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Contents

Federal Register

Vol. 85, No. 216

Friday, November 6, 2020

Agriculture Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71047

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Environmental Information, 71097–71098
Reciprocity Questionnaire, 71098

Bureau of Consumer Financial Protection
PROPOSED RULES
Consumer Access to Financial Records, 71003–71011

Centers for Medicare & Medicaid Services
RULES
Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency, 71142–71205

Civil Rights Commission
NOTICES
Meetings:
Texas Advisory Committee, 71047–71048
Wyoming Advisory Committee, 71048

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 71061–71062

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Fiduciary Activities, 71138–71139
Licensing Manual, 71137–71138

Defense Department
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, 71077–71078

Education Department
RULES
Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; at al.; Corrections, 70975

Employee Benefits Security Administration
RULES
Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency, 71142–71205

Employment and Training Administration
NOTICES
Change in Status of an Extended Benefit Program:
Arkansas, 71100–71101
Iowa, 71100
Federal-State Unemployment Compensation Program:
Certifications for 2020 under the Federal Unemployment Tax Act, 71101–71102

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Meetings:
High Energy Physics Advisory Panel, 71062–71063

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71063–71064

Environmental Protection Agency
RULES
Pesticide Tolerances:
Mefentrifluconazole, 70997–71001
Tolerance Crop Grouping Program V, 70976–70996
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Michigan; Partial Approval and Partial Disapproval of the Detroit SO_2 Nonattainment Area Plan, 71022–71023
Utah; Salt Lake City and Provo Fine Particulate Matter Redesignations to Attainment and Utah State Implementation Plan Revisions, 71023–71046
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
General Administrative Requirements for Assistance Programs, 71072–71074
Draft Endangered Species Act Biological Evaluations:
Atrazine, Simazine, and Propazine Registration Review, 71071–71072
Environmental Impact Statements; Availability, etc., 71074

Farm Credit Administration
RULES
Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility; Correction, 70955

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Helicopters, 70955–70958

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reporting of Information Using Special Airworthiness Information Bulletin, 71135–71136

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71074–71075

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 71066–71071
Filing:
City of Vernon, CA, 71065–71066
Hicks, Bradley H., 71064–71065
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Groton Station Fuel Cell, LLC, 71068
Harmony Florida Solar, LLC, 71066
Sigurd Solar, LLC, 71065
Taylor Creek Solar, LLC, 71066
Todd Solar, LLC, 71068

Federal Highway Administration
NOTICES
Final Federal Agency Actions:
I–5 Rose Quarter Improvement Project in City of Portland, Multnomah County, OR, 71136

Federal Maritime Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71075–71076

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 71076
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 71076–71077

Fish and Wildlife Service
NOTICES
Environmental Impact Statement and Final Deschutes Basin Habitat Conservation Plan:
Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, OR, 71086–71088
Meetings:
Hunting and Shooting Sports Conservation Council, 71088–71089

Foreign-Trade Zones Board
NOTICES
Subzone Application:
Port Arthur LNG, LLC; Foreign-Trade Zone 116; Port Arthur, TX, 71048–71049

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Acquisition Regulation; Zero Burden Information Collection Reports, 71078
Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, 71077–71078

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See National Institutes of Health
RULES
Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency, 71142–71205
PROPOSED RULES
National Vaccine Injury Compensation Program:
Revisions to the Vaccine Injury Table; Correction, 71046

Historic Preservation, Advisory Council
NOTICES
Policy Statement on Promotion and Value of Traditional Trades Training, 71082–71085

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Family Self-Sufficiency Program, 71085–71086

Industry and Security Bureau
PROPOSED RULES
Commerce Control List:
Proposed Controls on 'Software' for the Operation of Certain Automated Nucleic Acid Assemblers and Synthesizers, 71012–71016

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency, 71142–71205
Gain or Loss of Foreign Persons from Sale or Exchange of Certain Partnership Interests, 70958–70972
PROPOSED RULES
Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency, 71016–71017

