash drum throughout an entire wash cycle; to provide consistent maximum temperature readings; and to provide repeatable temperature indications sufficient to demonstrate that a wash temperature of greater than 135 °F has been achieved. The amendments also clarify that the label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the label provides a temperature indicator at 135 °F. If the label does not provide a temperature indicator at 135 °F, the label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the next highest temperature indicator is greater than 135 °F and less than 140 °F, or ±3 °F if the next highest temperature indicator is 140 °F or greater. If the label does not provide a temperature indicator at 135 °F, DOE notes that failure to activate the next-highest temperature indicator does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be considered a valid test due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle.

In addition, the amendments incorporate the proposed guidance regarding placement of a temperature label within the clothing drum, with minor wording changes for clarification, and to further clarify that the temperature labels for front-loaders should be located adjacent to one of the baffles in the clothing drum.

O. Gas-Heated and Oil-Heated Hot Water Energy

Section 4.1.4 of both appendix J1 and appendix J2 provides equations for calculating per-cycle hot water energy consumption using gas-heated or oil-heated water. The result of this calculation is not used in any downstream calculations within the DOE test procedure. The calculated result is referenced within 10 CFR 430.23(j)(1)(i)(B) and (ii)(B); however, these values are not included as part of DOE's certification requirements for clothes washers in 10 CFR 429.20 and 429.46, nor are they required for other DOE regulatory purposes. DOE stated in the April 2014 NOPR that it was unaware of any other regulatory programs that require the calculation of per-cycle hot water energy using gas- or oil-heated water for clothes washers. Therefore, DOE proposed to remove section 4.1.4 from both appendix J1 and appendix J2, and to remove the related sections of 10 CFR 430.23(j)(1)(i)(B) and (ii)(B), adjusting the subsequent section numberings accordingly. 79 FR 23068.

AHAM supports DOE's proposal to remove the equations for calculating per-cycle hot water energy consumption using gas-heated or oil-heated water. (AHAM, No. 4 at p. 12)

ALS objects to DOE's proposal to remove the per-cycle gas hot water heating calculation from both appendix J1 and appendix J2, because this calculation is required by the Federal Trade Commission (FTC) under 16 CFR part 305, The Appliance Labeling Rule, for determining the ''Estimated Yearly Cost for Gas Water Heating'' on the clothes washer EnergyGuide label. (ALS, No. 5 at p. 5) ALS supports DOE's proposal to remove the calculation for per-cycle oil-heated hot water, because it is not used by either DOE or FTC. (ALS, No. 5 at p. 5)

DOE confirms that the FTC EnergyGuide label includes an estimated yearly cost for gas water heating, which is based on the calculation for determining per-cycle hot water energy consumption using gas-heated or oil-heater water in section 4.1.4 of both appendix J1 and appendix J2. Therefore, this final rule leaves intact this calculation in both appendix J1 and appendix J2, as well as the associated calculations in 10 CFR 430.23(j)(1)(i)(B) and (ii)(B). For clarification, DOE amends the title of section 4.1.4 to read, ''*Total per-cycle hot water energy consumption using gas-heated or oil-heated water, for product labeling requirements.*''

P. Out-of-Balance Loads

DOE has observed that some clothes washers may terminate the wash cycle prematurely if an out-of-balance condition is detected. Because the test procedure defines an energy test cycle as including the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to each cycle, the data from a wash cycle that terminates prematurely if an out-of-balance condition is detected, and thus does not include these required elements, should be discarded. In the April 2014 NOPR, DOE proposed amendments to provide this clarification in section 3.2 of appendix J1 and a new section 3.2.9 of appendix J2. 79 FR 23068.

[29] The docket for this rulemaking is available at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0009.*

AHAM supports DOE's attempt to clarify how out-of-balance loads should be addressed. (AHAM, No. 4 at p. 3) AHAM suggested that DOE add language to its proposal to indicate that if there is a visual or audio indicator that would alert the user about an out-of-balance load, the test should be stopped and the results discarded. (AHAM, No. 4 at p. 3) AHAM also suggested that to address possible circumvention concerns (*e.g.,* that a product would be designed to terminate at any indication of out-of-balance condition), that DOE consider a similar approach used in IEC 60456, section 9.1 and the related note,[30] which limits the number of additional test runs and requires reporting the reason for the rejection of a test run. (AHAM, No. 4 at p. 3)

ALS supports AHAM's suggestion regarding visual or audio indicators that communicate to the user when an out-of-balance load has occurred. (ALS, No. 5 at p. 5) ALS also supports AHAM's suggestion that DOE require reporting the reason for any rejection of a test run. (ALS, No. 5 at p. 5) ALS supports, with qualification, DOE's proposal concerning how to proceed or to know when an out-of-balance condition has occurred during an RMC test. ALS suggested that DOE provide more clarification as to when a test run should be considered invalid. (ALS, No. 5 at p. 5)

DOE agrees with commenters that if a clothes washer provides a visual or audio indicator that would alert a user that an out-of-balance condition has been detected, the test should be stopped and the results discarded. Therefore, this final rule adds this additional clarification to section 3.2 of appendix J1 and a new section 3.2.9 of appendix J2. Other than a visual or audio indicator, or early termination of a cycle, DOE is unaware of any other methods that a test laboratory could use to identify when an individual test run should be invalidated.

Section 9.1 of IEC 60456 Ed. 5.0, ''Clothes Washing Machines for Household Use—Methods for Measuring the Performance,'' [31] states the following:

> In case of an invalid test run (in either the test washing machine or the reference machine) neither the test run result in the test washing machine nor the corresponding test run result from the reference machine shall be used for any evaluation of that test washing machine within the test series.

The related note in section 8.2.5 states the following:

> NOTE Refer to 9.1 regarding evaluation of results where more than 5 test runs[32] are undertaken in a test series. The reason for rejection of a test run from a test series should be explained in the test report. . . . If more than one test run is invalid in a test series, then the whole test series is invalid, irrespective of the reason.

Unlike IEC 60456, which requires five identical test run replications to measure each aspect of clothes washer performance, the DOE test procedure does not require the replication of any identical test runs; *i.e.,* each DOE test run is only performed once, with each test run having a unique set of conditions including load size, wash/rinse temperature, and/or spin speed. The data from each unique test condition is required for the calculation of MEF/IMEF and WF/integrated water factor (IWF); therefore, a valid test run must be performed at each set of required conditions. The DOE test procedure cannot limit the number of attempts needed to obtain the data for a particular test condition if multiple test runs are invalided due to out-of-balance conditions. For this reason, DOE partially rejects AHAM's suggestion to use the approach in IEC 60456, section 9.1, and the related note to limit the number of additional test runs that would be required. However, DOE agrees with AHAM's suggestion that the reason for rejecting any test run during testing should be noted in the test report for that unit.

For these reasons, this final rule implements DOE's proposal to discard any data from a wash cycle that terminates prematurely due to an out-of-balance load condition or provides a visual or audio indicator to alert the user that an out-of-balance condition has been detected. The amendments also require documenting the rejection of any test run and the reason for the rejection in the test report for that unit. These amendments apply to section 3.2 of appendix J1 and a new section 3.2.9 of appendix J2.

Q. Reordering of Section 2, Testing Conditions

In the April 2014 NOPR, DOE proposed reordering the subsections within section 2 of appendix J2 (Testing Conditions) to improve the clarity and overall flow of the section. 79 FR 23068. After reordering, the general progression of section 2 would be as follows:

- Laboratory infrastructure requirements
- Instrumentation requirements
- Test cloth requirements
- Test load composition and handling
- Clothes washer installation and preconditioning procedures
- Energy test cycle determination

DOE received no comments objecting to its proposal to reorder the subsections within section 2 of appendix J2 to improve the clarity and overall flow of the section. Therefore, for the reasons stated above, this final rule incorporates these amendments into appendix J2.

R. Table 3.2 Edits

Table 3.2 in both appendix J1 and appendix J2 defines the sections within the test procedure that govern the tests of particular clothes washers, based on the number of wash/rinse temperature selections available on the model. In the April 2014 NOPR, DOE proposed clarifying one of the headings in Table 3.2 of appendix J1. 79 FR 23068. DOE also proposed amending the current heading, ''Number of wash temp. selections'' to ''Number of wash temp. selections in the energy test cycle.'' In addition, DOE proposed fixing a typographical error in Table 3.2 in appendix J1 regarding the misspelling of the word ''heating.'' *Id.*

DOE also proposed simplifying the overall structure of Table 3.2 in appendix J2 (renumbered 3.2.2) by using the clarified wash/rinse temperature nomenclature within the revised energy test cycle definition and flowcharts. As stated in the April 2014 NOPR, DOE does not intend for any of the required test sections to change as a result of the proposed revisions to the table. 79 FR 23068–23069.

DOE received no comments objecting to its proposal to amend Table 3.2 in both appendix J1 and appendix J2. Therefore, for the reasons stated above, this final rule incorporates these amendments.

S. Table 4.1.1 Edits

Table 4.1.1 in appendix J2 provides the temperature use factors. In the April 2014 NOPR, DOE proposed improving the clarity of the overall structure of Table 4.1.1 in appendix J2 by reorganizing the columns in the table to more closely match the wash/rinse temperature nomenclature within the revised energy test cycle definition and flowcharts. 79 FR 23069. As explained in the April 2014 NOPR, DOE does not

[30] Section 9.1 of IEC 60456 does not contain a note. DOE infers from the context of AHAM's comment that AHAM is referring to the note in section 8.2.5, which references section 9.1, and states that the reason for rejection of a test run from a test series should be explained in the test report.

[31] IEC 60456 Ed. 5.0 is available at *http://webstore.iec.ch/webstore/webstore.nsf/artnum/043760.*

[32] IEC 60456 requires completing five test runs to measure each aspect of clothes washer performance, which includes the following: Washing performance, rinsing performance, water extraction performance, and water and energy measurement.

intend for any of the temperature use factors to change as a result of the proposed revisions to the table. *Id.*

DOE received no comments objecting to its proposal to amend Table 4.1.1 in appendix J2 to improve its clarity and overall structure. Therefore, for the reasons stated above, this final rule incorporates this amendment into appendix J2.

T. Table 2.8 Edits

Table 2.8 in appendix J2 (''Test Load Sizes and Water Fill Settings Required'') contains a formatting error that combined the average and minimum test load sizes into a single row for clothes washers with an adaptive water fill control system. In the April 2014 NOPR, DOE proposed amending the layout of Table 2.8 in both appendix J1 and appendix J2 to improve its overall clarity. 79 FR 23069. DOE also proposed changing the heading of the relevant column to ''automatic water fill control system'' rather than ''adaptive water fill control system.'' *Id.*

DOE received no comments objecting to its proposal to amend Table 2.8 in both appendix J1 and appendix J2 to correct a formatting error and improve its overall clarity. Therefore, for the reasons stated above, this final rule incorporates these amendment into appendix J1 and appendix J2.

U. Replacing ''Consumer'' With ''User''

Both appendix J1 and appendix J2 refer to the ''consumer'' in various parts of the test procedures. In each instance, the word ''consumer'' refers to the individual using the clothes washer. DOE notes that the word ''consumer'' may be misconstrued as the original purchaser or owner of the clothes washer. In some cases, particularly coin-operated laundries and multi-family housing common laundry rooms, the purchaser or owner of the clothes washer is not the end user of the clothes washer.

The distinction between the owner and the end user may be relevant to the test procedure if certain settings, such as water fill levels, may be customized by the owner of the clothes washer but are not adjustable by the end user. To prevent any possible ambiguity implied by the word ''consumer,'' DOE proposed in the April 2014 NOPR replacing the word ''consumer'' with ''user'' or ''end user'' throughout the test procedures in all instances where the word ''consumer'' is currently used. 79 FR 23061, 23069 (Apr. 25, 2014).

ALS supports DOE's proposal to replace the word ''consumer'' with the word ''user'' in all instances, because CCWs need to have the distinction that the test provisions are relevant to the end-user and not the purchaser of the laundry equipment. (ALS, No. 5 at p. 5)

DOE received no comments objecting to its proposal to replace the word ''consumer'' with ''user'' or ''end user.'' Therefore, for the reasons stated above, this final rule implements these changes throughout appendix J1 and appendix J2.

V. Test Procedure Provisions in 10 CFR 430.23

In the April 2014 NOPR, DOE proposed revising section 430.23(j)(3) to contain only the provisions for calculating annual water consumption when using either appendix J1 or appendix J2. 79 FR 23069. DOE proposed adding a new section 430.23(j)(4) containing the provisions for determining water factor and integrated water factor. *Id.*

DOE also proposed creating a new section 430.23(j)(5) containing the following statement: ''Other useful measures of energy consumption for automatic or semi-automatic clothes washers shall be those measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions and that are derived from the application of appendix J1 or appendix J2, as appropriate.'' 79 FR 23069. This statement is currently contained in section 430.23(j)(3). Moving the statement to a dedicated subsection would maintain consistency with DOE's test procedure provisions for other products within 10 CFR part 430. In its proposal, DOE noted that the measurement or reporting of any additional measures of energy or water consumption would be adopted through the rulemaking process. *Id.*

Finally, to eliminate any potential ambiguity, DOE proposed replacing the phrase ''can be determined'' with ''must be determined'' throughout the text of 10 CFR 430.23(j)(3) through (j)(5). 79 FR 23069.

ALS supports DOE's proposed amendments to paragraphs (j)(3) through (j)(5) under 10 CFR part 430.23. (ALS, No. 5 at pp. 2–3) ALS also supports DOE's proposal to replace the word ''shall'' with ''must'' to avoid ambiguity. ALS added that most safety standards use the word ''shall,'' and then add a note clarifying that it means ''mandatory.'' However, ALS believes that the word ''must'' assures that the item needs to be done and conveys a much stronger meaning than the word ''shall,'' which is often considered as an optional directive.

DOE received no comments objecting to its proposal to amend 10 CFR 430.23(j)(3) through (j)(5) to improve overall clarity and consistency. Therefore, for the reasons stated above, this final rule implements these changes.

W. Reporting and Verification Requirements

1. Remaining Moisture Content

DOE has observed the potential for significant variation in the RMC measurement at the maximum spin speed setting on some clothes washer models. During testing of front-loading clothes washer models, DOE observed that the maximum target spin speed may not be achieved during the final spin portion of the cycle if the load size is not evenly distributed around the circumference of the wash drum. DOE believes that in such cases, the spin speed may be automatically reduced as a safety precaution and to prevent damage to the clothes washer caused by the asymmetric rotation of the unbalanced load within the wash basket.

In the April 2014 NOPR, DOE presented example RMC test data obtained from one front-loading clothes washer model. 79 FR 23069–23070. DOE performed the RMC measurement using the cold wash cycle at the maximum available spin speed setting. The RMC measurement was performed a total of twelve times using three different test cloth lots. The corrected RMC measurement [33] varied between 32.3 percent and 46.2 percent, with an average of 37.0 percent. *Id.* DOE explained that it has observed similar variations of this magnitude on multiple front-loading clothes washer models. *Id.*

The RMC measurement is used to determine the per-cycle energy consumption for removal of moisture from the test load—*i.e.,* the ''drying energy'' portion of the MEF and IMEF calculations. The drying energy represents between 59 and 87 percent of a clothes washer's total energy consumption; [34] hence, the RMC

[33] Corrected RMC measurements are obtained using the test cloth correction factors developed for each test cloth lot, as applied in section 2.6.7 of appendix J1 and appendix J2. DOE publishes a list of the test cloth correction factors developed for test cloth Lots 5 through 20 at *http://www2.eere.energy.gov/buildings/appliance_standards/residential/clothes_washer_test_cloth_correction.html.*

[34] Percentages derived from Table 7.2.1 and 7.2.2 in the May 31, 2012 direct final rule technical support document for the residential clothes washer energy conservations standards rulemaking, available at *http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0019-0047.*

measurement significantly impacts the overall MEF and IMEF calculations.

In the April 2014 NOPR, DOE also proposed adding a new section 3.8.5 in both appendix J1 and appendix J2 to specify that manufacturers may perform up to two additional replications of the RMC measurement, for a total of three independent RMC measurements for the tested unit, and use the average of the three measurements as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load. 79 FR 23070.

DOE also proposed adding the RMC measurement to the list of public product-specific information contained in the certification reports for RCWs, as described in 10 CFR 429.20(b)(2)(i) and (ii). DOE also proposed creating a new section, 10 CFR 429.20(a)(4), which would specify that the certified RMC value of any clothes washer basic model shall be the mean of the final RMC value measured for all tested units of the basic model. 79 FR 23070.

Finally, DOE proposed creating another new section, 10 CFR 429.134(c)(1), which would specify that during assessment or enforcement testing, the measured RMC value of a tested unit would be considered the tested unit's final RMC value if the measured RMC value was within two RMC percentage points of the certified RMC value of the basic model (expressed as a percentage), or if the measured RMC value was lower than the certified RMC value. 79 FR 23070. DOE proposed a threshold of two RMC percentage points because such a variation would limit the variation in the overall MEF or IMEF calculation to roughly five percent. *Id.*

For cases where the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE proposed performing two additional replications of the RMC measurement, each pursuant to the provisions of newly added section 3.8.5 of appendix J1 and appendix J2, for a total of three independent RMC measurements of the tested unit. 79 FR 23070. Under DOE's proposal, the average of the three RMC measurements would be considered the tested unit's final RMC value and would be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit. *Id.*

AHAM agrees with DOE's proposal to add a new section to both appendix J1 and appendix J2 to specify that manufacturers may perform up to two additional replications of the RMC measurement, for a total of three independent RMC measurements for the tested unit, and use the average of the three measurements as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load. (AHAM, No. 4 at p. 13) AHAM acknowledges that these multiple measurements could increase test burden; however, AHAM believes the benefit outweighs the potential increase in test burden. (AHAM, No. 4 at p. 13)

AHAM does not oppose DOE's proposal to add the RMC measurement to the list of public product-specific information contained in certification reports for RCWs. AHAM stated that it assumes that DOE is proposing to make this information publicly available to give a reference point to third-party test laboratories who might be conducting verification testing, and that based on that reasoning, AHAM does not oppose the proposal. (AHAM, No. 4 at p. 13)

AHAM noted that DOE provided example RMC test data obtained from testing one front-loading clothes washer, but could more fully evaluate DOE's conclusions if DOE had provided additional data on similar testing conducted on other models. (AHAM, No. 4 at p. 13)

AHAM and ALS support DOE's proposed approach for measuring RMC during assessment or enforcement testing. (AHAM, No. 4 at p. 13; ALS, No. 5 at p. 2))

ALS supports DOE's proposed revisions to 10 CFR 429.20(b)(2)(i) and (b)(2)(ii). (ALS, No. 5 at p. 1)

DOE received no comments objecting to its proposal to allow performing up to three RMC replications, adding the RMC measurement to the list of public product-specific information contained in the certification reports for RCWs, and adding a new approach for measuring RMC during assessment or enforcement testing. Therefore, for the reasons stated above, this final rule implements these amendments as proposed in the April 2014 NOPR.

