

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

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this rule under the Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

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

#### List of Subjects in 33 CFR Part 165

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

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

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T14–1030 to read as follows:

#### § 165.T14–1030 Security Zone; Kailua Bay, Oahu, HI.

(a) *Location.* The security zone area is located within the COTP Zone (See 33 CFR 3.70–10) and encompasses two primary areas from the surface of the water to the ocean floor: The navigable waters of the Kawainui Canal, beginning at the North Kalaheo Avenue Road Bridge and continuing northeast into Kailua Bay; and the navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734. The geographic coordinates of the zone include the navigable waters of the Kawainui Canal beginning at a point 21°24′56″ N., 157°44′58″ W., then extending to 21°25′27″ N., 157°44′21″ W. (Kapoho Point) including all the waters to the west of a straight line to 21°25′11″ N., 157°44′39″ W., and extending back to the original point 21°24′56″ N., 157°44′58″ W.

(b) *Effective period.* This rule is effective from 8 a.m. (HST) on December 14, 2016, through 8 a.m. (HST) on January 4, 2017.

(c) *Regulations.* The general regulations governing security zones contained in 33 CFR 165.33 apply to the security zone created by this temporary final rule.

(1) All persons and vessels are required to comply with the general regulations governing security zones found in 33 CFR part 165.

(2) Entry into or remaining in this security zone is prohibited unless authorized by the COTP Honolulu or his designated representative.

(3) Persons or vessels desiring to transit the security zone identified in paragraph (a) of this section may contact the COTP of Honolulu through his designated representatives at the Command Center via telephone: (808) 842–2600 and (808) 842–2601; fax: (808) 842–2642; or on VHF channel 16 (156.8 Mhz) to request permission to transit the

security zone. If permission is granted, all persons and vessels must comply with the instructions of the COTP Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the security zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by Federal, State, and local agencies.

(d) *Notice of enforcement.* The COTP Honolulu will provide notice of enforcement of the security zone described in this section by verbal radio broadcasts, written notice to mariners, and general public outreach.

(e) *Definitions.* As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the security zone described in paragraph (a) of this section.

Dated: December 1, 2016.

**M.C. Long,**

*Captain, U.S. Coast Guard, Captain of the Port, Honolulu.*

[FR Doc. 2016–29317 Filed 12–6–16; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900–AP87

#### Extension of Pharmacy Copayments for Medications

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its medical regulations concerning the copayment required for certain medications. This rulemaking freezes copayments at the current rate for veterans in priority groups 2 through 8 through February 26, 2017.

**DATES:** *Effective Date:* This rule is effective on December 7, 2016.

*Comment date:* Comments must be received on or before February 6, 2017.

**ADDRESSES:** Written comments may be submitted by email through <http://www.regulations.gov>; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to “RIN 2900–AP87-Copayments for Medications in

2017.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bridget Souza, Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382-2537. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 1722A(a), VA must require veterans to pay at least a \$2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a non-service-connected disability or condition unless a veteran has a service-connected disability rated 50 percent or more, is a former prisoner of war, or has an annual income at or below the maximum annual rate of VA pension that would be payable if the veteran were eligible for pension. Under 38 U.S.C. 1722A(b), VA “may,” by regulation, increase that copayment amount and establish a maximum annual copayment amount (a “cap”). We have consistently interpreted section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

Under 38 CFR 17.110(b)(1), veterans are obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). Under the current regulation, the copayment amount for veterans in priority groups 2 through 6 of VA’s health care system is \$8 through December 31, 2016. 38 CFR 17.110(b)(1)(i). The copayment amount for veterans in priority groups 7 and 8 is \$9 through December 31, 2016. 38 CFR 17.110(b)(1)(ii). Thereafter, the copayment amount for all affected veterans is to be established using a formula based on the prescription drug component of the Medical Consumer Price Index (CPI-P), set forth in 38 CFR

17.110(b)(1)(iii). Using this methodology would generally result in increased medication prices for veterans.

Currently § 17.110(b)(2) also includes a “cap” on the total amount of copayments in a calendar year for a veteran enrolled in one of VA’s health care enrollment system priority groups 2 through 6. Through December 31, 2016, the annual cap is set at \$960. Thereafter, the cap is to increase “by \$120 for each \$1 increase in the copayment amount” applicable to veterans in priority categories 2 through 6.