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Oil Country Tubular Goods from the Republic of Korea, 71052
Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 71055–71057
Fresh Garlic from the People's Republic of China, 71049–71051
Steel Concrete Reinforcing Bar from Mexico, 71053–71055
Determination in the Less-Than-Fair-Value Investigation:
Common Alloy Aluminum Sheet from Indonesia and Romania, 71049

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Automated Storage and Retrieval Systems, Robots, and Components Thereof, 71096–71097

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Number of Full-time Law Enforcement Employees as of October 31, 71098–71099
Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative, 71100
Proposed Consent Decree:
Clean Water Act, 71099–71100

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Escape and Evacuation Plans, 71102–71103
Events Management Platform, 71106
Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls, 71103–71104
Hoist Operators' Physical Fitness, 71102
Sealing of Abandoned Areas, 71107
Statement of Policy Regarding Independence of Advisory Committee Members, 71104–71106

Land Management Bureau
NOTICES
Call for Nominations:
Rio Puerco Management Committee, New Mexico, 71089–71090

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, 71077–71078

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 71080–71081
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 71081–71082
National Center for Complementary and Integrative Health, 71078
National Heart, Lung, and Blood Institute, 71080
National Institute of Allergy and Infectious Diseases, 71081
National Institute on Aging, 71079
National Library of Medicine, 71078–71079, 71081
Prospective Grant of Exclusive Patent License:
Treatment of Hermansky-Pudlak Syndrome and Idiopathic Pulmonary Fibrosis, 71079–71080

National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alaska Interagency Electronic Reporting System, 71059–71060
Alaska Region Scale and Catch Weighing Requirements, 71060–71061
Alaska Region Vessel Monitoring System Program, 71057–71058
Processed Products Family of Forms, 71058–71059
Environmental Impact Statement and Final Deschutes Basin Habitat Conservation Plan:
Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, OR, 71086–71088
Takes of Marine Mammals Incidental to Specified Activities:
Marine Site Characterization Surveys, 71058

National Park Service
PROPOSED RULES
Pictured Rocks National Lakeshore; Snowmobiles, 71017–71020
NOTICES
Inventory Completion:
Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, Indianapolis, IN, 71094–71095
Michigan State Police, Lansing, MI, 71090–71092
Michigan State University, East Lansing, MI, 71095–71096
Tennessee Valley Authority, Knoxville, TN, 71092–71093
Repatriation of Cultural Items:
Gilcrease Museum, Tulsa, OK, 71093–71094

National Science Foundation
NOTICES
Antarctic Conservation Act Permits, 71108
Meetings:
Advisory Committee for Computer and Information Science and Engineering, 71109
Advisory Committee for Social, Behavioral and Economic Sciences, 71108–71109
Meetings; Sunshine Act, 71108

National Transportation Safety Board
NOTICES
Senior Executive Service Performance Review Board, 71109

Navy Department
NOTICES
Performance Review Board:
2020 Membership, 71062

Nuclear Regulatory Commission
PROPOSED RULES
Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors, 71002–71003
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Fitness-for-Duty Programs, 71109–71111

Occupational Safety and Health Administration
NOTICES
Charter Renewal:
Advisory Committee on Construction Safety and Health, 71108

Personnel Management Office
NOTICES
Senior Executive Service Performance Review Board, 71111

Presidential Documents
ADMINISTRATIVE ORDERS
Refugee Admissions for Fiscal Year 2021 (Presidential Determination No. 2021-02 of October 27, 2020), 71219–71221

Sudan; Certification Pursuant to Section 6(E) of the Comprehensive Peace in Sudan Act of 2004, as Amended by Darfur Peace and Accountability Act of 2006 (Memorandum of October 26, 2020), 71215–71217
Trafficking in Persons; Foreign Governments' Efforts To Combat (Presidential Determination No. 2020-12 of September 28, 2020), 71207–71211