2. Rounding Requirements for All Reported Values

In the April 2014 NOPR, DOE proposed adding a new paragraph at 10 CFR 429.20(c) to specify the rounding requirements of all reported values for RCWs as follows: MEF and IMEF to the nearest 0.01 cu ft/kWh/cycle, WF and IWF to the nearest 0.1 gal/cycle/cu ft, RMC to the nearest 0.1 percentage point, and clothes container capacity to the nearest 0.1 cu ft. 79 FR 23070.

AHAM and ALS support DOE's proposed specification of rounding requirements for MEF and IMEF, WF and IWF, RMC, and clothes container capacity. (AHAM, No. 4 at pp.13–14; ALS, No. 5 at p.1)

DOE received no comments objecting to its proposal to add a new paragraph at 10 CFR 429.20(c) to specify rounding requirements for all reported values for RCWs. Therefore, for the reasons stated above, this final rule implements this amendment.

3. Energy Test Cycle Selections

10 CFR 429.20(b)(3) requires certification reports based on testing conducted in accordance with appendix J2 to include a list of all cycle selections comprising the complete energy test cycle for each basic model. Because the difference in wording of the energy test cycle definition in appendix J1 makes cycle selections less clear, DOE proposed in the April 2014 NOPR amending 10 CFR 429.20(b)(3) to require a list of all cycle selections comprising the complete energy test cycle for each basic model, regardless of whether the certification is based on testing conducted in accordance with appendix J1 or appendix J2. 79 FR 23070.

AHAM opposes DOE's proposal to revise its regulations to require a list of all cycle selections comprising the complete energy test cycle for each basic model, regardless of whether the certification is based on testing conducted in accordance with appendix J1 or appendix J2. AHAM noted that this amendment would only affect appendix J1 testing and that it is unlikely that the proposed requirement will ever be mandatory. AHAM believes it is too late to make the energy test cycle selection reporting requirement changes, and believes the changes will also increase certification reporting burden. (AHAM, No. 4 at p.14)

ALS supports DOE's proposed amendment to 10 CFR 429.20(b)(3) to require a list of all cycle selections comprising the complete energy test cycle for each basic model. (ALS, No. 5 at p. 1, 2) ALS questioned why the proposed wording in 429.20(b)(3) uses the word ''shall'' rather than the word ''must.'' (ALS, No. 5 at p. 2)

The potential ambiguity regarding energy test cycle selection under appendix J1 primarily affects RCWs, more so than CCWs, due to the increasing use of electronic control panels on RCWs, which provide numerous cycle selection options. Because the use of appendix J2 became mandatory on March 7, 2015 for RCWs, and only CCWs will continue to use appendix J1, this final rule retains the current requirement in 10 CFR 429.20(b)(3) to include a list of all cycle selections comprising the complete energy test cycle for each basic model

only when using appendix J2. DOE is, however, amending this requirement in this final rule to use the word ''must'' rather than ''shall.''

4. Product Firmware Updates

In response to the April 2014 NOPR, the CA IOUs suggested that DOE should evaluate the potential for firmware updates to materially affect the energy and water use of products. The CA IOUs proposed that if firmware updates significantly affect the energy and water use of products, DOE should assess how such changes should be managed through certified energy and water ratings. The CA IOUs recommended that DOE consider requiring manufacturers to report the magnitude of the anticipated impact on annual energy consumption associated with firmware upgrades when they are released. (CA IOUs, No. 3 at p. 4)

DOE is aware of clothes washer models on the market that offer the capability to download custom wash cycles directly from the manufacturer. DOE has observed that as currently implemented on the market, such downloadable cycles are typically niche cycles that would not be considered part of the DOE energy test cycle. However, DOE believes that this technology could be readily used to update the Normal cycle, or any alternate cycles that may be included in the energy test cycle, which could change the energy and water use of the cycle used for DOE testing.

If a manufacturer provides new or modified cycle settings for an already-certified basic model, DOE believes that the new or modified cycle settings must be included among the suite of options considered when determining the energy test cycle. Thus, if one of the new or modified cycle settings that becomes available would meet the criteria to be selected as part of the energy test cycle, and including the new or modified cycle settings would invalidate the basic model's ratings (*i.e.,* the rating would no longer be supported by the test data underlying the certification), then the manufacturer would be required to retest, rerate, and recertify as a new basic model.

To provide further clarification of this in the test procedure, this final rule adds the following statement to newly created section 1.8(D) in appendix J1 and newly renumbered section 2.12 in appendix J2: ''The determination of the energy test cycle must take into consideration all cycle settings available to the end user for the basic model under test, including any cycle selections or cycle attributes associated with that basic model that are provided by the manufacturer via software or firmware updates.''

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, 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 DOE 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 reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The final rule amends DOE's test procedure by codifying guidance interpreting DOE's existing regulations, providing further clarifying interpretation of the relevant test procedure provisions, correcting formatting errors, providing improved overall organization, and removing certain testing provisions within the current test procedures. DOE has concluded that this final rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the 2007 North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335224, which applies to household laundry equipment manufacturers and includes RCW manufacturers, is 1,000 employees. Searches of the SBA Web site [35] to identify clothes washer manufacturers within this NAICS code identified one small business. This small business manufactures laundry appliances, including RCWs.

The threshold number for NAICS classification code 333312—which applies to commercial laundry, dry cleaning, and pressing machine manufacturers—is 500 employees. Searches of the SBA Web site to identify CCW manufacturers within this NAICS classification number did not identify any small businesses that manufacture CCWs. Additionally, DOE checked its own publicly available Compliance Certification Database [36] to identify manufacturers of CCWs and also did not identify any manufacturers of CCWs that employ less than 500 people.

DOE estimates that the clarified description of the capacity measurement would take the same amount of time to conduct as the capacity measurement as described in the current DOE test procedure. DOE believes that use of an alternate bracing method for front-loading clothes washers that do not contain shipping bolts or other bracing hardware is already current practice among manufacturers of such clothes washers. Additionally, DOE notes that the identified small business produces only a single platform of top-loading clothes washers, for which the proposed alternate bracing method would not be applicable.

DOE assessed the potential increased testing burden associated with maintaining a five degree tolerance on supply water temperatures for clothes washers in which electrical energy consumption or water energy consumption are affected by the inlet water temperature. One method for achieving this temperature tolerance would be to use electronically

[35] A searchable database of certified small businesses is available online at: *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

[36] DOE's Compliance Certification Database is available online at: *http://www.regulations.doe.gov/certification-data.*

controlled water mixing valves on both the cold and hot water supply lines. DOE estimates a capital cost of approximately $2,500 for installing electronically controlled water mixing valves on a single test stand. DOE notes that the identified small business currently does not manufacturer this type of clothes washer; therefore, DOE does not expect this final rule amendment to require any changes to the testing hardware currently used by the small business.

DOE does not expect any of the clarifications to the energy test cycle definition or the standby and off mode measurements to affect the total length of testing time. Regarding any potential increase in test burden as a result of eliminating the separate testing provisions for clothes washers with uniformly distributed warm wash temperatures, DOE notes that the total testing time would be no greater than for clothes washers with the same number of warm wash temperature options, but with non-uniformly distributed temperatures, which DOE observes constitutes the majority of the market. DOE also notes that the clothes washers manufactured by the identified small business do not contain uniformly distributed warm wash temperatures, and thus the small business will not be affected by this amendment.

Finally, the changes in this final rule are intended to clarify the existing test methods without adding any additional requirements and therefore would not result in additional burden.

For the reasons stated above, DOE certifies that these test procedure amendments would not have a significant impact on a substantial number of small entities. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of both residential and commercial clothes washers 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 clothes washers, 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 both residential and commercial clothes washers. 10 CFR part 429, subpart B. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

In the April 2014 NOPR, DOE estimated the public reporting burden for certification to be 20 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. AHAM commented that it disagreed with DOE's estimate of an average of 20 hours per response for public reporting burden for certification. According to AHAM, no clothes washer manufacturer reported a burden of less than 50 hours, and some manufacturers reported a burden as high as 100 hours. AHAM requested that DOE revise its public reporting burden estimate. (AHAM, No. 4 at p. 14)

DOE has amended its estimate to an average of 30 hours per company, which reflects that some manufacturers (particularly small businesses) may only submit 1 or 2 certification reports per year, while other manufacturers (such as many of the large companies represented by AHAM) may submit a certification report as often as once a week. This requirement has been approved by OMB under OMB control number 1910–1400. *See* 80 FR 5099 (Jan. 30, 2015). 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

In this final rule, DOE amends its test procedure for clothes washers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on 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 examined this final rule and determined that it 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. 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(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), 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. 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 sections 3(a) and 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 resulting 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 proposed ''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; also available at *http://energy.gov/gc/office-general-counsel*. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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. The final rule will 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

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under 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 agencies to review most disseminations of information to the public under 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 OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated 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 if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

DOE is not requiring the use of any new commercial standards in this final rule, so these requirements do not apply.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before 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).

V. 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, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on July 17, 2015.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE amends parts 429 and 430 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 429.20 is amended by adding paragraphs (a)(3) and (4), revising paragraphs (b)(2)(i), (b)(2)(ii), and (b)(3), and adding paragraph (c) to read as follows:

§ 429.20 Residential clothes washers.

(a) * * *

(3) The capacity of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the measured clothes container capacity, C, of all tested units of the basic model.

(4) The remaining moisture content (RMC) of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the final RMC value measured for all tested units of the basic model.

(b) * * *

(2) * * *

(i) For residential clothes washers tested in accordance with Appendix J1: The modified energy factor (MEF) in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle), the capacity in cubic feet (cu ft), the corrected remaining moisture content (RMC) expressed as a percentage, and, for standard-size residential clothes washers, a water factor (WF) in gallons per cycle per cubic foot (gal/cycle/cu ft).

(ii) For residential clothes washers tested in accordance with Appendix J2: The integrated modified energy factor (IMEF) in cu ft/kWh/cycle, the integrated water factor (IWF) in gal/cycle/cu ft, the capacity in cu ft, the corrected remaining moisture content (RMC) expressed as a percentage, and the type of loading (top-loading or front-loading).

(3) Pursuant to § 429.12(b)(13), a certification report must include the following additional product-specific information: A list of all cycle selections comprising the complete energy test cycle for each basic model.

(c) *Reported values.* Values reported pursuant to this subsection must be rounded as follows: MEF and IMEF to the nearest 0.01 cu ft/kWh/cycle, WF and IWF to the nearest 0.1 gal/cycle/cu ft, RMC to the nearest 0.1 percentage point, and clothes container capacity to the nearest 0.1 cu ft.

■ 3. Section 429.134(c) is added to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(c) *Clothes washers.* (1) *Determination of Remaining Moisture Content.* The procedure for determining remaining moisture content (RMC) will be performed once in its entirety, pursuant to the test requirements of section 3.8 of appendix J1 and appendix J2 to subpart B of part 430, for each unit tested.

(i) The measured RMC value of a tested unit will be considered the tested unit's final RMC value if the measured RMC value is within two RMC percentage points of the certified RMC value of the basic model (expressed as a percentage), or is lower than the certified RMC value.

(ii) If the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE will perform two additional replications of the RMC measurement procedure, each pursuant to the provisions of section 3.8.5 of appendix J1 and appendix J2 to subpart B of part 430, for a total of three independent RMC measurements of the tested unit. The average of the three RMC measurements will be the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

(2) [Reserved].

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 5. Section 430.23 is amended by revising paragraph (j)(3) and adding paragraphs (j)(4) and (5) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(j) * * *

(3) The annual water consumption of a clothes washer must be determined as:

(i) When using appendix J1, the product of the representative average-use of 392 cycles per year and the total weighted per-cycle water consumption in gallons per cycle determined according to section 4.2.2 of appendix J1.

(ii) When using appendix J2, the product of the representative average-use of 295 cycles per year and the total weighted per-cycle water consumption for all wash cycles, in gallons per cycle, determined according to section 4.2.11 of appendix J2.

(4)(i) The water factor must be determined according to section 4.2.3 of appendix J1 (when using appendix J1) or section 4.2.12 of appendix J2 (when using appendix J2), with the result rounded to the nearest 0.1 gallons per cycle per cubic foot.

(ii) The integrated water factor must be determined according to section 4.2.13 of appendix J2, with the result rounded to the nearest 0.1 gallons per cycle per cubic foot.

(5) Other useful measures of energy consumption for automatic or semi-automatic clothes washers shall be those measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions and that are derived from the application of appendix J1 or appendix J2, as appropriate.

* * * * *

■ 6. Appendix J1 to subpart B of part 430 is amended by:

■ a. Revising the introductory text after the heading, and sections 1.1 and 1.2;

■ b. Removing section 1.17;

■ c. Redesignating the sections in the ''Old sections'' column into the sections in the ''New sections'' column as shown in the following table:

Old sections	New sections
1.18 through 1.23	1.19 through 1.24.
1.8 through 1.16	1.10 through 1.18.
1.3 through 1.7	1.4 through 1.8.

■ d. Adding new section 1.3;

■ e. Revising newly redesignated section 1.8;

■ f. Adding new section 1.9;

■ g. Revising newly redesignated sections 1.11 and 1.12;

■ h. Revising section 2.3;

■ i. Removing sections 2.3.1 and 2.3.2,

■ j. Revising section 2.6.4.6;

■ k. Removing sections 2.6.4.6.1 and 2.6.4.6.2;

■ l. Revising sections 2.6.5,

■ m. Removing sections, 2.6.6, and 2.6.7;

■ n. Revising section 2.8, Table 2.8, and section 2.8.3;

■ o. Adding sections 2.8.3.1. and 2.8.3.2;
■ p. Revising section 2.10;
■ q. Revising sections 3.1.1, 3.1.2, 3.1.4, and 3.1.5;
■ r. Adding section 3.1.6;
■ s. Revising section 3.2;
■ t. Removing section 3.2.1.3;
■ u. Revising sections 3.2.3, 3.2.3.1, 3.2.3.2, 3.2.3.2.2, and 3.2.3.3, Table 3.2, and sections 3.3, 3.3.3, 3.4.3, 3.5, 3.5.1, 3.5.2;
■ v. Removing sections 3.5.2.1, 3.5.2.2, and 3.5.2.3;
■ w. Adding section 3.5.3;
■ x. Revising section 3.6.3;
■ y. Adding section 3.8.5; and
■ z. Revising Table 4.1.3 and section 4.1.4.

The revisions and additions read as follows:

Appendix J1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-automatic Clothes Washers

Note: Any representation related to the energy or water consumption of a residential clothes washer must be based upon results generated using Appendix J2.

Before January 1, 2018, any representation related to the energy or water consumption of commercial clothes washers must be based on results generated using Appendix J1. Specifically, before February 1, 2016, representations must be based upon results generated either under this appendix or under Appendix J1 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2015. Any representations made on or after February 1, 2016, but before January 1, 2018, must be made based upon results generated using this appendix. Any representations made on or after January 1, 2018, must be based upon results generated using Appendix J2.

* * * * *

1.1 *Adaptive control system* means a clothes washer control system, other than an adaptive water fill control system, that is capable of automatically adjusting washer operation or washing conditions based on characteristics of the clothes load placed in the clothes container, without allowing or requiring user intervention or actions. The automatic adjustments may, for example, include automatic selection, modification, or control of any of the following: Wash water temperature, agitation or tumble cycle time, number of rinse cycles, or spin speed. The characteristics of the clothes load, which could trigger such adjustments, could, for example, consist of or be indicated by the presence of either soil, soap, suds, or any other additive laundering substitute or complementary product.

1.2 *Adaptive water fill control system* means a clothes washer automatic water fill control system that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container.

1.3 *Automatic water fill control system* means a clothes washer water fill control system that does not allow or require the user to determine or select the water fill level, and includes adaptive water fill control systems and fixed water fill control systems.

* * * * *

1.8 *Energy test cycle* for a basic model includes:

(A) All wash/rinse temperature selections and water levels offered in the cycle recommended by the manufacturer for washing cotton or linen clothes, and

(B) For each other wash/rinse temperature selection or water level available on that basic model, the portion(s) of other cycle(s) with that temperature selection or water level that, when tested pursuant to these test procedures, will contribute to an accurate representation of the energy consumption of the basic model as used by end users.

If a warm rinse temperature selection is available on the clothes washer but is not available in the cycle recommended for washing cotton or linen clothes, the energy test cycle shall include the warm rinse temperature selection in the cycle most comparable to the cycle recommended for washing cotton or linen clothes.

If an extra-hot temperature selection is available only on a sanitization cycle, the sanitization cycle should be included in the energy test cycle if the cycle is recommended by the manufacturer for washing clothing. If the extra-hot temperature selection is available only on a sanitization cycle not recommended by the manufacturer for washing clothing (*e.g.,* a cycle intended only for sanitizing the wash drum), such a cycle is not required for consideration as part of the energy test cycle.

(C) For clothes washers with electronic control systems, use the manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content. Specifically, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water-heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, or spin speed on wash cycles used to determine remaining moisture content) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing.

For clothes washers with control panels containing mechanical switches or dials, any optional settings, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content, must be in the position recommended by the manufacturer for washing normally soiled cotton clothing. If the manufacturer instructions do not recommend a particular switch or dial position to be used for washing normally soiled cotton clothing, the setting switch or dial must remain in its as-shipped position.

(D) The determination of the energy test cycle must take into consideration all cycle settings available to the end user, including any cycle selections or cycle modifications provided by the manufacturer via software or firmware updates to the product, for the basic model under test.

1.9 *Fixed water fill control system* means a clothes washer automatic water fill control system that automatically terminates the fill when the water reaches an appropriate level in the clothes container.

* * * * *

1.11 *Manual control system* means a clothes washer control system that requires that the user make the choices that determine washer operation or washing conditions, such as, for example, wash/rinse temperature selections, and wash time before starting the cycle.

1.12 *Manual water fill control system* means a clothes washer water fill control system that requires the user to determine or select the water fill level.