On October 27, 2014, we published an interim final rulemaking that “froze” copayments for veterans in priority categories 2 through 6 at \$8 and for veterans in priority groups 7 and 8 at \$9, through December 31, 2015. 79 FR 63819. This interim final rule was made final on September 16, 2015. 79 FR 55545. In that final rulemaking, we extended the copayment freeze to be effective through December 31, 2016. We stated that this extended timeframe would permit the freeze to be in effect all of calendar year 2016 for the continued benefit of veterans, and would allow VA to continue to develop and publish proposed and final rules to implement a tiered copayment structure for certain medications, which will further align VA’s medication copayment structure with other Federal agencies and the commercial sector. In these rulemakings, we stated that this freeze was appropriate because failure to take the action would result in higher copayments, and, as described in prior rulemakings, higher copayments reduced the utilization of VA pharmacy benefits and caused VA patients to instead rely on external providers for medications. 79 FR 63820. We continue to believe this to be the case. The ability to ensure that medications are taken as prescribed is essential to effective health care management. VA can monitor whether its patients are refilling prescriptions at regular intervals while also checking for medications that may interact with each other when these prescriptions are filled by VA. When both VA and non-VA providers are issuing prescriptions to a veteran, there is a greater risk of adverse interactions and harm to the patient because it is more difficult for each provider to assess whether the patient is taking any other medications.

On January 5, 2016, we published a proposed rule that would establish a tiered medication copayment structure. 81 FR 196. In that proposed rule, we indicated that VA intended to publish a final rule that would make the proposed changes effective January 1, 2017. VA

proposed an effective date of January 1, 2017 based on our assumption that the necessary system changes would be in place by that date to allow us to publish a final rule implementing a tiered medication copayment structure. VA will be unable to meet that timeline. However, VA thinks that the necessary changes will be in place in February 2017, and that a final rule establishing a tiered medication copayment regime can be published with an effective date of February 27, 2017.

In this rulemaking, we are removing December 31, 2016, in each place it appears in paragraphs (b)(1)(i)–(iii) and (b)(2), and inserting February 26, 2017, to continue to keep copayment rates and caps at their current levels until the tiered copayment system is established.

If we fail to extend the medication copayment freeze past December 31, 2016, affected veterans would be subject to increased medication copayments until such time as the anticipated final rule implementing the tiered medication copayment structure is effective. In that case, beginning January 1, 2017, VA would use the CPI-P methodology in § 17.110(b)(1)(iii) to determine whether to increase copayments and calculate any mandated increase in the copayment amount for veterans in priority groups 2 through 8. At that time, the copayment amounts would be adjusted to a higher rate based on changes in the CPI-P over the past five years, and the annual copayment cap would also be raised by \$120 for each \$1 increase in the copayment amount. The end result would be increased medication copayments, and a higher annual cap on copayments until the effective date of the anticipated final rule implementing tiered medication copayments. VA believes this would not only have an adverse financial effect on veterans subject to medication copayments, but would also cause unnecessary confusion by making two changes to veterans’ medication copayment amounts over a two-month period. Thus, the intended effect of this interim final rule is to prevent increases in copayment amounts and the copayment cap for veterans in priority groups 2 through 8 until VA has published a final rule establishing a new copayment structure. At that time, veterans’ copayments will be determined according to the methodology contained in the final rule that VA will publish to establish a tiered copayment system. If VA has not established a new tiered copayment system by the end of February, copayments and the copayment cap will increase as prescribed in current

§ 17.110(b) in the absence of further rulemaking.

### Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. As stated above, this rule freezes at current rates the prescription drug copayment that VA charges certain veterans. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. If the medication copayment freeze is not extended, on January 1, 2017, affected veterans would be subject to increased medication copayments based on changes to the CPI-P since 2010, as well as an upward adjustment to the annual copayment cap. VA believes that this might cause a significant financial hardship for those affected veterans and may decrease patient adherence to medical plans and have other unpredictable negative health effects. Further, VA believes that failing to extend the current medication copayment freeze, without interruption, would likely result in confusion for the public and affected veterans because the new tiered medication copayment regime will go into effect within a relatively short period of time. Lastly, allowing the current medication copayment freeze to expire on December 31, 2016, would create programmatic issues that would be difficult for VA to administratively manage. Within a 60-day period IT algorithms that are currently in place would have to be removed, new copayment amounts and annual cap amounts would have to be calculated and implemented along with the necessary system changes, followed by application of the new IT changes necessary for establishing a new tiered medication copayment scheme.

For the above reasons, the Secretary issues this rule as an interim final rule. VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

### Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this interim final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All

existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

### Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is 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 governments 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; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this interim final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

### Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will temporarily freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. This interim rule directly affects individual VA patients and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs,

approved this document on October 3, 2016, for publication.

Dated: December 2, 2016.

**Michael Shores,**

*Acting Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

### PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

Sections 17.640 and 17.647 also issued under Public Law 114–2, sec. 4.

Sections 17.641 through 17.646 also issued under 38 U.S.C. 501(a) and Public Law 114–2, sec. 4.

#### § 17.110 [Amended]

■ 2. Amend § 17.110 as follows:

■ a. In paragraphs (b)(1)(i), (ii), and (iii), remove all references to “December 31, 2016” and add in each place “February 26, 2017”.

■ b. In paragraph (b)(2), remove all references to “December 31, 2016” and add in each place “February 26, 2017”.