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 71118
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 71120–71125
New York Stock Exchange, LLC, 71125–71130
NYSE American, LLC, 71113–71115
NYSE Arca, Inc., 71118–71120
NYSE Chicago, Inc., 71115–71118
NYSE National, Inc., 71111–71113

Surface Mining Reclamation and Enforcement Office
RULES
West Virginia Regulatory Program, 70972–70975

Surface Transportation Board
NOTICES
Change in Operators, Lease and Operation Exemption with Interchange Commitment:
R. J. Corman Railroad Co./Lehigh Line, LLC; Lehigh Railway, LLC and Norfolk Southern Railway Co., 71131–71132
Change in Operators, Lease and Operation Exemption:
R. J. Corman Railroad Co./Luzerne & Susquehanna Line, LLC; Luzerne and Susquehanna Railway Co. and Luzerne County Rail Corp., 71132–71133
Exemption:
Acquisition and Operation; Alabama Railroad, LLC; Line of Alabama Railroad Co., Inc., 71133
Acquisition of Control; Cleveland-Cliffs Inc.; Brandywine Valley Railroad Co., Steelton and Highspire Railroad Co., Lake Michigan and Indiana Railroad Co., Upper Merion and Plymouth Railroad Co., Cleveland Works Railway Inc., and South Chicago and Indiana Harbor Railway Co., 71135
Continuance in Control; R. J. Corman Railroad Co., LLC and R. J. Corman Railroad Group, LLC: R. J. Corman Railroad Co./Lehigh Line, LLC, R. J. Corman Railroad Co./Owego and Harford Line, Inc., and R. J. Corman Railroad Co./Luzerne and Susquehanna Line, LLC, 71131
Modified Certificate of Public Convenience and Necessity:
R. J. Corman Railroad Co./Owego and Harford Line, Inc., 71134
Operation Exemption:
DFW & Southern Railway Co.; Rail Line at MidTexas International Center, 71134

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
RULES
Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency, 71142–71205

Veterans Affairs Department
PROPOSED RULES
Elimination of Copayment for Opioid Antagonists and Education on Use of Opioid Antagonists, 71020–71022
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder; Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder Secondary to Personal Assault, 71139–71140
Loan Guaranty:
Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index; Withdrawal and Reissuance, 71139

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 71142–71205
Health and Human Services Department, 71142–71205
Labor Department, Employee Benefits Security Administration, 71142–71205
Treasury Department, Internal Revenue Service, 71142–71205
Treasury Department, 71142–71205

Part III
Presidential Documents, 71207–71211, 71215–71217, 71219–71221

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Memorandums:

Memorandum of October 26, 2020 71213

Presidential Determinations:

No. 2020–12 of September 28, 2017 71209

No. 2021–02 of September 27, 2017 71219

10 CFR

Proposed Rules:

53.....71002

12 CFR

615.....70955

Proposed Rules:

Ch. X.....71003

14 CFR

39.....70955

15 CFR

Proposed Rules:

774.....71012

26 CFR

1.....70958

54.....71142

Proposed Rules:

54.....71016

29 CFR

2590.....71142

30 CFR

948.....70972

31 CFR

33.....71142

34 CFR

75.....70975

76.....70975

106.....70975

606.....70975

607.....70975

608.....70975

609.....70975

36 CFR

Proposed Rules:

7.....71017

38 CFR

Proposed Rules:

17.....71020

40 CFR

180 (2 documents) 70976, 70997

Proposed Rules:

52 (2 documents) 71022, 71023

81.....71023

42 CFR

410.....71142

411.....71142

414.....71142

417.....71142

433.....71142

510.....71142

Proposed Rules:

100.....71046

45 CFR

147.....71142

155.....71142

182.....71142

Rules and Regulations

Federal Register
Vol. 85, No. 216
Friday, November 6, 2020

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

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AD35

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration is correcting a final rule published in the **Federal Register**. On October 6, 2020, the Farm Credit Administration (FCA, we, or our) adopted a final rule that amended our investment regulations to allow Farm Credit System (FCS or System) associations to purchase and hold the portion of certain loans that non-FCS lenders originate and sell in the secondary market, and that the United States Department of Agriculture (USDA) unconditionally guarantees or insures as to the timely payment of principal and interest. In that publication, the amendatory instruction to revise paragraph (b)(3) of 12 CFR 615.5140 is incorrect. This document corrects that error.