* * * * *

2.3 *Supply Water.* Maintain the temperature of the hot water supply at

the water inlets between 130 °F (54.4 °C) and 135 °F (57.2 °C), using 135 °F as the target temperature. Maintain the temperature of the cold water supply at the water inlets between 55 °F (12.8 °C) and 60 °F (15.6 °C), using 60 °F as the target temperature. A water meter shall be installed in both the hot and cold water lines to measure water consumption.

* * * * *

2.6.4.6 The moisture absorption and retention shall be evaluated for each new lot of test cloth by the standard extractor Remaining Moisture Content (RMC) test specified in appendix J3 to 10 CFR part 430 subpart B.

2.6.5 *Application of RMC correction curve.*

2.6.5.1 Using the coefficients A and B calculated in appendix J3 to 10 CFR part 430 subpart B:

$RMC_{corr} = A \times RMC + B$

2.6.5.2 Substitute RMC_{corr} values in calculations in section 3.8 of this appendix.

* * * * *

2.8 *Use of Test Loads.* Use the test load sizes and corresponding water fill settings defined in Table 2.8 when measuring water and energy consumptions. Automatic water fill control system and manual water fill control system are defined in section 1 of this appendix.

TABLE 2.8—REQUIRED TEST LOAD SIZES AND WATER FILL SETTINGS

Water fill control system type	Test load size	Water fill setting
Manual water fill control system	Max	Max.
	Min	Min.
Automatic water fill control system	Max	As determined by the clothes washer.
	Avg	
	Min	

* * * * *

2.8.3 Prepare the energy test cloths for loading by grasping them in the center, lifting, and shaking them to hang loosely, as illustrated in Figure 2.8.3 of this appendix.

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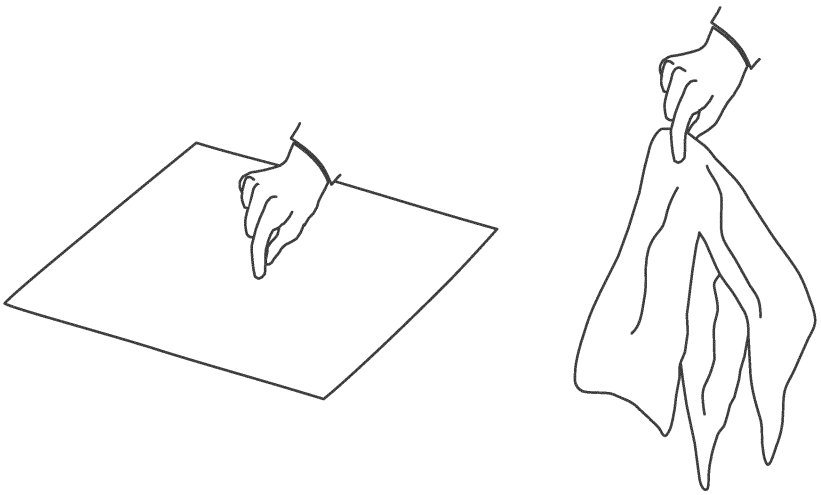
Figure 2.8.3—Grasping Energy Test Cloths in the Center, Lifting, and Shaking to Hang Loosely

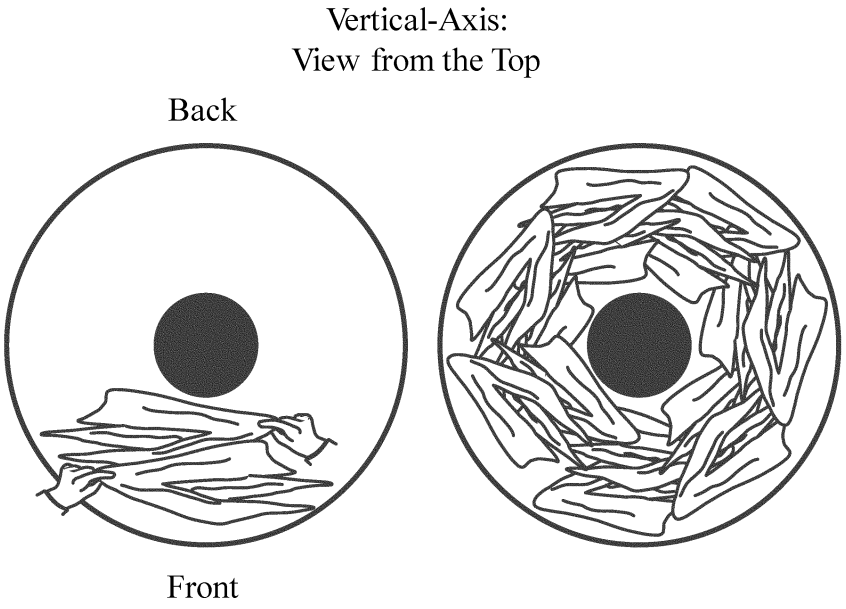


BILLING CODE 6450–01–C

For all clothes washers, follow any manufacturer loading instructions provided to the user regarding the placement of clothing within the clothes container. In the absence of any manufacturer instructions regarding the placement of clothing within the clothes container, the following loading instructions apply.

2.8.3.1 To load the energy test cloths in a top-loading clothes washer, arrange the cloths circumferentially around the axis of rotation of the clothes container, using alternating lengthwise orientations for adjacent pieces of cloth. Complete each cloth layer across its horizontal plane within the clothes container before adding a new layer. Figure 2.8.3.1 of this appendix illustrates the correct loading technique for a vertical-axis clothes washer.

Figure 2.8.3.1—Loading Energy Test Cloths into a Top-Loading Clothes Washer



2.8.3.2 To load the energy test cloths in a front-loading clothes washer, grasp each test cloth in the center as indicated in section 2.8.3 of this appendix, and then place each cloth into the clothes container prior to activating the clothes washer.

* * * * *

2.10 *Wash time setting.* If one wash time is prescribed in the energy test cycle, that shall be the wash time setting; otherwise, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available in the energy test cycle, regardless of the labeling of suggested dial locations. If 70% of the maximum wash time is not available on a dial with a discreet number of wash time settings, choose the next-highest setting greater than 70%. If the clothes washer is equipped with an electromechanical dial controlling wash time, reset the dial to the minimum wash time and then turn it in the direction of increasing wash time to reach the appropriate setting. If the appropriate setting is passed, return the dial to the minimum wash time and then turn in the direction of increasing wash time until the appropriate setting is reached.

3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water. For front-loading clothes washers, the door seal and shipping bolts or other forms of bracing hardware to support the wash drum during shipping must remain in place during the capacity measurement.

If the design of a front-loading clothes washer does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, a laboratory may support the wash drum by other means, including temporary bracing or support beams. Any temporary bracing or support beams must keep the wash drum in a fixed position, relative to the geometry of the door and door seal components, that is representative of the position of the wash drum during normal operation. The method used must avoid damage to the unit that would affect the results of the energy and water testing.

For a front-loading clothes washer that does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, the test report must document the alternative method used to support the wash drum during capacity measurement, and, pursuant to § 429.71 of this chapter, the manufacturer must retain such documentation as part of its test records.

3.1.2 Line the inside of the clothes container with a 2 mil thickness (0.051 mm) plastic bag. All clothes washer components that occupy space within the clothes container and that are recommended for use during a wash cycle must be in place and must be lined with a 2 mil thickness (0.051 mm) plastic bag to prevent water from entering any void space.

* * * * *

3.1.4 Fill the clothes container manually with either 60 °F ± 5 °F (15.6 °C ± 2.8 °C) or 100 °F ± 10 °F (37.8 °C ± 5.5 °C) water to its uppermost edge. For a top-loading, vertical-axis clothes washer, the uppermost edge of the clothes container is defined as the highest point of the innermost diameter of the tub cover. Figure 3.1.4.1 illustrates the maximum fill level for top-loading vertical-axis clothes washers. Figure 3.1.4.2 shows the location of the maximum fill level for a variety of example tub cover designs.

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Figure 3.1.4.1—Maximum Fill Level for the Clothes Container Capacity

Measurement of Top-Loading Vertical-Axis Clothes Washers

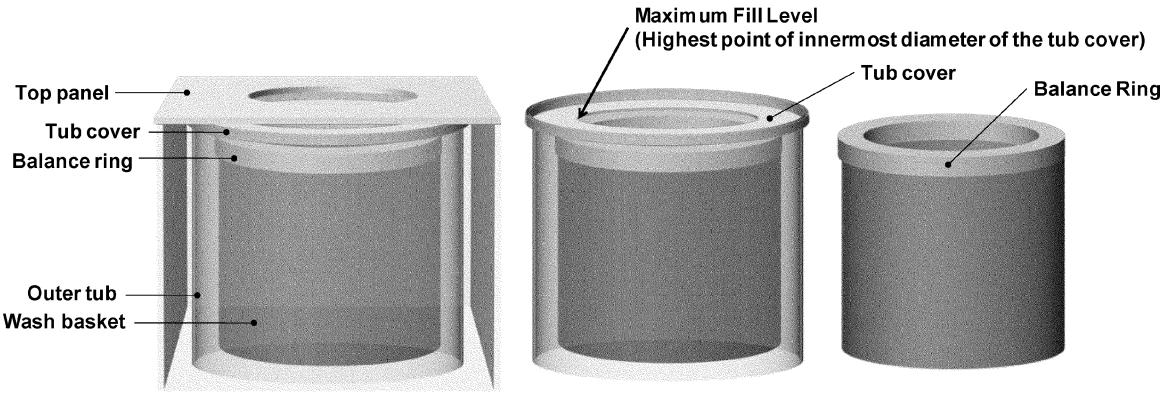
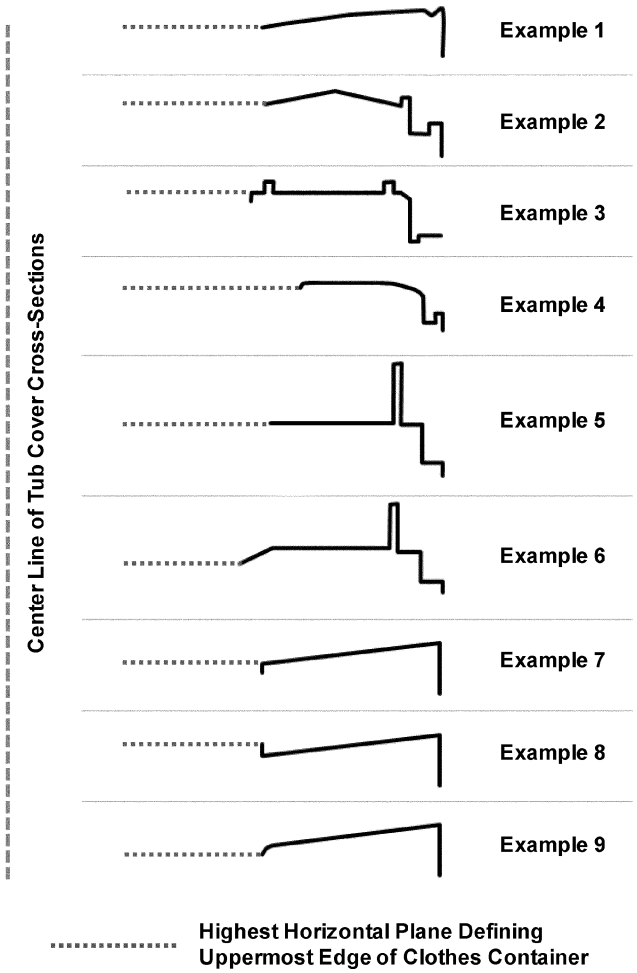


Figure 3.1.4.2— Example Cross-Sections of Tub Covers Showing the Highest Horizontal Plane Defining the Uppermost Edge of the Clothes Container



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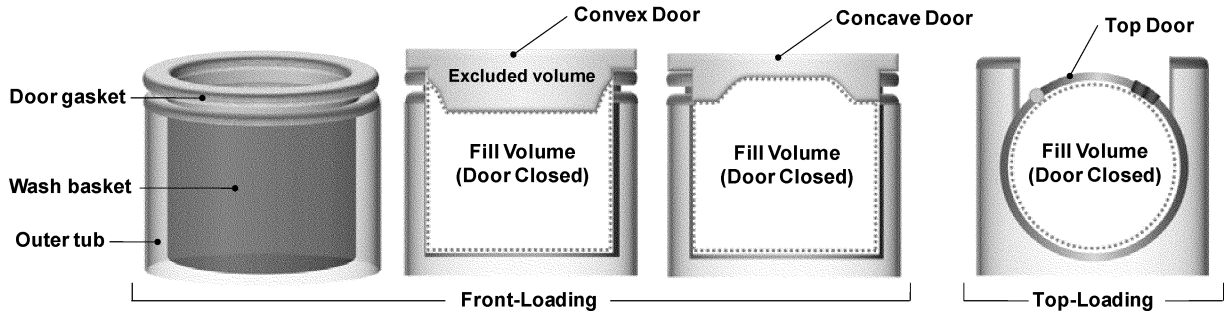
For a front-loading horizontal-axis clothes washer, fill the clothes container to the highest point of contact between the door and the door gasket. If any portion of the door or gasket would occupy the measured volume space when the door is closed, exclude the volume that the door or gasket portion

would occupy from the measurement. For a front-loading horizontal-axis clothes washer with a concave door shape, include any additional volume above the plane defined by the highest point of contact between the door and the door gasket, if that area can be occupied by clothing during washer operation. For a top-loading horizontal-axis clothes washer, include any additional volume above the plane of the door hinge that clothing could occupy during washer operation. Figure 3.1.4.3 illustrates the maximum fill volumes for all horizontal-axis clothes washer types.

Figure 3.1.4.3—Maximum Fill Volumes for the Clothes Container Capacity

Measurement of Horizontal-Axis Clothes Washers



For all clothes washers, exclude any volume that cannot be occupied by the clothing load during operation.

3.1.5 Measure and record the weight of water, W, in pounds. Calculate the clothes container capacity as follows:

$C = W/d$

where:

C = Capacity in cubic feet (liters).

W = Mass of water in pounds (kilograms).

d = Density of water (62.0 lbs/ft^3 for 100 °F (993 kg/m^3 for 37.8 °C) or 62.3 lbs/ft^3 for 60 °F (998 kg/m^3 for 15.6 °C)).

3.1.6 Calculate the clothes container capacity, C, to the nearest 0.01 cubic foot for the purpose of determining test load sizes per Table 5.1 of this appendix and for all subsequent calculations in this appendix that include the clothes container capacity.

* * * * *

3.2 *Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers.* All energy consumption tests shall be performed under the energy test cycle(s), unless otherwise specified. Table 3.2 indicates the sections below that govern tests of particular clothes washers, based on the number of wash/rinse temperature selections available on the model and also, in some instances, method of water heating. The procedures prescribed are applicable regardless of a clothes washer's washing capacity, loading port location, primary axis of rotation of the clothes container, and type of control system. Data from a wash cycle that provides a visual or audio indicator to alert the user that an out-of-balance condition has been detected, or that terminates prematurely if an out-of-balance condition is detected, and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test, shall be discarded. The test report must document the rejection of data from any wash cycle during testing and the reason for the rejection.

* * * * *

3.2.3 *Clothes washers with automatic water fill/manual water fill control systems*

3.2.3.1 *Clothes washers with automatic water fill control system and alternate manual water fill control system.* If a clothes washer with an automatic water fill control system allows user selection of manual controls as an alternative, then both manual and automatic modes shall be tested and, for each mode, the energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T) values shall be calculated as set forth in section 4. Then the average of the two values (one from each mode, automatic and manual) for each variable shall be used in section 4 for the clothes washer.

3.2.3.2 *Clothes washers with automatic water fill control system.*

* * * * *

3.2.3.2.2 *User-adjustable.* Four tests shall be conducted on clothes washers with user-adjustable automatic water fill controls that affect the relative wash water levels. The first test shall be conducted using the maximum test load and with the automatic water fill control system set in the setting that will give the most energy intensive result. The second test shall be conducted with the minimum test load and with the automatic water fill control system set in the setting that will give the least energy intensive result. The third test shall be conducted with the average test load and with the automatic water fill control system set in the setting that will give the most energy intensive result for the given test load. The fourth test shall be conducted with the average test load and with the automatic water fill control system set in the setting that will give the least energy intensive result for the given test load. The energy and water consumption for the average test load and water level shall be the average of the third and fourth tests.

3.2.3.3 *Clothes washers with manual water fill control system.* In accordance with Table 2.8, the water fill selector shall be set to the maximum water level available for the wash cycle under test for the maximum test load size and the minimum water level available for the wash cycle under test for the minimum test load size.

TABLE 3.2—TEST SECTION REFERENCE

Max. wash temp. available	≤135 °F (57.2 °C)			>135 °F (57.2 °C) [2]	
Number of wash temp. Selections in the energy test cycle	1	2	>2	3	>3
Test Sections Required to be Followed	.....	.....	.....	3.3	3.3
	.....	3.4	3.4	.....	3.4
	.....	.....	3.5	3.5	3.5
	3.6	3.6	3.6	3.6	3.6
	[1] 3.7	[1] 3.7	[1] 3.7	[1] 3.7	[1] 3.7
	3.8	3.8	3.8	3.8	3.8

[1] Only applicable to machines with warm rinse in any cycle.
[2] This only applies to water heating clothes washers on which the maximum wash temperature available exceeds 135 °F (57.2 °C).

3.3 *''Extra-Hot Wash'' (Max Wash Temp >135 °F (57.2 °C)) for water heating clothes washers only.* Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.3.1 through 3.3.3 for the hottest wash setting available.

Non-reversible temperature indicator labels, adhered to the inside of the clothes container, may be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle, under the following conditions. The label must remain waterproof, intact, and adhered to the wash drum throughout an entire wash cycle; provide consistent maximum temperature readings; and provide repeatable temperature indications sufficient to demonstrate that a wash temperature of greater than 135 °F has been achieved. The label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the label provides a temperature indicator at 135 °F. If the label does not provide a temperature indicator at 135 °F, the label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the next-highest temperature indicator is greater than 135 °F and less than 140 °F, or ±3 °F if the next-highest temperature indicator is 140 °F or greater. If the label does not provide a temperature indicator at 135 °F, failure to activate the next-highest temperature indicator does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be considered a valid test due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle.

If using a temperature indicator label to test a front-loading clothes washer, adhere the label along the interior surface of the clothes container drum, midway between the front and the back of the drum, adjacent to one of the baffles. If using a temperature indicator label to test a top-loading clothes washer, adhere the label along the interior surface of the clothes container drum, on the vertical portion of the sidewall, as close to the bottom of the container as possible.