[FR Doc. 2016–29337 Filed 12–6–16; 8:45 am]

**BILLING CODE 8320–01–P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Parts 3015 and 3060

[Docket No. RM2016–13; Order No. 3641]

### Changes to Attributable Costing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is issuing a set of final rules amending some existing Commission rules related to attributable costing. The final rules are consistent with methodology changes approved by the Commission. Relative

to the proposed rules, one rule was revised to alleviate confusion and another revision was administrative in nature.

**DATES:** Effective January 6, 2017.

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

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

81 FR 63448 (Sept. 15, 2016).

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- I. Introduction
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#### I. Introduction

On September 9, 2016, the Commission issued proposed rules consisting of necessary changes, resulting from Order No. 3506, that specifically define or describe attributable costs.<sup>1</sup> For the reasons discussed below, the Commission adopts final rules on this topic, with minor revisions to the proposed rules as discussed in chapter IV.

#### II. Background

On September 9, 2016, the Commission issued Order No. 3506 after consideration of a United Parcel Service, Inc. (UPS) petition which sought to make changes to the methodologies employed by the Postal Service to account for the costs of the Postal Service’s products in its periodic reports.<sup>2</sup> In Proposal One, UPS recommended that the Postal Service calculate and attribute inframarginal costs to individual products in addition to the currently attributed volume-variable and product-specific fixed costs. Petition, Proposal One at 1. Proposal Two dealt with reclassifying some fixed costs as fully or partially variable, and attributing those costs to products. Petition, Proposal Two at 1. UPS also filed a third proposal, which

<sup>1</sup> Notice of Proposed Rulemaking on Changes Concerning Attributable Costing, September 9, 2016 (Order No. 3507). See also Docket No. RM2016–2, Order Concerning United Parcel Service, Inc.’s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016 (Order No. 3506). Discussed in greater detail below, the Commission issued an errata related to Order No. 3506. Docket No. RM2016–2, Notice of Errata, October 19, 2016 (Errata). Any reference to Order No. 3506 refers to the updated version including the changes identified in the Errata.

<sup>2</sup> See generally Order No. 3506. See also Docket No. RM2016–2, Petition of United Parcel Service, Inc. for the Initiation of Proceedings to Make Changes to Postal Service Costing Methodologies, October 8, 2015 (Petition).

requested a review of competitive products’ share of institutional costs.<sup>3</sup>

The instant rulemaking stems from the Commission’s findings in Order No. 3506 on Proposal One. In that order, the Commission found that a portion of inframarginal costs (those inframarginal costs calculated as part of a product’s incremental cost) have a reliably identifiable causal relationship to products. Order No. 3506 at 61.

Therefore, pursuant to Order No. 3506, attributable costs must also include those inframarginal costs calculated as part of a competitive product’s incremental costs (in addition to a product’s volume-variable costs and product-specific fixed costs).<sup>4</sup>

As noted above, on October 19, 2016, the Commission issued the Errata to clarify the definition of inframarginal costs described in Order No. 3506. See Errata. Generally, when defining inframarginal costs, the Errata replaced the phrase “do not vary directly with volume,” with the phrase “are not volume-variable costs.” *Id.* at 1–2. The revised definition of inframarginal costs does not impact the Commission’s findings in Order No. 3506. However, the definition cited in Order No. 3507, “[i]nframarginal costs are variable costs that do not vary directly with volume,” would now be cited as “[i]nframarginal costs are variable costs that are not volume-variable costs.” *Id.* at 1; Order No. 3507 at 4; see also Order No. 3506 at 10.

#### III. Review and Analysis of Comments

On October 17, 2016, the Commission received comments from Amazon Fulfillment Services, Inc. (Amazon),<sup>5</sup> the Public Representative,<sup>6</sup> and the Postal Service.<sup>7</sup> On October 18, 2016, the Commission received comments from UPS<sup>8</sup> and, on October 20, 2016, it

<sup>3</sup> Petition, Proposal Three at 1. The Commission declined to consider Proposal Three as it planned to initiate its 5-year review pursuant to 39 U.S.C. 3633(b) following Order No. 3506’s issuance. Order No. 3506 at 124, 125; see also Docket No. RM2017–1, Order No. 3624, Advance Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, November 22, 2016.

<sup>4</sup> On October 7, 2016, UPS appealed Order No. 3506 to the United States Court of Appeals for the District of Columbia Circuit. *United Parcel Service, Inc. v. Postal Regulatory Commission*, No. 16–1354 (D.C. Cir. filed Oct. 7, 2016) (Case No. 16–1354).

<sup>5</sup> Comments of Amazon Fulfillment Services, Inc., October 17, 2016 (Amazon Comments).

<sup>6</sup> Public Representative Comments, October 17, 2016 (PR Comments).

<sup>7</sup> Comments of the United States Postal Service in Response to Order No. 3507, October 17, 2016 (Postal Service Comments).

<sup>8</sup> United Parcel Service, Inc.’s Comments on Notice of Proposed Rulemaking on Changes Concerning Attributable Costing, October 18, 2016 (UPS Comments). UPS also filed a motion for late