DATES: November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SUPPLEMENTARY INFORMATION: In FR Doc. 2020–19711 ''Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility'' that was published in the **Federal Register** on Tuesday, October 6, 2020 at 85 FR 62945, in the third column on page 62949, correct amendatory instruction 2 to read as follows:

■ 2. Amend § 615.5140 by revising paragraph (b)(2) and paragraph (b)(3) introductory text to read as follows:

Dated: October 16, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–23315 Filed 11–5–20; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1019; Product Identifier 2018–SW–011–AD; Amendment 39–21264; AD 2020–20–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This AD requires, depending on helicopter configuration, installing skived polytetrafluoroethylene tape (PTFE tape) or removing PTFE tape and replacing window seals. This AD also prohibits the installation of a jettisonable cabin window unless the applicable requirements are accomplished. This AD was prompted by a report of excessive friction between the window seal and the helicopter airframe. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective December 11, 2020.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of December 11, 2020.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1019.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1019; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Union Aviation Safety Agency (EASA) AD, any service information that is incorporated by reference, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation and Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. The NPRM published in the **Federal Register** on January 6, 2020 (85 FR 469). For all of the specified helicopter models without Modification (MOD) 332P087140.00 installed, the NPRM proposed to require installing PTFE tape to each jettisonable cabin window frame. For some of the specified helicopter models with MOD 332P087140.00 installed, the NPRM proposed to require removing the PTFE tape, if installed, from each jettisonable cabin window and replacing each VIP jettisonable cabin window polychloroprene seal with a silicone seal. The NPRM also proposed to prohibit the installation of a jettisonable

cabin window unless the applicable required actions were accomplished.

The NPRM was prompted by EASA AD No. 2018–0039, dated February 9, 2018, and corrected March 7, 2018 (EASA AD 2018–0039), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) Model AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, AS 332 L2, and EC 225 LP helicopters. EASA advises of an emergency exit window that required excessive pushing force to jettison. According to EASA, an investigation revealed the window seal was in good condition with no indication of paint contamination or of hardening. EASA advises that the root cause of the incident was excessive friction between the window seal and the airframe. EASA further advises that helicopters with VIP jettisonable cabin windows, which corresponds to MOD 332P087140.00, with PTFE skived film installed, require greater force to jettison than standard jettisonable cabin windows with PTFE skived film installed due to the thickness of the VIP jettisonable cabin windows.

EASA states if this condition is not corrected, it could prevent the window from jettisoning, subsequently affecting the evacuation of passengers during an emergency situation. To address this unsafe condition, EASA AD 2018–0039 requires installing PTFE skived film on the window frames of helicopters with standard jettisonable cabin windows, and removing PTFE skived film and replacing polychloroprene seals with silicone seals on the window frames of helicopters with VIP jettisonable cabin windows.

Actions Since the NPRM Was Issued

After the NPRM was issued, EASA issued AD No. 2020–0061, dated March 17, 2020 (EASA AD 2020–0061), for Airbus Helicopters Model AS 332 L2 helicopters without MOD 07 28630, 332P087142.00, or 332P087140.00 installed and Model EC 225 LP helicopters without MOD 07 28370, 332P087140.00, 332P087142.00, 332P087142.03, 332P087142.06, 332A087149.00, or 332A087149.03 installed. EASA AD 2020–0061 requires modifying the window jettisoning system by removing the PTFE skived film between the window seal and the helicopter airframe and installing silicone seals. The FAA plans to publish a separate rulemaking to address the unsafe condition in EASA AD 2020–0061. Further, EASA AD 2020–0061 advises that it is expected that Airbus Helicopters will also develop similar MODs for helicopters affected by EASA AD 2018–0039, which is the subject of this AD action. Accordingly, certain configurations of Model AS332L2 and EC225LP helicopters have been removed from the applicability and this Final Rule is an interim action.