* * * * *

3.3.3 *Average test load and water fill.* For clothes washers with an automatic water fill control system, measure the values for hot water consumption (Hm_a), cold water consumption (Cm_a), and electrical energy consumption (Em_a) for an extra-hot wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

* * * * *

3.4.3 *Average test load and water fill.* For clothes washers with an automatic water fill control system, measure the values for hot water consumption (Hh_a), cold water consumption (Ch_a), and electrical energy consumption (Eh_a) for a hot wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

* * * * *

3.5 *''Warm Wash.''* Water and electrical energy consumption shall be determined for each water fill level and/or test load size as specified in 3.5.1 through 3.5.3 for the applicable warm water wash temperature(s). For a clothes washer with fewer than four discrete warm wash selections, test all warm wash temperature selections. For a clothes washer that offers four or more warm wash selections, test at all discrete selections, or test at the 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection use the next warmer setting. Each reportable value to be used for the warm water wash setting shall be the arithmetic average of the results from all tests conducted pursuant to this section.

3.5.1 *Maximum test load and water fill.* Hot water consumption (Hwx), cold water consumption (Cwx), and electrical energy consumption (Ewx) shall be measured with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1.

3.5.2 *Minimum test load and water fill.* Hot water consumption (Hwn), cold water consumption (Cwn), and electrical energy consumption (Ewn) shall be measured with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1.

3.5.3 *Average test load and water fill.* For clothes washers with an automatic water fill control system, measure the values for hot water consumption (Hwa), cold water consumption (Cwa), and electrical energy consumption (Ewa) with an average test load size as determined per Table 5.1.

* * * * *

3.6.3 *Average test load and water fill.* For clothes washers with an automatic water fill control system, measure the values for hot water consumption (Hc_a), cold water consumption (Cc_a), and electrical energy consumption (Ec_a) for a cold wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

* * * * *

3.8.5 The procedure for calculating RMC as defined in section 3.8.2.5, 3.8.3.3., or 3.8.4 of this appendix may be replicated twice in its entirety, for a total of three independent RMC measurements. If three replications of the RMC measurement are performed, use the average of the three RMC measurements as the final RMC in section 4.3 of this appendix.

* * * * *

TABLE 4.1.3—LOAD USAGE FACTORS

Load usage factor	Water fill control system	
	Manual	Automatic
F_{max} =	0.72 [1]	0.12 [2]
F_{avg} =	.....	0.74 [2]
F_{min} =	0.28 [1]	0.14 [2]

[1]Reference 3.2.3.3.
[2]Reference 3.2.3.2.

4.1.4 *Total per-cycle hot water energy consumption using gas-heated or oil-heated water, for product labeling requirements.* Calculate for the energy test cycle the per-cycle hot water consumption, HE_{TG}, using gas-heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$HE_{TG} = HE_T \times 1/e \times 3412$ Btu/kWh or
$HE_{TG} = HE_T \times 1/e \times 3.6$ MJ/kWh

where:

e = Nominal gas or oil water heater efficiency = 0.75.

HE_T = As defined in 4.1.3.

* * * * *

■ 7. Appendix J2 to subpart B of part 430 is revised to read as follows:

Appendix J2 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-automatic Clothes Washers

Note: Any representation related to the energy or water consumption of residential clothes washers must be based upon results generated using Appendix J2. Specifically, before February 1, 2016, representations must be based upon results generated either under this appendix or under Appendix J2 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2015. Any representations made on or after February 1, 2016 must be made based upon results generated using this appendix.

Before January 1, 2018, any representation related to the energy or water consumption of commercial clothes washers must be based on results generated using Appendix J1. Any representations made on or after January 1, 2018, must be based upon results generated using Appendix J2.

1. Definitions and Symbols

1.1 *Active mode* means a mode in which the clothes washer is connected to a mains power source, has been activated, and is performing one or more of the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing, or is involved in functions necessary for these main functions, such as admitting water into the washer or pumping water out of the washer. Active mode also includes delay start and cycle finished modes.

1.2 *Active washing mode* means a mode in which the clothes washer is performing any of the operations included in a complete cycle intended for washing a clothing load, including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing.

1.3 *Adaptive control system* means a clothes washer control system, other than an adaptive water fill control system, that is capable of automatically adjusting washer operation or washing conditions based on characteristics of the clothes load placed in the clothes container, without allowing or requiring user intervention or actions. The automatic adjustments may, for example, include automatic selection, modification, or control of any of the following: wash water temperature, agitation or tumble cycle time, number of rinse cycles, or spin speed. The characteristics of the clothes load, which could trigger such adjustments, could, for example, consist of or be indicated by the presence of either soil, soap, suds, or any other additive laundering substitute or complementary product.

1.4 *Adaptive water fill control system* means a clothes washer automatic water fill control system that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container.

1.5 *Automatic water fill control system* means a clothes washer water fill control system that does not allow or require the user to determine or select the water fill level, and includes adaptive water fill control systems and fixed water fill control systems.

1.6 *Bone-dry* means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

1.7 *Clothes container* means the compartment within the clothes washer that holds the clothes during the operation of the machine.

1.8 *Cold rinse* means the coldest rinse temperature available on the machine, as indicated to the user on the clothes washer control panel.

1.9 *Combined low-power mode* means the aggregate of available modes other than active washing mode, including inactive mode, off mode, delay start mode, and cycle finished mode.

1.10 *Compact* means a clothes washer that has a clothes container capacity of less than 1.6 ft^3 (45 L).

1.11 *Cycle finished mode* means an active mode that provides continuous status display, intermittent tumbling, or air circulation following operation in active washing mode.

1.12 *Delay start mode* means an active mode in which activation of active washing mode is facilitated by a timer.

1.13 *Energy test cycle* means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12. Within the energy test cycle, the following definitions apply:

(a) *Cold Wash/Cold Rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.1 of this appendix.

(b) *Hot Wash/Cold Rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.2 of this appendix.

(c) *Warm Wash/Cold Rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.3 of this appendix.

(d) *Warm Wash/Warm Rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.4 of this appendix.

(e) *Extra-Hot Wash/Cold Rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.5 of this appendix.

1.14 *Fixed water fill control system* means a clothes washer automatic water fill control system that automatically terminates the fill when the water reaches an appropriate level in the clothes container.

1.15 *IEC 62301* means the test standard published by the International Electrotechnical Commission, entitled ''Household electrical appliances—Measurement of standby power,'' Publication 62301, Edition 2.0 2011–01 (incorporated by reference; see § 430.3).

1.16 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.17 *Integrated modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of:

(a) The machine electrical energy consumption;

(b) The hot water energy consumption;

(c) The energy required for removal of the remaining moisture in the wash load; and

(d) The combined low-power mode energy consumption.

1.18 *Integrated water factor* means the quotient of the total weighted per-cycle water consumption for all wash cycles in gallons divided by the cubic foot (or liter) capacity of the clothes washer.

1.19 *Load usage factor* means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

1.20 *Lot* means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

1.21 *Manual control system* means a clothes washer control system that requires that the user make the choices that determine washer operation or washing conditions, such as, for example, wash/rinse temperature selections and wash time, before starting the cycle.

1.22 *Manual water fill control system* means a clothes washer water fill control system that requires the user to determine or select the water fill level.

1.23 *Modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

1.24 *Non-water-heating clothes washer* means a clothes washer that does not have an internal water heating device to generate hot water.

1.25 *Normal cycle* means the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.

1.26 *Off mode* means a mode in which the clothes washer is connected to a mains power source and is not providing any active or standby mode function, and where the mode may persist for an indefinite time.

1.27 *Roll* means a subset of a lot.

1.28 *Standard* means a clothes washer that has a clothes container capacity of 1.6 ft^3 (45 L) or greater.

1.29 *Standby mode* means any mode in which the clothes washer is connected to a mains power source and offers one or more of the following user oriented or protective functions that may persist for an indefinite time:

(a) Facilitating the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.30 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

C—Capacity
C (with subscripts)—Cold Water Consumption
D—Energy Consumption for Removal of Moisture from Test Load
E—Electrical Energy Consumption
F—Load Usage Factor
H—Hot Water Consumption
HE—Hot Water Energy Consumption
ME—Machine Electrical Energy Consumption
P—Power
Q—Water Consumption
RMC—Remaining Moisture Content
S—Annual Hours
TUF—Temperature Use Factor
V—Temperature-Weighted Hot Water Consumption
W—Mass of Water
WC—Weight of Test Load After Extraction
WI—Initial Weight of Dry Test Load

Subscripts:

a or avg—Average Test Load
c—Cold Wash (minimum wash temp.)
corr—Corrected (RMC values)
h—Hot Wash (maximum wash temp. ≤135 °F (57.2 °C))
ia—Inactive Mode
LP—Combined Low-Power Mode
m—Extra-Hot Wash (maximum wash temp. >135 °F (57.2 °C))
n—Minimum Test Load
o—Off Mode
oi—Combined Off and Inactive Modes
T—Total
w—Warm Wash
ww—Warm Wash/Warm Rinse
x—Maximum Test Load

The following examples are provided to show how the above symbols can be used to define variables:

Em_x = ''Electrical Energy Consumption'' for an ''Extra-Hot Wash'' and ''Maximum Test Load''

HE_{min} = ''Hot Water Energy Consumption'' for the ''Minimum Test Load''

Qh_{min} = ''Water Consumption'' for a ''Hot Wash'' and ''Minimum Test Load''

TUF_m = ''Temperature Use Factor'' for an ''Extra-Hot Wash''

1.31 *Temperature use factor* means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

1.32 *Thermostatically controlled water valves* means clothes washer controls that have the ability to sense and adjust the hot and cold supply water.

1.33 *Water factor* means the quotient of the total weighted per-cycle water consumption for cold wash divided by the cubic foot (or liter) capacity of the clothes washer.

1.34 *Water-heating clothes washer* means a clothes washer where some or all of the hot water for clothes washing is generated by a water heating device internal to the clothes washer.

2. Testing Conditions

2.1 *Electrical energy supply.*

2.1.1 *Supply voltage and frequency.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120, 120/240, or 120/208Y volts as applicable to the particular terminal block wiring system and within 2 percent of the nameplate frequency as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct test at the highest voltage specified by the manufacturer.

2.1.2 *Supply voltage waveform.* For the combined low-power mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301. If the power measuring instrument used for testing is unable to measure and record the total harmonic content during the test measurement period, total harmonic content may be measured and recorded immediately before and after the test measurement period.

2.2 *Supply water.* Maintain the temperature of the hot water supply at the water inlets between 130 °F (54.4 °C) and 135 °F (57.2 °C), using 135 °F as the target temperature. Maintain the temperature of the cold water supply at the water inlets between 55 °F (12.8 °C) and 60 °F (15.6 °C), using 60 °F as the target temperature.

2.3 *Water pressure.* Maintain the static water pressure at the hot and cold

water inlet connection of the clothes washer at 35 pounds per square inch gauge (psig) ± 2.5 psig (241.3 kPa ± 17.2 kPa) when the water is flowing.

2.4 *Test room temperature.* For all clothes washers, maintain the test room ambient air temperature at 75 ± 5 °F (23.9 ± 2.8 °C) for active mode testing and combined low-power mode testing. Do not use the test room ambient air temperature conditions specified in Section 4, Paragraph 4.2 of IEC 62301 for combined low-power mode testing.

2.5 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.5.1 *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale used for weighing test cloth must have a resolution of no larger than 0.2 oz (5.7 g) and a maximum error no greater than 0.3 percent of the measured value.

2.5.1.2 *Weighing scale for clothes container capacity measurement.* The scale used for performing the clothes container capacity measurement must have a resolution no larger than 0.50 lbs (0.23 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter used to measure electrical energy consumption must have a resolution no larger than 1 Wh (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 Wh (180.0 kJ).

2.5.3 *Watt meter.* The watt meter used to measure combined low-power mode power consumption must comply with the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference, see § 430.3). If the power measuring instrument used for testing is unable to measure and record the crest factor, power factor, or maximum current ratio during the test measurement period, the crest factor, power factor, and maximum current ratio may be measured and recorded immediately before and after the test measurement period.

2.5.4 *Water and air temperature measuring devices.* The temperature devices used to measure water and air temperature must have an error no greater than ±1 °F (±0.6 °C) over the range being measured.

2.5.5 *Water meter.* A water meter must be installed in both the hot and cold water lines to measure water flow and/or water consumption. The water meters must have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured.

2.5.6 *Water pressure gauge.* A water pressure gauge must be installed in both the hot and cold water lines to measure water pressure. The water pressure gauges must have a resolution of 1 pound per square inch gauge (psig) (6.9 kPa) and a maximum error no greater than 5 percent of any measured value.

2.6 *Bone dryer temperature.* The dryer used for bone drying must heat the test cloth load above 210°F (99 °C).

2.7 *Test cloths.*

2.7.1 *Energy test cloth.* The energy test cloth must be made from energy test cloth material, as specified in section 2.7.4 of this Appendix, that is 24 ± ½ inches by 36 ± ½ inches (61.0 ± 1.3 cm by 91.4 ± 1.3 cm) and has been hemmed to 22 ± ½ inches by 34 ± ½ inches (55.9 ± 1.3 cm by 86.4 ± 1.3 cm) before washing. The energy test cloth must be clean and must not be used for more than 60 test runs (after preconditioning as specified in 2.7.3 of this appendix). All energy test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer.

2.7.2 *Energy stuffer cloth.* The energy stuffer cloth must be made from energy test cloth material, as specified in section 2.7.4 of this Appendix, that is 12 ± ¼ inches by 12 ± ¼inches (30.5 ± 0.6 cm by 30.5 ± 0.6 cm) and has been hemmed to 10 ± ¼ inches by 10 ± ¼ inches (25.4 ± 0.6 cm by 25.4 ± 0.6 cm) before washing. The energy stuffer cloth must be clean and must not be used for more than 60 test runs (after preconditioning as specified in section 2.7.3 of this Appendix). All energy stuffer cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer.

2.7.3 *Preconditioning of test cloths.* The new test cloths, including energy test cloths and energy stuffer cloths, must be pre-conditioned in a clothes washer in the following manner:

Perform five complete wash-rinse-spin cycles, the first two with AHAM Standard Detergent Formula 3 and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 27.0 grams + 4.0 grams per pound of cloth load of AHAM Standard detergent Formula 3. The wash temperature is to be controlled to 135 °F ± 5 °F (57.2 °C ± 2.8 °C) and the rinse temperature is to be controlled to 60 °F ±5 °F (15.6 °C ± 2.8 °C). Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (for a total of five complete wash-rinse-spin cycles).

2.7.4 *Energy test cloth material.* The energy test cloths and energy stuffer cloths must be made from fabric meeting the following specifications:

2.7.4.1 The test cloth material should come from a roll of material with a width of approximately 63 inches and approximately 500 yards per roll. However, other sizes may be used if the test cloth material meets the specifications listed in sections 2.7.4.2 through 2.7.4.7.

2.7.4.2 *Nominal fabric type.* Pure finished bleached cloth made with a momie or granite weave, which is nominally 50 percent cotton and 50 percent polyester.

2.7.4.3 *Fabric weight.* 5.60 ± 0.25 ounces per square yard (190.0 ± 8.4 g/m^2).

2.7.4.4 *Thread count.* 65 × 57 per inch (warp × fill), ±2 percent.

2.7.4.5 *Fiber content of warp and filling yarn.* 50 percent ±4 percent cotton, with the balance being polyester, open end spun, 15/1 ±5 percent cotton count blended yarn.

2.7.4.6 Water repellent finishes, such as fluoropolymer stain resistant finishes, must not be applied to the test cloth. Verify the absence of such finishes using both of the following:

2.7.4.6.1 AATCC Test Method 118–2007 (incorporated by reference; see § 430.3) for each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard™ or other water repellent finish (required scores of ''D'' across the board).

2.7.4.6.2 AATCC Test Method 79–2010 (incorporated by reference; see § 430.3) for each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard™ or other water repellent finish (time to absorb one drop should be on the order of 1 second).

2.7.4.7 The maximum shrinkage after preconditioning must not be more than 5 percent of the length and width. Measure per AATCC Test Method 135–2010 (incorporated by reference; see § 430.3).

2.7.5 The moisture absorption and retention must be evaluated for each new lot of test cloth using the standard extractor Remaining Moisture Content (RMC) procedure specified in Appendix J3 to 10 CFR part 430 subpart B.

2.8 *Test load sizes.* Use Table 5.1 of this appendix to determine the maximum, minimum, and, when required, average test load sizes based on the clothes container capacity as measured in section 3.1 of this appendix. Test loads must consist of energy test cloths and no more than five

energy stuffer clothes per load to achieve the proper weight.

Use the test load sizes and corresponding water fill settings defined in Table 2.8 of this appendix when measuring water and energy consumption. Use only the maximum test load size when measuring RMC.

TABLE 2.8—REQUIRED TEST LOAD SISZES AND WATER FILL SETTINGS

Water fill control system type	Test load size	Water fill setting
Manual water fill control system	Max	Max.
	Min	Min.
Automatic water fill control system	Max	As determined by the clothes washer.
	Avg	
	Min	

2.9 *Use of test loads.*

2.9.1 Test loads for energy and water consumption measurements must be bone dry prior to the first cycle of the test, and dried to a maximum of 104 percent of bone dry weight for subsequent testing.

2.9.2 Prepare the energy test cloths for loading by grasping them in the center, lifting, and shaking them to hang loosely, as illustrated in Figure 2.9.2 of this appendix.

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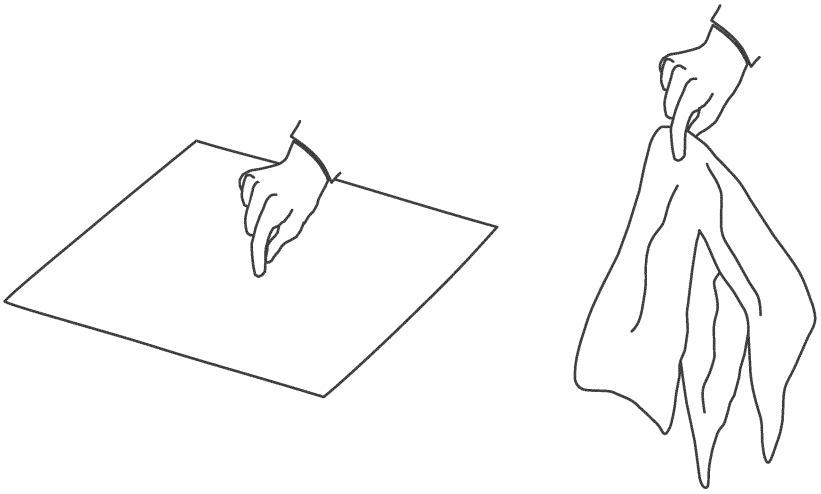
Figure 2.9.2—Grasping Energy Test Cloths in the Center, Lifting, and Shaking to Hang Loosely



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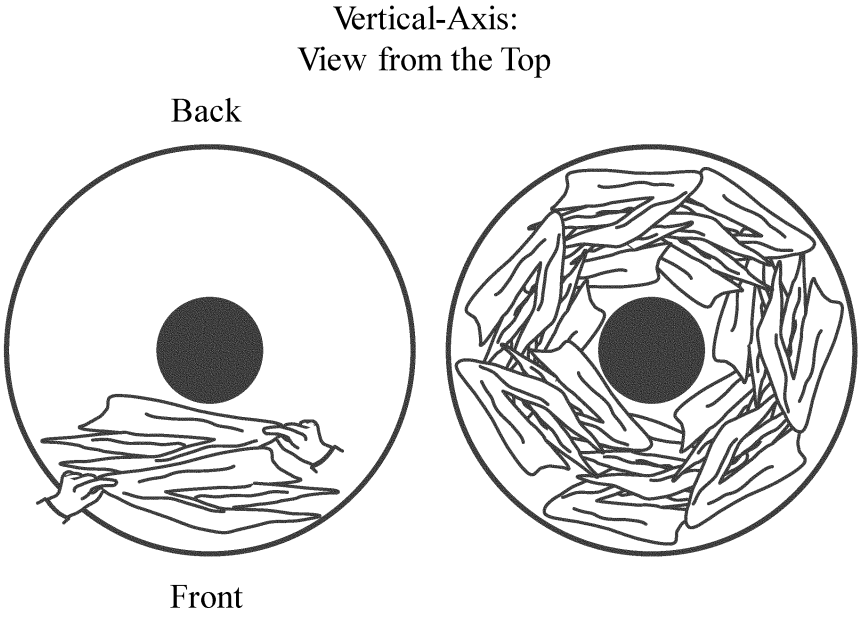
For all clothes washers, follow any manufacturer loading instructions provided to the user regarding the placement of clothing within the clothes container. In the absence of any manufacturer instructions regarding the placement of clothing within the clothes container, the following loading instructions apply.

2.9.2.1 To load the energy test cloths in a top-loading clothes washer, arrange the cloths circumferentially around the axis of rotation of the clothes container, using alternating lengthwise orientations for adjacent pieces of cloth. Complete each cloth layer across its horizontal plane within the clothes container before adding a new layer. Figure 2.9.2.1 of this appendix illustrates the correct loading technique for a vertical-axis clothes washer.

Figure 2.9.2.1—Loading Energy Test Cloths into a Top-Loading Clothes Washer



2.9.2.2 To load the energy test cloths in a front-loading clothes washer, grasp each test cloth in the center as indicted in section 2.9.2 of this appendix, and then place each cloth into the clothes container prior to activating the clothes washer.

2.10 *Clothes washer installation.* Install the clothes washer in accordance with manufacturer's instructions. For combined low-power mode testing, install the clothes washer in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.11 *Clothes washer pre-conditioning.*

2.11.1 *Non-water-heating clothes washer.* If the clothes washer has not been filled with water in the preceding 96 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.11.2 *Water-heating clothes washer.* If the clothes washer has not been filled with water in the preceding 96 hours, or if it has not been in the test room at the specified ambient conditions for 8 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.12 *Determining the energy test cycle.* To determine the energy test cycle, evaluate the wash/rinse temperature selection flowcharts in the order in which they are presented in this section. The determination of the energy test cycle must take into consideration all cycle settings available to the end user, including any cycle selections or cycle modifications provided by the manufacturer via software or firmware updates to the product, for the basic model under test. The energy test cycle does not include any cycle that is recommended by the manufacturer exclusively for cleaning, deodorizing, or sanitizing the clothes washer.

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Figure 2.12.1—Determination of Cold Wash/Cold Rinse

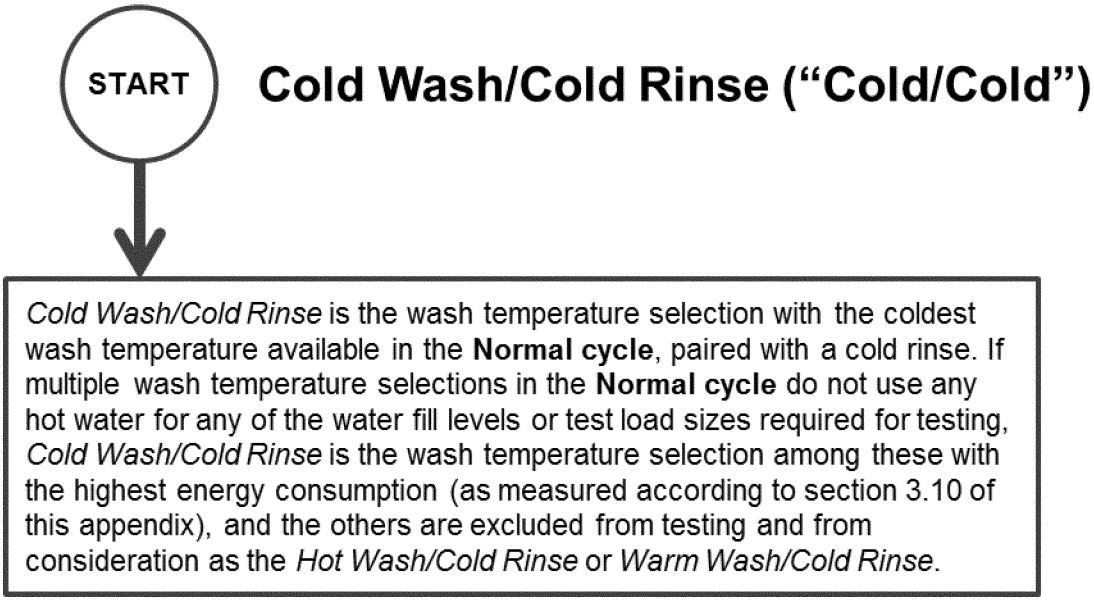


Figure 2.12.2—Determination of Hot Wash/Cold Rinse

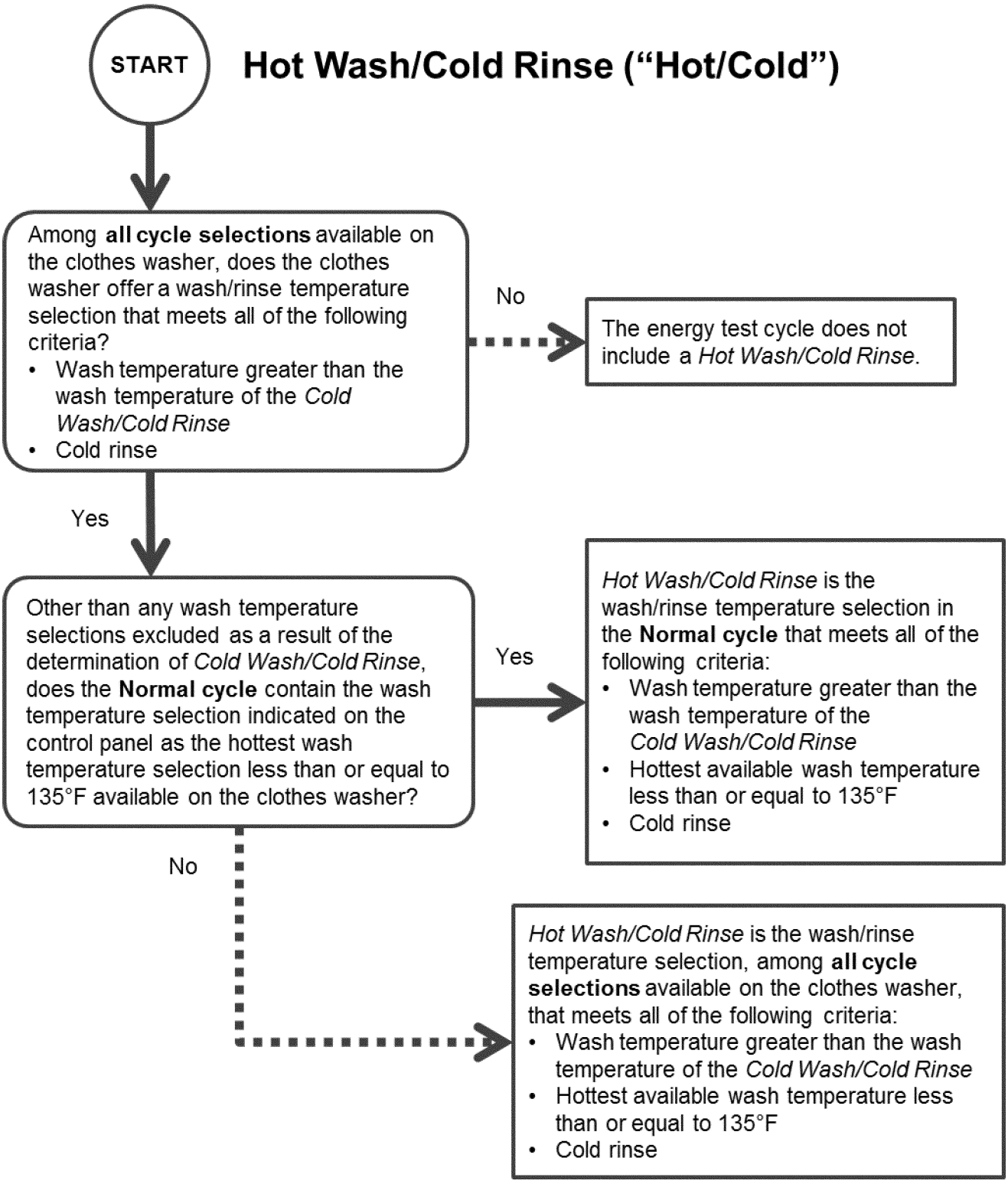


Figure 2.12.3—Determination of Warm Wash/Cold Rinse

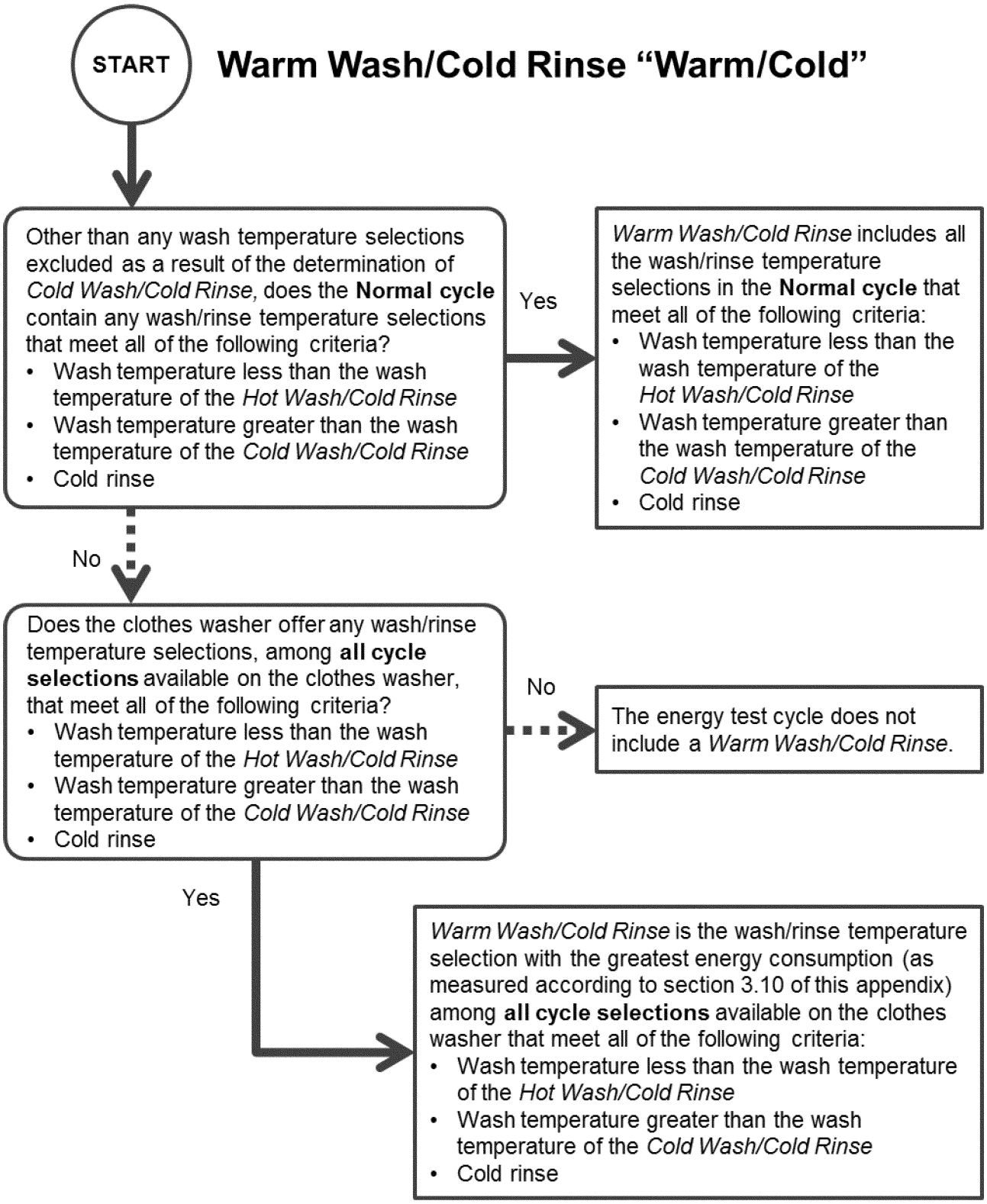


Figure 2.12.4—Determination of Warm Wash/Warm Rinse

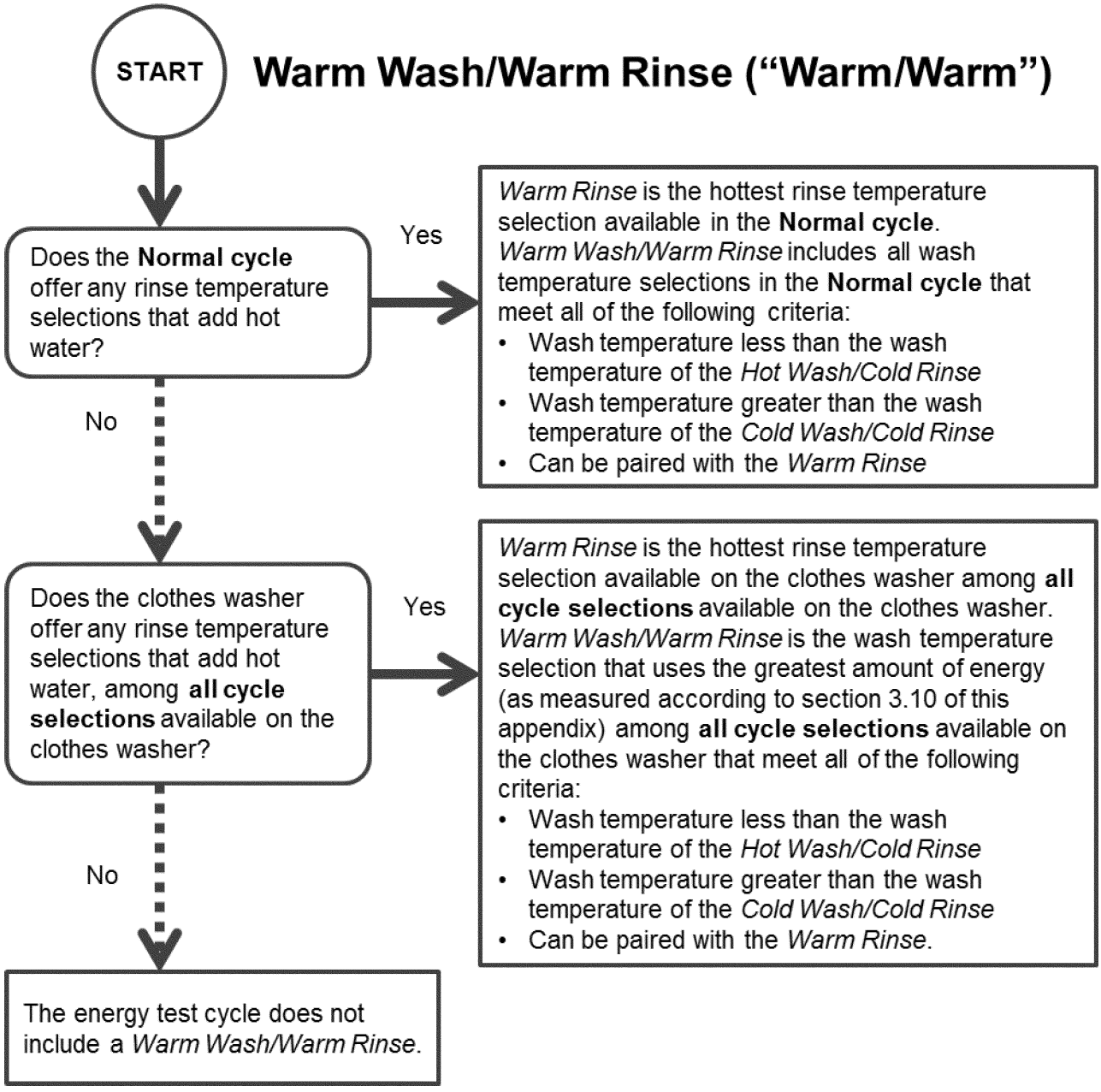
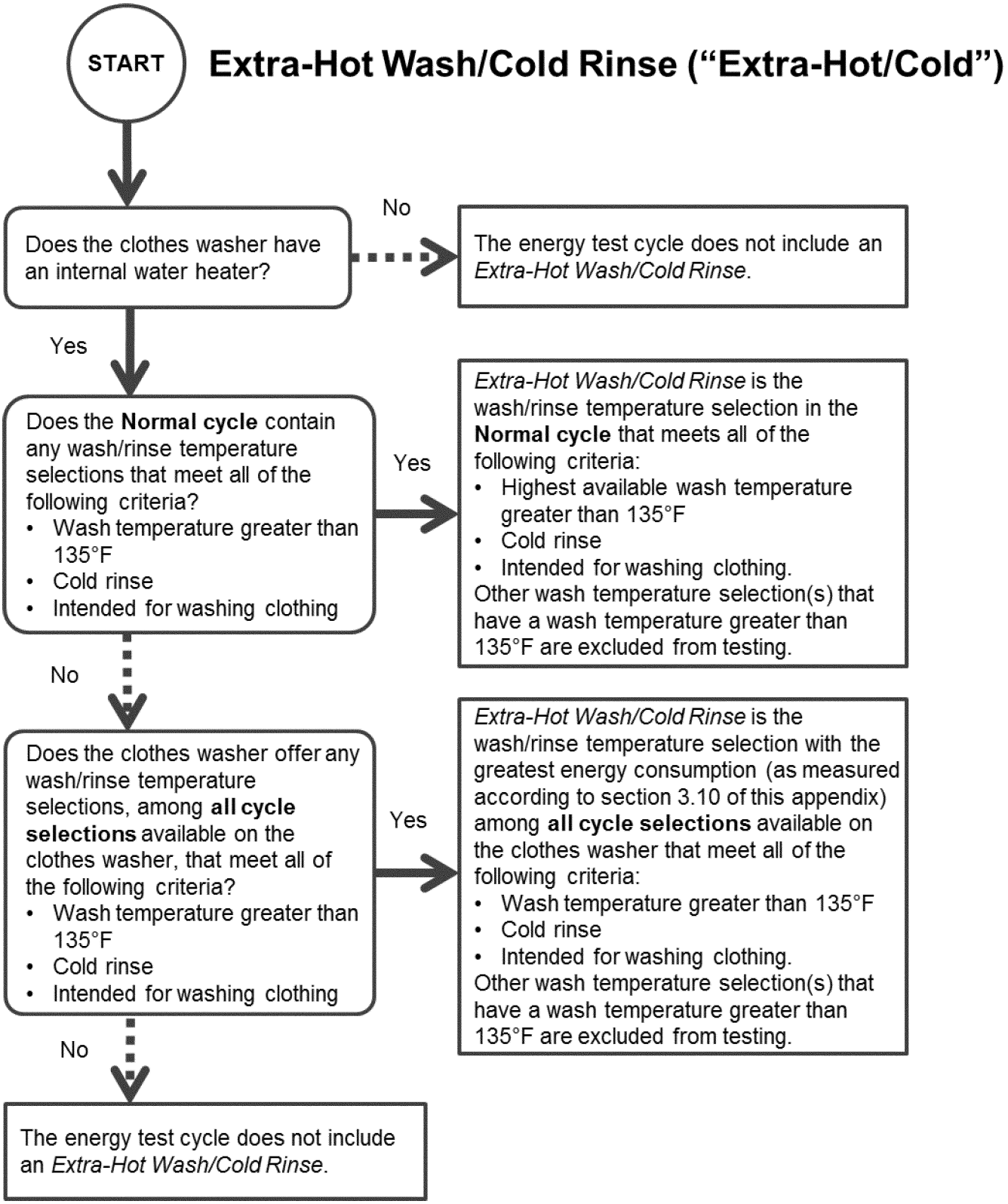


Figure 2.12.5—Determination of Extra-Hot Wash/Cold Rinse



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3. Test Measurements

3.1 *Clothes container capacity.* Measure the entire volume that a clothes load could occupy within the clothes container during active mode washer operation according to the following procedures:

3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water. For front-loading clothes washers, the door seal and shipping bolts or other forms of bracing hardware to support the wash drum during shipping must remain in place during the capacity measurement.

If the design of a front-loading clothes washer does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, a laboratory may support the wash drum by other means, including temporary bracing or support beams. Any temporary bracing or support beams must keep the wash drum in a fixed position, relative to the geometry of the door and door seal components, that is representative of the position of the wash drum during normal operation. The method used must avoid damage to the unit that would affect the results of the energy and water testing.

For a front-loading clothes washer that does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, the laboratory must fully document the alternative method used to support the wash drum during capacity measurement, include such documentation in the final test report, and pursuant to § 429.71 of this chapter, the manufacturer must retain such documentation as part its test records.

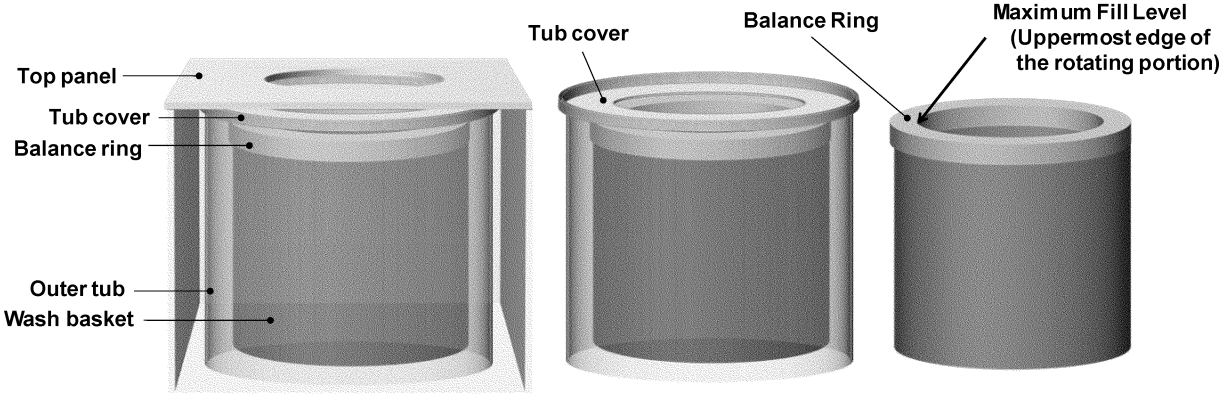
3.1.2 Line the inside of the clothes container with a 2 mil thickness (0.051 mm) plastic bag. All clothes washer components that occupy space within the clothes container and that are recommended for use during a wash cycle must be in place and must be lined with a 2 mil thickness (0.051 mm) plastic bag to prevent water from entering any void space.

3.1.3 Record the total weight of the machine before adding water.

3.1.4 Fill the clothes container manually with either 60 °F ± 5 °F (15.6 °C ± 2.8 °C) or 100 °F ± 10 °F (37.8 °C ± 5.5 °C) water, with the door open. For a top-loading vertical-axis clothes washer, fill the clothes container to the uppermost edge of the rotating portion, including any balance ring. Figure 3.1.4.1 of this appendix illustrates the maximum fill level for top-loading clothes washers.

Figure 3.1.4.1—Maximum Fill Level for the Clothes Container Capacity

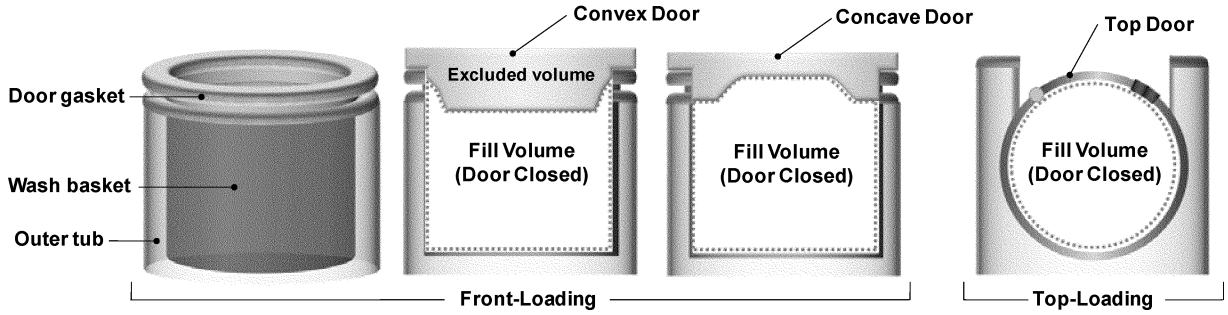
Measurement of Top-Loading Vertical-Axis Clothes Washers



For a front-loading horizontal-axis clothes washer, fill the clothes container to the highest point of contact between the door and the door gasket. If any portion of the door or gasket would occupy the measured volume space when the door is closed, exclude from the measurement the volume that the door or gasket portion would occupy. For a front-loading horizontal-axis clothes washer with a concave door shape, include any additional volume above the plane defined by the highest point of contact between the door and the door gasket, if that area can be occupied by clothing during washer operation. For a top-loading horizontal-axis clothes washer, include any additional volume above the plane of the door hinge that clothing could occupy during washer operation. Figure 3.1.4.2 of this appendix illustrates the maximum fill volumes for all horizontal-axis clothes washer types.

Figure 3.1.4.2—Maximum Fill Volumes for the Clothes Container Capacity

Measurement of Horizontal-Axis Clothes Washers



For all clothes washers, exclude any volume that cannot be occupied by the clothing load during operation.

3.1.5 Measure and record the weight of water, W, in pounds.

3.1.6 Calculate the clothes container capacity as follows:

$$C = W/d$$

where:

C = Capacity in cubic feet (liters).
W = Mass of water in pounds (kilograms).
d = Density of water (62.0 lbs/ft^3 for 100 °F (993 kg/m^3 for 37.8 °C) or 62.3 lbs/ft^3 for 60 °F (998 kg/m^3 for 15.6 °C)).

3.1.7 Calculate the clothes container capacity, C, to the nearest 0.01 cubic foot for the purpose of determining test load sizes per Table 5.1 of this appendix and for all subsequent calculations that include the clothes container capacity.

3.2 *Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers.*

3.2.1 Perform all energy consumption tests under the energy test cycle.

3.2.2 Perform the test sections listed in Table 3.2.2 in accordance with the wash/rinse temperature selections available in the energy test cycle.

TABLE 3.2.2—TEST SECTION REFERENCE

Wash/rinse temperature selections available in the energy test cycle	Corresponding test section reference
Extra-Hot/Cold	3.3
Hot/Cold	3.4
Warm/Cold	3.5
Warm/Warm	3.6
Cold/Cold	3.7
Test Sections Applicable to all Clothes Washers	
Remaining Moisture Content	3.8

TABLE 3.2.2—TEST SECTION REFERENCE—Continued

Wash/rinse temperature selections available in the energy test cycle	Corresponding test section reference
Combined Low-Power Mode Power	3.9

3.2.3 *Hot and cold water faucets.*

3.2.3.1 For automatic clothes washers, open both the hot and cold water faucets.

3.2.3.2 For semi-automatic washers:

(1) For hot inlet water temperature, open the hot water faucet completely and close the cold water faucet;

(2) For warm inlet water temperature, open both hot and cold water faucets completely;

(3) For cold inlet water temperature, close the hot water faucet and open the cold water faucet completely.

3.2.4 *Wash/rinse temperature selection.* Set the wash/rinse temperature selection control to obtain the desired wash/rinse temperature selection within the energy test cycle.

3.2.5 *Wash time setting.* If one wash time is prescribed for the wash cycle under test, that shall be the wash time setting; otherwise, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations. If 70% of the maximum wash time is not available on a dial with a discreet number of wash time settings, choose the next-highest setting greater than 70%. If the clothes washer is equipped with an electromechanical dial controlling wash time, reset the dial to the minimum wash time and then turn it in the direction of increasing wash time to reach the appropriate setting. If the appropriate setting is passed, return the dial to the minimum wash time and then turn in the direction of increasing wash time until the appropriate setting is reached.

3.2.6 *Water fill levels.*

3.2.6.1 *Clothes washers with manual water fill control system.* Set the water fill selector to the maximum water level available for the wash cycle under test for the maximum test load size and the minimum water level available for the wash cycle under test for the minimum test load size.

3.2.6.2 *Clothes washers with automatic water fill control system.*

3.2.6.2.1 *Not user adjustable.* The maximum, minimum, and average water levels as described in the following sections refer to the amount of water fill that is automatically selected by the control system when the respective test loads are used.

3.2.6.2.2 *User adjustable.* Conduct four tests on clothes washers with user adjustable automatic water fill controls that affect the relative wash water levels. Conduct the first test using the maximum test load and with the automatic water fill control system set in the setting that will give the most energy intensive result. Conduct the second test using the minimum test load and with the automatic water fill control system set in the setting that will give the least energy intensive result. Conduct the third test using the average test load and with the automatic water fill control system set in the setting that will give the most energy intensive result for the given test load. Conduct the fourth test using the average test load and with the automatic water fill control system set in the setting that will give the least energy intensive result for the given test load. Average the results of the third and fourth tests to obtain the energy and water consumption values for the average test load size.

3.2.6.3 *Clothes washers with automatic water fill control system and alternate manual water fill control system.* If a clothes washer with an automatic water fill control system allows user selection of manual controls as an alternative, test both manual and automatic modes and, for each mode, calculate the energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T) values as set forth in section 4 of this appendix. Then, calculate the average of the two values (one from each mode, automatic and manual) for each variable (HE_T, ME_T, D_E, and Q_T) and use the average value for each variable in the final calculations in section 4 of this appendix.

3.2.7 *Manufacturer default settings.* For clothes washers with electronic control systems, use the manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content. Specifically, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, or spin speed on wash cycles used to determine remaining moisture content) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing.

For clothes washers with control panels containing mechanical switches or dials, any optional settings, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content, must be in the position recommended by the manufacturer for washing normally soiled cotton clothing. If the manufacturer instructions do not recommend a particular switch or dial position to be used for washing normally soiled cotton clothing, the setting switch or dial must remain in its as-shipped position.

3.2.8 For each wash cycle tested, include the entire active washing mode and exclude any delay start or cycle finished modes.

3.2.9 Discard the data from a wash cycle that provides a visual or audio indicator to alert the user that an out-of-balance condition has been detected, or that terminates prematurely if an out-of-balance condition is detected, and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test. Document in the test report the rejection of data from any wash cycle during testing and the reason for the rejection.

3.3 *Extra-Hot Wash/Cold Rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.3.1 through 3.3.3 of this appendix for the Extra-Hot Wash/Cold Rinse as defined within the energy test cycle.

Non-reversible temperature indicator labels, adhered to the inside of the clothes container, may be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle, under the following conditions. The label must remain waterproof, intact, and adhered to the wash drum throughout an entire wash cycle; provide consistent maximum temperature readings; and provide repeatable temperature indications sufficient to demonstrate that a wash temperature of greater than 135 °F has been achieved. The label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the label provides a temperature indicator at 135 °F. If the label does not provide a temperature indicator at 135 °F, the label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the next-highest temperature indicator is greater than 135 °F and less than 140 °F, or ±3 °F if the next-highest temperature indicator is 140 °F or greater. If the label does not provide a temperature indicator at 135 °F, failure to activate the next-highest temperature indicator does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be considered a valid test due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle.

If using a temperature indicator label to test a front-loading clothes washer, adhere the label along the interior surface of the clothes container drum, midway between the front and the back of the drum, adjacent to one of the baffles. If using a temperature indicator label to test a top-loading clothes washer, adhere the label along the interior surface of the clothes container drum, on the vertical portion of the sidewall, as close to the bottom of the container as possible.

3.3.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hm_x), cold water consumption (Cm_x), and electrical energy consumption (Em_x) for an Extra-Hot Wash/Cold Rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.3.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hm_n), cold water consumption (Cm_n), and electrical energy consumption (Em_n) for an Extra-Hot Wash/Cold Rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.3.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hm_a), cold water consumption (Cm_a), and electrical energy consumption (Em_a) for an Extra-Hot Wash/Cold Rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.4 *Hot Wash/Cold Rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.4.1 through 3.4.3 of this appendix for the Hot Wash/Cold Rinse temperature selection, as defined within the energy test cycle.

3.4.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hh_x), cold water consumption (Ch_x), and electrical energy consumption (Eh_x) for a Hot Wash/Cold Rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.4.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hh_n), cold water consumption (Ch_n), and electrical energy consumption (Eh_n) for a Hot Wash/Cold Rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.4.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water

consumption (Hh_a), cold water consumption (Ch_a), and electrical energy consumption (Eh_a) for a Hot Wash/Cold Rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.5 *Warm Wash/Cold Rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.5.1 through 3.5.3 of this appendix for the applicable Warm Wash/Cold Rinse temperature selection(s), as defined within the energy test cycle.

For a clothes washer with fewer than four discrete Warm Wash/Cold Rinse temperature selections, test all Warm Wash/Cold Rinse selections. For a clothes washer that offers four or more Warm Wash/Cold Rinse selections, test at all discrete selections, or test at the 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection, use the next warmer setting. For each reportable value to be used for the Warm Wash/Cold Rinse temperature selection, calculate the average of all Warm Wash/Cold Rinse temperature selections tested pursuant to this section.

3.5.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hw_x), cold water consumption (Cw_x), and electrical energy consumption (Ew_x) for the Warm Wash/Cold Rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.5.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hw_n), cold water consumption (Cw_n), and electrical energy consumption (Ew_n) for the Warm Wash/Cold Rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.5.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hw_a), cold water consumption (Cw_a), and electrical energy consumption (Ew_a) for a Warm Wash/Cold Rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.6 *Warm Wash/Warm Rinse.* Measure the water and electrical energy consumption for each water fill level and/or test load size as specified in sections 3.6.1 through 3.6.3 of this appendix for the applicable Warm Wash/Warm Rinse temperature selection(s), as defined within the energy testy cycle.

For a clothes washer with fewer than four discrete Warm Wash/Warm Rinse temperature selections, test all Warm Wash/Warm Rinse selections. For a clothes washer that offers four or more Warm Wash/Warm Rinse selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection use the next warmer setting. For each reportable value to be used for the Warm Wash/Warm Rinse temperature selection, calculate the arithmetic average of all Warm Wash/Warm Rinse temperature selections tested pursuant to this section.

3.6.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hww_x), cold water consumption (Cww_x), and electrical energy consumption (Eww_x) for the Warm Wash/Warm Rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.6.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hww_n), cold water consumption (Cww_n), and electrical energy consumption (Eww_n) for the Warm Wash/Warm Rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.6.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hww_a), cold water consumption (Cww_a), and electrical energy consumption (Eww_a) for the Warm Wash/Warm Rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.7 *Cold Wash/Cold Rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.7.1 through 3.7.3 of this appendix for the applicable Cold Wash/Cold Rinse temperature selection, as defined within the energy test cycle.

3.7.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hc_x), cold water consumption (Cc_x), and electrical energy consumption (Ec_x) for a Cold Wash/Cold Rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.7.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hc_n), cold water consumption (Cc_n), and electrical energy consumption (Ec_n) for a Cold Wash/Cold Rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.7.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hc_a), cold water consumption (Cc_a), and electrical energy consumption (Ec_a) for a Cold Wash/Cold Rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.8 *Remaining moisture content (RMC).*

3.8.1 The wash temperature must be the same as the rinse temperature for all testing. Use the maximum test load as defined in Table 5.1 of this appendix for testing.

3.8.2 *Clothes washers with cold rinse only.*

3.8.2.1 Record the actual ''bone dry'' weight of the test load (WI_x), then place the test load in the clothes washer.

3.8.2.2 Set the water level controls to maximum fill.

3.8.2.3 Run the Cold Wash/Cold Rinse cycle.

3.8.2.4 Record the weight of the test load immediately after completion of the wash cycle (WC_x).

3.8.2.5 Calculate the remaining moisture content of the maximum test load, RMC_x, defined as:

$$RMC_x = (WC_x - WI_x)/WI_x$$

3.8.2.6 Apply the RMC correction curve described in section 6.3 of this appendix to calculate the corrected remaining moisture content, RMC_{corr}, expressed as a percentage as follows:

$$RMC_{corr} = (A \times RMC_x + B) \times 100\%$$

where:

A and B are the coefficients of the RMC correction curve as defined in section 6.2.1 of this appendix.

RMC_x = As defined in section 3.8.2.5 of this appendix.

3.8.2.7 Use RMC_{corr} as the final corrected RMC in section 4.3 of this appendix.

3.8.3 *Clothes washers with both cold and warm rinse options.*

3.8.3.1 Complete sections 3.8.2.1 through 3.8.2.4 of this appendix for a Cold Wash/Cold Rinse cycle. Calculate the remaining moisture content of the maximum test load for Cold Wash/Cold Rinse, RMC_{COLD}, defined as:

$RMC_{COLD} = (WC_x - WI_x)/WI_x$

3.8.3.2 Apply the RMC correction curve described in section 6.3 of this appendix to calculate the corrected remaining moisture content for Cold Wash/Cold Rinse, $RMC_{COLD,corr}$, expressed as a percentage, as follows:

$RMC_{COLD,corr} = (A \times RMC_{COLD} + B) \times 100\%$

where:

A and B are the coefficients of the RMC correction curve as defined in section 6.2.1 of this appendix.

RMC_{COLD} = As defined in section 3.8.3.1 of this appendix.

3.8.3.3 Complete sections 3.8.2.1 through 3.8.2.4 of this appendix using a Warm Wash/Warm Rinse cycle instead. Calculate the remaining moisture content of the maximum test load for Warm Wash/Warm Rinse, RMC_{WARM}, defined as:

$RMC_{WARM} = (WC_x - WI_x)/WI_x$

3.8.3.4 Apply the RMC correction curve described in section 6.3 of this appendix to calculate the corrected remaining moisture content for Warm Wash/Warm Rinse, $RMC_{WARM,corr}$, expressed as a percentage, as follows:

$RMC_{WARM,corr} = (A \times RMC_{WARM} + B) \times 100\%$

where:

A and B are the coefficients of the RMC correction curve as defined in section 6.2.1 of this appendix.

RMC_{WARM} = As defined in section 3.8.3.3 of this appendix.

3.8.3.5 Calculate the corrected remaining moisture content of the maximum test load, RMC_{corr}, expressed as a percentage as follows:

$RMC_{corr} = RMC_{COLD,corr} \times (1 - TUF_{ww}) + RMC_{WARM,corr} \times (TUF_{ww})$

where:

$RMC_{COLD,corr}$ = As defined in section 3.8.3.2 of this Appendix.

$RMC_{WARM,corr}$ = As defined in section 3.8.3.4 of this Appendix.

TUF_{ww} is the temperature use factor for Warm Wash/Warm Rinse as defined in Table 4.1.1 of this appendix.

3.8.3.6 Use RMC_{corr} as calculated in section 3.8.3.5 as the final corrected RMC used in section 4.3 of this appendix.

3.8.4 *Clothes washers that have options such as multiple selections of spin speeds or spin times that result in different RMC values, and that are available within the energy test cycle.*

3.8.4.1 Complete sections 3.8.2 or 3.8.3 of this appendix, as applicable, using the maximum and minimum extremes of the available spin options, excluding any ''no spin'' (zero spin speed) settings. Combine the calculated values $RMC_{corr,max\ extraction}$ and $RMC_{corr,min\ extraction}$ at the maximum and minimum settings, respectively, as follows:

$RMC_{corr} = 0.75 \times RMC_{corr,max\ extraction} + 0.25 \times RMC_{corr,min\ extraction}$

where:

$RMC_{corr,\ max\ extraction}$ is the corrected remaining moisture content using the maximum spin setting, calculated according to section 3.8.2 or 3.8.3 of this appendix, as applicable.

$RMC_{corr,\ min\ extraction}$ is the corrected remaining moisture content using the minimum spin setting, calculated according to section 3.8.2 or 3.8.3 of this appendix, as applicable.

3.8.4.2 Use RMC_{corr} as calculated in section 3.8.4.1 as the final corrected RMC used in section 4.3 of this appendix.

3.8.5 The procedure for calculating the corrected RMC as described in section 3.8.2, 3.8.3, or 3.8.4 of this appendix may be replicated twice in its entirety, for a total of three independent corrected RMC measurements. If three replications of the RMC measurement are performed, use the average of the three corrected RMC measurements as the final corrected RMC in section 4.3 of this appendix.

3.9 *Combined low-power mode power.* Connect the clothes washer to a watt meter as specified in section 2.5.3 of this appendix. Establish the testing conditions set forth in sections 2.1, 2.4, and 2.10 of this appendix.

3.9.1 Perform combined low-power mode testing after completion of an active mode wash cycle included as part of the energy test cycle; after removing the test load; without changing the control panel settings used for the active mode wash cycle; with the door closed; and without disconnecting the electrical energy supply to the clothes washer between completion of the active mode wash cycle and the start of combined low-power mode testing.

3.9.2 For a clothes washer that takes some time to automatically enter a stable inactive mode or off mode state from a higher power state as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the clothes washer to automatically reach the default inactive/off mode state before proceeding with the test measurement.

3.9.3 Once the stable inactive/off mode state has been reached, measure and record the default inactive/off mode power, $P_{default}$, in watts, following the test procedure for the sampling method specified in Section 5, Paragraph 5.3.2 of IEC 62301.

3.9.4 For a clothes washer with a switch, dial, or button that can be optionally selected by the end user to achieve a lower-power inactive/off mode state than the default inactive/off mode state measured in section 3.9.3 of this appendix, after performing the measurement in section 3.9.3, activate the switch, dial, or button to the position resulting in the lowest power consumption and repeat the measurement procedure described in section 3.9.3. Measure and record the lowest-power inactive/off mode power, P_{lowest}, in Watts.

3.10 *Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle.* This section is implemented only in cases where the energy test cycle flowcharts in section 2.12 require the determination of the wash/rinse temperature selection with the highest energy consumption.

3.10.1 For the wash/rinse temperature selection being considered under this section, establish the testing conditions set forth in section 2 of this appendix. Select the applicable cycle selection and wash/rinse temperature selection. For all wash/rinse temperature selections, the manufacturer default settings shall be used as described in section 3.2.7 of this appendix.

3.10.2 Use the clothes washer's maximum test load size, determined from Table 5.1 of this appendix, for testing under this section.

3.10.3 For clothes washers with a manual fill control system, user-adjustable automatic water fill control system, or automatic water fill control system with alternate manual water fill control system, use the water fill selector setting resulting in the maximum water level available for each cycle selection for testing under this section.

3.10.3 Each wash cycle tested under this section shall include the entire active washing mode and exclude any delay start or cycle finished modes.

3.10.4 Measure each wash cycle's electrical energy consumption (E_X) and hot water consumption (H_X). Calculate the total energy consumption for each cycle selection (E_{TX}), as follows:

$E_{TX} = E_X + (H_X \times T \times K)$

where:

E_X is the electrical energy consumption, expressed in kilowatt-hours per cycle.

H_X is the hot water consumption, expressed in gallons per cycle.

T = nominal temperature rise = 75 °F (41.7 °C).

K = Water specific heat in kilowatt-hours per gallon per degree F = 0.00240 kWh/gal -°F (0.00114 kWh/L-°C).

4. Calculation of Derived Results From Test Measurements

4.1 *Hot water and machine electrical energy consumption of clothes washers.*

4.1.1 *Per-cycle temperature-weighted hot water consumption for all maximum, average, and minimum water fill levels tested.* Calculate the per-cycle temperature-weighted hot water consumption for the maximum water fill level, Vh_x, the average water fill level, Vh_a, and the minimum water fill level, Vh_n, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Vh_x = [Hm_x \times TUF_m] + [Hh_x \times TUF_h] + [Hw_x \times TUF_w] + [Hww_x \times TUF_{ww}] + [Hc_x \times TUF_c]$

(b) $Vh_a = [Hm_a \times TUF_m] + [Hh_a \times TUF_h] + [Hw_a \times TUF_w] + [Hww_a \times TUF_{ww}] + [Hc_a \times TUF_c]$

(c) $Vh_n = [Hm_n \times TUF_m] + [Hh_n \times TUF_h] + [Hw_n \times TUF_w] + [Hww_n \times TUF_{ww}] + [Hc_n \times TUF_c]$

where:

Hm_x, Hm_a, and Hm_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Extra-Hot Wash/Cold Rinse cycle, as measured in sections 3.3.1 through 3.3.3 of this appendix.

Hh_x, Hh_a, and Hh_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Hot Wash/Cold Rinse cycle, as measured in sections 3.4.1 through 3.4.3 of this appendix.

Hw_x, Hw_a, and Hw_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Warm Wash/Cold Rinse cycle, as measured in sections 3.5.1 through 3.5.3 of this appendix.

Hww_x, Hww_a, and Hww_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Warm Wash/Warm Rinse cycle, as measured in sections 3.6.1 through 3.6.3 of this appendix.

Hc_x, Hc_a, and Hc_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Cold Wash/Cold Rinse cycle, as measured in sections 3.7.1 through 3.7.3 of this appendix.

TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are temperature use factors for Extra-Hot Wash/Cold Rinse, Hot Wash/Cold Rinse, Warm Wash/Cold Rinse, Warm Wash/Warm Rinse, and Cold Wash/Cold Rinse temperature selections, respectively, as defined in Table 4.1.1 of this appendix.

TABLE 4.1.1—TEMPERATURE USE FACTORS

Wash/Rinse Temperature Selections Available in the Energy Test Cycle	Clothes washers with cold rinse only					Clothes washers with both cold and warm rinse		
	C/C	H/C C/C	H/C W/C C/C	XH/C H/C C/C	XH/C H/C W/C C/C	H/C W/C W/W C/C	XH/C H/C W/W C/C	XH/C H/C W/C W/W C/C
TUF_m (Extra-Hot/Cold)	.....	.....	.....	0.14	0.05	.....	0.14	0.05
TUF_h (Hot/Cold)	.....	0.63	0.14	*0.49	0.09	0.14	*0.22	0.09
TUF_w (Warm/Cold)	.....	.....	0.49	.....	0.49	0.22	.....	0.22
TUF_{ww} (Warm/Warm)	.....	.....	.....	.....	.....	0.27	0.27	0.27
TUF_c (Cold/Cold)	1.00	0.37	0.37	0.37	0.37	0.37	0.37	0.37

*On clothes washers with only two wash temperature selections ≤135 °F, the higher of the two wash temperatures is classified as a Hot Wash/Cold Rinse, in accordance with the wash/rinse temperature definitions within the energy test cycle.

4.1.2 *Total per-cycle hot water energy consumption for all maximum, average, and minimum water fill levels tested.* Calculate the total per-cycle hot water energy consumption for the maximum water fill level, HE_{max}, the average water fill level, HE_{avg}, and the minimum water fill level, HE_{min}, expressed in kilowatt-hours per cycle and defined as:

(a) $HE_{max} = [Vh_x \times T \times K]$ = Total energy when a maximum load is tested.

(b) $HE_{avg} = [Vh_a \times T \times K]$ = Total energy when an average load is tested.

(c) $HE_{min} = [Vh_n \times T \times K]$ = Total energy when a minimum load is tested.

where:

Vh_x, Vh_a, and Vh_n are defined in section 4.1.1 of this appendix.

T = Temperature rise = 75 °F (41.7 °C).

K = Water specific heat in kilowatt-hours per gallon per degree F = 0.00240 kWh/gal-°F (0.00114 kWh/L-°C).

4.1.3 *Total weighted per-cycle hot water energy consumption.* Calculate the total weighted per-cycle hot water energy consumption, HE_T, expressed in kilowatt-hours per cycle and defined as:

$HE_T = [HE_{max} \times F_{max}] + [HE_{avg} \times F_{avg}] + HE_{min} \times F_{min}]$

where:

HE_{max}, HE_{avg}, and HE_{min} are defined in section 4.1.2 of this appendix.

F_{max}, F_{avg}, and F_{min} are the load usage factors for the maximum, average, and minimum test loads based on the size and type of the control system on the washer being tested, as defined in Table 4.1.3 of this appendix.

TABLE 4.1.3—LOAD USAGE FACTORS

Load usage factor	Water fill control system	
	Manual	Automatic
F_{max} = ...	0.72	0.12
F_{avg} = ...	.....	0.74
F_{min} = ...	0.28	0.14

4.1.4 *Total per-cycle hot water energy consumption using gas-heated or oil-heated water, for product labeling requirements.* Calculate for the energy test cycle the per-cycle hot water consumption, HE_{TG}, using gas-heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$HE_{TG} = HE_T \times 1/e \times 3412$ Btu/kWh or

$HE_{TG} = HE_T \times 1/e \times 3.6$ MJ/kWh

where:

e = Nominal gas or oil water heater efficiency = 0.75.

HE_T = As defined in section 4.1.3 of this Appendix.

4.1.5 *Per-cycle machine electrical energy consumption for all maximum, average, and minimum test load sizes.* Calculate the total per-cycle machine electrical energy consumption for the maximum water fill level, ME_{max}, the average water fill level, ME_{avg}, and the minimum water fill level, ME_{min}, expressed in kilowatt-hours per cycle and defined as:

(a) $ME_{max} = [Em_x \times TUF_m] + [Eh_x \times TUF_h] + [Ew_x \times TUF_w] + [Eww_x \times TUF_{ww}] + [Ec_x \times TUF_c]$

(b) $ME_{avg} = [Em_a \times TUF_m] + [Eh_a \times TUF_h] + [Ew_a \times TUF_w] + [Eww_a \times TUF_{ww}] + [Ec_a \times TUF_c]$

(c) $ME_{min} = [Em_n \times TUF_m] + [Eh_n \times TUF_h] + [Ew_n \times TUF_w] + [Eww_n \times TUF_{ww}] + [Ec_n \times TUF_c]$

where:

Em_x, Em_a, and Em_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Extra-Hot Wash/Cold Rinse cycle, as measured in sections 3.3.1 through 3.3.3 of this appendix.

Eh_x, Eh_a, and Eh_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Hot Wash/Cold Rinse cycle, as measured in sections 3.4.1 through 3.4.3 of this appendix.

Ew_x, Ew_a, and Ew_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Warm Wash/Cold Rinse cycle, as measured in sections 3.5.1 through 3.5.3 of this appendix.

Eww_x, Eww_a, and Eww_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Warm Wash/Warm Rinse cycle, as measured in sections 3.6.1 through 3.6.3 of this appendix.

Ec_x, Ec_a, and Ec_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Cold Wash/Cold Rinse cycle, as measured in sections 3.7.1 through 3.7.3 of this appendix.

TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.1.6 *Total weighted per-cycle machine electrical energy consumption.* Calculate the total weighted per-cycle machine electrical energy consumption, ME_T, expressed in kilowatt-hours per cycle and defined as:

$$ME_T = [ME_{max} \times F_{max}] + [ME_{avg} \times F_{avg}] + [ME_{min} \times F_{min}]$$

where:

ME_{max}, ME_{avg}, and ME_{min} are defined in section 4.1.5 of this appendix.

F_{max}, F_{avg}, and F_{min} are defined in Table 4.1.3 of this appendix.

4.1.7 *Total per-cycle energy consumption when electrically heated water is used.* Calculate the total per-cycle energy consumption, E_{TE}, using electrically heated water, expressed in kilowatt-hours per cycle and defined as:

$$E_{TE} = H_{ET} + M_{ET}$$

where:

M_{ET} = As defined in section 4.1.6 of this appendix.

H_{ET} = As defined in section 4.1.3 of this appendix.

4.2 Water consumption of clothes washers.

4.2.1 *Per-cycle water consumption for Extra-Hot Wash/Cold Rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Extra-Hot Wash/Cold Rinse cycle and defined as:

$$Qm_{max} = [Hm_x + Cm_x]$$
$$Qm_{avg} = [Hm_a + Cm_a]$$
$$Qm_{min} = [Hm_n + Cm_n]$$

where:

Hm_x, Cm_x, Hm_a, Cm_a, Hm_n, and Cm_n are defined in section 3.3 of this appendix.

4.2.2 *Per-cycle water consumption for Hot Wash/Cold Rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Hot Wash/Cold Rinse cycle and defined as:

$$Qh_{max} = [Hh_x + Ch_x]$$
$$Qh_{avg} = [Hh_a + Ch_a]$$
$$Qh_{min} = [Hh_n + Ch_n]$$

where:

Hh_x, Ch_x, Hh_a, Ch_a, Hh_n, and Ch_n are defined in section 3.4 of this appendix.

4.2.3 *Per-cycle water consumption for Warm Wash/Cold Rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Warm Wash/Cold Rinse cycle and defined as:

$$Qw_{max} = [Hw_x + Cw_x]$$
$$Qw_{avg} = [Hw_a + Cw_a]$$
$$Qw_{min} = [Hw_n + Cw_n]$$

where:

Hw_x, Cw_x, Hw_a, Cw_a, Hw_n, and Cw_n are defined in section 3.5 of this appendix.

4.2.4 *Per-cycle water consumption for Warm Wash/Warm Rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Warm Wash/Warm Rinse cycle and defined as:

$$Qww_{max} = [Hww_x + Cww_x]$$
$$Qww_{avg} = [Hww_a + Cww_a]$$
$$Qww_{min} = [Hww_n + Cww_n]$$

where:

Hww_x, Cww_x, Hww_a, Cww_a, Hww_n, and Cww_n are defined in section 3.7 of this appendix.

4.2.5 *Per-cycle water consumption for Cold Wash/Cold Rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Cold Wash/Cold Rinse cycle and defined as:

$$Qc_{max} = [Hc_x + Cc_x]$$
$$Qc_{avg} = [Hc_a + Cc_a]$$
$$Qc_{min} = [Hc_n + Cc_n]$$

where:

Hc_x, Cc_x, Hc_a, Cc_a, Hc_n, and Cc_n are defined in section 3.6 of this appendix.

4.2.6 *Total weighted per-cycle water consumption for Extra-Hot Wash/Cold Rinse.* Calculate the total weighted per-cycle water consumption for the Extra-Hot Wash/Cold Rinse cycle, Qm_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$$Qm_T = [Qm_{max} \times F_{max}] + [Qm_{avg} \times F_{avg}] + [Qm_{min} \times F_{min}]$$

where:

Qm_{max}, Qm_{avg}, Qm_{min} are defined in section 4.2.1 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.7 *Total weighted per-cycle water consumption for Hot Wash/Cold Rinse.* Calculate the total weighted per-cycle water consumption for the Hot Wash/Cold Rinse cycle, Qh_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$$Qh_T = [Qh_{max} \times F_{max}] + [Qh_{avg} \times F_{avg}] + [Qh_{min} \times F_{min}]$$

where:

Qh_{max}, Qh_{avg}, Qh_{min} are defined in section 4.2.2 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.8 *Total weighted per-cycle water consumption for Warm Wash/Cold Rinse.* Calculate the total weighted per-cycle water consumption for the Warm Wash/Cold Rinse cycle, Qw_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$$Qw_T = [Qw_{max} \times F_{max}] + [Qw_{avg} \times F_{avg}] + [Qw_{min} \times F_{min}]$$

where:

Qw_{max}, Qw_{avg}, Qw_{min} are defined in section 4.2.3 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.9 *Total weighted per-cycle water consumption for Warm Wash/Warm Rinse.* Calculate the total weighted per-cycle water consumption for the Warm Wash/Warm Rinse cycle, Qww_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$$Qww_T = [Qww_{max} \times F_{max}] + [Qww_{avg} \times F_{avg}] + [Qww_{min} \times F_{min}]$$

where:

Qww_{max}, Qww_{avg}, Qww_{min} are defined in section 4.2.4 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.10 *Total weighted per-cycle water consumption for Cold Wash/Cold Rinse.* Calculate the total weighted per-cycle water consumption for the Cold Wash/Cold Rinse cycle, Qc_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$$Qc_T = [Qc_{max} \times F_{max}] + [Qc_{avg} \times F_{avg}] + [Qc_{min} \times F_{min}]$$

where:

Qc_{max}, Qc_{avg}, Qc_{min} are defined in section 4.2.5 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.11 *Total weighted per-cycle water consumption for all wash cycles.* Calculate the total weighted per-cycle

water consumption for all wash cycles, Q_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$$Q_T = [Qm_T \times TUF_m] + [Qh_T \times TUF_h] + [Qw_T \times TUF_w] + [Qww_T \times TUF_{ww}] + [Qc_T \times TUF_c]$$

where:

Qm_T, Qh_T, Qw_T, Qww_T, and Qc_T are defined in sections 4.2.6 through 4.2.10 of this appendix.

TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.2.12 *Water factor.* Calculate the water factor, WF, expressed in gallons per cycle per cubic foot (or liters per cycle per liter), as:

$$WF = Qc_T/C$$

where:

Qc_T = As defined in section 4.2.10 of this appendix.

C = As defined in section 3.1.6 of this appendix.

4.2.13 *Integrated water factor.* Calculate the integrated water factor, IWF, expressed in gallons per cycle per cubic foot (or liters per cycle per liter), as:

$$IWF = Q_T/C$$

where:

Q_T = As defined in section 4.2.11 of this appendix.

C = As defined in section 3.1.6 of this appendix.

4.3 *Per-cycle energy consumption for removal of moisture from test load.* Calculate the per-cycle energy required to remove the remaining moisture of the test load, D_E, expressed in kilowatt-hours per cycle and defined as:

$$D_E = [(F_{max} \times \text{Maximum test load weight}) + (F_{avg} \times \text{Average test load weight}) + (F_{min} \times \text{Minimum test load weight})] \times (RMC_{corr} - 4\%) \times (DEF) \times (DUF)$$

where:

F_{max}, F_{avg}, and F_{min} are defined in Table 4.1.3 of this appendix.

Maximum, average, and minimum test load weights are defined in Table 5.1 of this appendix.

RMC_{corr} = As defined in section 3.8.2.6, 3.8.3.5, or 3.8.4.1 of this Appendix.

DEF = Nominal energy required for a clothes dryer to remove moisture from clothes = 0.5 kWh/lb (1.1 kWh/kg).

DUF = Dryer usage factor, percentage of washer loads dried in a clothes dryer = 0.91.

4.4 *Per-cycle combined low-power mode energy consumption.* Calculate the per-cycle combined low-power mode energy consumption, E_{TLP}, expressed in kilowatt-hours per cycle and defined as:

$$E_{TLP} = [(P_{default} \times S_{default}) + (P_{lowest} \times S_{lowest})] \times K_p/295$$

where:

$P_{default}$ = Default inactive/off mode power, in watts, as measured in section 3.9.3 of this appendix.

P_{lowest} = Lowest-power inactive/off mode power, in watts, as measured in section 3.9.4 of this appendix for clothes washers with a switch, dial, or button that can be optionally selected by the end user to achieve a lower-power inactive/off mode than the default inactive/off mode; otherwise, P_{lowest}=0.

$S_{default}$= Annual hours in default inactive/off mode, defined as 8,465 if no optional lowest-power inactive/off mode is available; otherwise 4,232.5.

S_{lowest}= Annual hours in lowest-power inactive/off mode, defined as 0 if no optional lowest-power inactive/off mode is available; otherwise 4,232.5.

K_p = Conversion factor of watt-hours to kilowatt-hours = 0.001.

295 = Representative average number of clothes washer cycles in a year.

8,465 = Combined annual hours for inactive and off mode.

4,232.5 = One-half of the combined annual hours for inactive and off mode.

4.5 *Modified energy factor.* Calculate the modified energy factor, MEF, expressed in cubic feet per kilowatt-hour per cycle (or liters per kilowatt-hour per cycle) and defined as:

$$MEF = C/(E_{TE} + D_E)$$

where:

C = As defined in section 3.1.6 of this appendix.

E_{TE} = As defined in section 4.1.7 of this appendix.

D_E = As defined in section 4.3 of this appendix.

4.6 *Integrated modified energy factor.* Calculate the integrated modified energy factor, IMEF, expressed in cubic feet per kilowatt-hour per cycle (or liters per kilowatt-hour per cycle) and defined as:

$$IMEF = C/(E_{TE} + D_E + E_{TLP})$$

where:

C = As defined in section 3.1.6 of this appendix.

E_{TE} = As defined in section 4.1.7 of this appendix.

D_E = As defined in section 4.3 of this appendix.

E_{TLP} = As defined in section 4.4 of this appendix.

5. Test Loads

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
0.00–0.80	0.00–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.85	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.05	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.25	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.45	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.85	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.05	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.25	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.45	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.65	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights is ±0.10 lbs (0.05 kg).

6. Waivers and Field Testing

6.1 *Waivers and Field Testing for Nonconventional Clothes Washers.* Manufacturers of nonconventional clothes washers, such as clothes washers with adaptive control systems, must submit a petition for waiver pursuant to 10 CFR 430.27 to establish an acceptable test procedure for that clothes washer if the washer cannot be tested pursuant to the DOE test procedure or the DOE test procedure yields results that are so unrepresentative of the clothes washer's true energy consumption characteristics as to provide materially inaccurate comparative data. In such cases, field testing may be appropriate for establishing an acceptable test procedure. The following are guidelines for field testing that may be used by manufacturers in support of petitions for waiver. These guidelines are not mandatory and the Department may determine that they do not apply to a particular model. Depending upon a manufacturer's approach for conducting field testing, additional data may be required. Manufacturers are encouraged to communicate with the Department prior to the commencement of field tests that may be used to support a petition for waiver. Section 6.3 of this appendix provides an example of field testing for a clothes washer with an adaptive water fill control system. Other features, such as the use of various spin speed selections, could be the subject of field tests.

6.2 *Nonconventional Wash System Energy Consumption Test.* The field test may consist of a minimum of 10 of the nonconventional clothes washers (''test clothes washers'') and 10 clothes washers already being distributed in commerce (''base clothes washers''). The tests should include a minimum of 50 wash cycles per clothes washer. The test clothes washers and base clothes washers should be identical in construction except for the controls or systems being tested. Equal numbers of both the test clothes washer and the base clothes washer should be tested simultaneously in comparable settings to minimize seasonal or end-user laundering conditions or variations. The clothes washers should be monitored in such a way as to accurately record the average total energy and water consumption per cycle, including water heating energy when electrically heated water is used, and the energy required to remove the remaining moisture of the test load. Standby and off mode energy consumption should be measured according to section 4.4 of this test procedure. The field test results should be used to determine the best method to correlate the rating of the test clothes washer to the rating of the base clothes washer.

6.3 *Adaptive water fill control system field test.* (1) Section 3.2.6.3 of this appendix defines the test method for measuring energy consumption for clothes washers that incorporate both adaptive (automatic) and alternate manual water fill control systems. Energy consumption calculated by the method defined in section 3.2.6.3 of this appendix assumes the adaptive cycle will be used 50 percent of the time. This section can be used to develop field test

data in support of a petition for waiver when it is believed that the adaptive cycle will be used more than 50 percent of the time. The field test sample size should be a minimum of 10 test clothes washers. The test clothes washers should be representative of the design, construction, and control system that will be placed in commerce. The duration of field testing in the user's house should be a minimum of 50 wash cycles, for each unit. No special instructions as to cycle selection or product usage should be given to the field test participants, other than inclusion of the product literature pack that would be shipped with all units, and instructions regarding filling out data collection forms, use of data collection equipment, or basic procedural methods. Prior to the test clothes washers being installed in the field test locations, baseline data should be developed for all field test units by conducting laboratory tests as defined by section 1 through section 5 of this appendix to determine the energy consumption, water consumption, and remaining moisture content values. The following data should be measured and recorded for each wash load during the test period: wash cycle selected, the mode of the clothes washer (adaptive or manual), clothes load dry weight (measured after the clothes washer and clothes dryer cycles are completed) in pounds, and type of articles in the clothes load (*e.g.,* cottons, linens, permanent press). The wash cycles used in calculating the in-home percentage split between adaptive and manual cycle usage should be only those wash cycles that conform to the definition of the energy test cycle.

Calculate:

T = The total number of wash cycles run during the field test.
T_a = The total number of adaptive control wash cycles.
T_m = The total number of manual control wash cycles.

The percentage weighting factors:

$P_a = (T_a/T) \times 100\%$ (the percentage weighting for adaptive control selection)
$P_m = (T_m/T) \times 100\%$ (the percentage weighting for manual control selection)

(2) Energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T) values calculated in section 4 of this appendix for the manual and adaptive modes should be combined using P_a and P_m as the weighting factors.

■ 8. Add Appendix J3 to subpart B of part 430 to read as follows:

Appendix J3 to Subpart B of Part 430—Uniform Test Method for Measuring the Moisture Absorption and Retention Characteristics of New Energy Test Cloth Lots

Note: DOE maintains an historical record of the standard extractor test data and final correction curve coefficients for each approved lot of energy test cloth. These can be accessed through DOE's Web page for standards and test procedures for residential clothes washers at DOE's Building Technologies Office Appliance and Equipment Standards Web site.

1. Objective

The following procedure is used to evaluate the moisture absorption and retention characteristics of a new lot of test cloth by measuring the remaining moisture content (RMC) in a standard extractor at a specified set of conditions. The results are used to develop a set of coefficients that correlate the measured RMC values of the new test cloth lot with a set of standard RMC values established as an historical reference point. These correction coefficients are applied to the RMC measurements performed during testing according to appendix J1 or appendix J2 to 10 CFR part 430 subpart B, ensuring that the final corrected RMC measurement for a clothes washer remains independent of the test cloth lot used for testing.

2. Definitions

2.1 *AHAM* means the Association of Home Appliance Manufacturers.

2.2 *Bone-dry* means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

2.3 *Lot* means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

3. Testing Conditions

3.1 Table 3.1 of this appendix provides the matrix of test conditions. In the table, ''g Force'' represents units of gravitational acceleration. When this matrix is repeated 3 times, a total of 60 extractor RMC test runs are required. For the purpose of the extractor RMC test, the test cloths may be used for up to 60 test runs (after preconditioning as specified in appendix J1 or appendix J2).

TABLE 3.1—MATRIX OF EXTRACTOR RMC TEST CONDITIONS

"g Force"	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
100				
200				
350				
500				
650				

3.2 Perform the standard extractor RMC tests using a North Star Engineered Products Inc. (formerly Bock) Model 215 extractor (having a basket diameter of 20 inches, height of 11.5 inches, and volume of 2.09 ft^3), with a variable speed drive (North Star Engineered Products, P.O. Box 5127, Toledo, OH 43611) or an equivalent extractor with same basket design (*i.e.,* diameter, height, volume, and hole configuration) and variable speed drive. Table 3.2 shows the extractor spin speed, in revolutions per minute (RPM), that must be used to attain each required g-force level.

TABLE 3.2—EXTRACTOR SPIN SPEEDS FOR EACH TEST CONDITION

"g Force"	RPM
100	594 ± 1
200	840 ± 1
350	1,111 ± 1
500	1,328 ± 1
650	1,514 ± 1

3.3 *Bone dryer temperature.* The dryer used for bone drying must heat the test cloth and energy stuffer cloths above 210 °F (99 °C).

4. Test Loads

4.1 *Preconditioning.* New test cloths, including energy test cloths and energy stuffer cloths, must be pre-conditioned in a clothes washer in the following manner:

Perform five complete wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 27.0 grams + 4.0 grams per pound of cloth load of AHAM Standard detergent Formula 3. The wash temperature is to be controlled to 135°F ± 5°F (57.2 °C ± 2.8 °C) and the rinse temperature is to be controlled to 60°F ± 5;°F (15.6 °C ± 2.8 °C). Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (for a total of five complete wash-rinse-spin cycles).

4.2 *Test load composition.* Test loads must be comprised of randomly selected cloth at the beginning, middle and end of a lot.

4.3 *Test load size.* Use a test load size of 8.4 lbs. Two test loads may be used for standard extractor RMC tests, with each load used for half of the total number of required tests.

5. Test Measurements

5.1 Dry the test cloth until it is ''bone-dry'' according to the definition in section 2.2 of this appendix. Record the bone-dry weight of the test load (WI).

5.2 Prepare the test load for soak by grouping four test cloths into loose bundles. Create the bundles by hanging four cloths vertically from one corner and loosely wrapping the test cloth onto itself to form the bundle. Bundles should be wrapped loosely to ensure consistency of water extraction. Then place the bundles into the water to soak. Eight to nine bundles will be formed depending on the test load. The ninth bundle may not equal four cloths but can incorporate energy stuffer cloths to help offset the size difference.

5.3 Soak the test load for 20 minutes in 10 gallons of soft (<17 ppm) water. The entire test load must be submerged. Maintain a water temperature of 100 °F ± 5 °F (37.8 °C ± 2.8 °C) at all times between the start and end of the soak.

5.4 Remove the test load and allow each of the test cloth bundles to drain over the water bath for a maximum of 5 seconds.

5.5 Manually place the test cloth bundles in the basket of the extractor, distributing them evenly by eye. The draining and loading process must take no longer than 1 minute. Spin the load at a fixed speed corresponding to the intended centripetal acceleration level (measured in units of the acceleration of gravity, g) ± 1g for the intended time period ± 5 seconds. Begin the timer when the extractor meets the required spin speed for each test.

5.6 Record the weight of the test load immediately after the completion of the extractor spin cycle (WC).

5.7 Calculate the remaining moisture content of the test load as (WC–WI)/WI.

5.8 Draining the soak tub is not necessary if the water bath is corrected for water level and temperature before the next extraction.

5.9 Drying the test load in between extraction runs is not necessary. However, the bone dry weight must be checked after every 12 extraction runs to make sure the bone dry weight is within tolerance (8.4 ± 0.1 lb).

5.10 The test load must be soaked and extracted once following bone drying, before continuing with the remaining extraction runs. Perform this extraction at the same spin speed used for the extraction run prior to bone drying, for a time period of 4 minutes. Either warm or cold soak temperature may be used.

5.11 Measure the remaining moisture content of the test load at five g levels: 100 g, 200 g, 350 g, 500 g, and 650 g, using two different spin times at each g level: 4 minutes and 15 minutes.

5.12 Repeat sections 5.1 through 5.11 of this appendix using soft (<17 ppm) water at 60 °F±5 °F (15.6 °C ± 2.8 °C).

6. Calculation of RMC Correction Curve

6.1 Average the values of 3 test runs, and fill in Table 3.1 of this appendix. Perform a linear least-squares fit to determine coefficients A and B such that the standard RMC values shown in Table 6.1 of this appendix ($RMC_{standard}$) are linearly related to the RMC values measured in section 5 of this appendix (RMC_{cloth}):

$RMC_{standard} \sim A * RMC_{cloth} + B$

where A and B are coefficients of the linear least-squares fit.

TABLE 6.1—STANDARD RMC VALUES ($RMC_{standard}$)

"g Force"	RMC Percentage			
	Warm soak		Cold soak	
	15 min. spin (percent)	4 min. spin (percent)	15 min. spin (percent)	4 min. spin (percent)
100	45.9	49.9	49.7	52.8
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0
650	23.0	26.4	24.1	28.0

6.2 Perform an analysis of variance with replication test using two factors, spin speed and lot, to check the interaction of speed and lot. Use the values from Table 3.1 and Table 6.1 of this appendix in the calculation. The ''P'' value of the F-statistic for interaction between spin speed and lot in the variance analysis must be greater than or equal to 0.1. If the ''P'' value is less than 0.1, the test cloth is unacceptable. ''P'' is a theoretically based measure of interaction based on an analysis of variance.

7. Application of the RMC Correction Curve

7.1 Using the coefficients A and B calculated in section 6.1 of this appendix:

$$RMC_{corr} = A \times RMC + B$$

7.2 Apply this RMC correction curve to measured RMC values in appendix J1 and appendix J2.

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