Also after the NPRM was issued, EASA issued EASA AD No. 2018–0039R1, dated September 25, 2020 (EASA AD 2018–0039R1), to revise EASA AD 2018–0039. EASA AD 2018–0039R1 advises that Airbus Helicopters developed various modifications and corresponding Alert Service Bulletins (ASBs) for the window jettison system, which restore the window jettison system's performance to the approved design standard. Accordingly, EASA AD 2018–0039R1 excludes certain model helicopters with the modifications installed from the applicability.

Additionally, after the NPRM was published, Airbus Helicopters revised the service information listed in the NPRM.

Accordingly, the applicability, required actions, and the related service information have been updated in this Final Rule to reflect the updated revisions. These changes are consistent with the intent of the proposals in NPRM and do not increase the economic burden on any operator nor increase the scope of this AD.

Comments

The FAA gave the public the opportunity to participate in developing this AD, but the FAA did not receive any comments on the NPRM.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all information provided by EASA and determining the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for reducing the applicability, updating the service information, and updating the Cost of Compliance section due to an increase in the number of registered helicopters. These changes are consistent with the intent of the proposals in the NPRM and will neither increase the economic burden on any operator nor increase the scope of this AD.

Interim Action

The FAA considers this AD interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Differences Between This AD and the EASA AD

The EASA AD allows compliance within 250 hours time-in-service (TIS) for helicopters that do not operate over water. This AD requires compliance within 110 hours TIS for all helicopters, regardless of where they operate.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters ASB No. AS332–05.01.05 for Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters, and ASB No. EC225–05A046 for Model EC225LP helicopters, both Revision 1 and dated February 8, 2018. This service information applies to helicopters without VIP jettisonable cabin window MOD 332P087140.00 installed. This service information specifies applying PTFE film to the jettisonable cabin window frames. The FAA also reviewed ASB No. AS332–05.01.05 for Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters, and ASB No. EC225–05A046 for Model EC225LP helicopters, Revision 2, dated April 10, 2019, and Revision 3, dated February 10, 2020. Revisions 2 and 3 contain the same procedures as Revision 1, except Revisions 2 and 3 cancel compliance for helicopters with certain modifications. The FAA reviewed Airbus Helicopters ASB No. AS332–05.01.05, Revision 4, dated September 23, 2020, which contains exceptions for compliance for certain helicopters with POST MOD 0728630, 332P087142.09, or 332P087142.12.

The FAA reviewed Airbus Helicopters ASB No. AS332–56.90.13 for Model AS332L2 helicopters, and ASB No. EC225–56C012 for Model EC225LP helicopters, both Revision 0 and dated February 2, 2018. This service information applies to helicopters with VIP jettisonable cabin window MOD 332P087140.00 installed. This service information specifies removing the PTFE film, if installed between the VIP cabin window frame and seal, from the VIP jettisonable cabin windows, and replacing the VIP jettisonable cabin window polychloroprene seals with silicone seals.

This service information is reasonably available because the interested parties

have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed Airbus Helicopters Information Notice No. 3012–I–05, Revision 0, dated March 8, 2016, for Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This service information provides additional information pertaining to the jettisonable window system and the application of PTFE film to the jettisonable window frames. This service information also advises that VIP windows are thicker and stiffer than serial design windows and are subsequently more difficult to jettison than standard cabin windows.

The FAA reviewed Airbus Helicopters ASB No. AS332–56.90.14, Revision 0, dated April 10, 2019, Airbus Helicopters ASB No. AS332–56.00.16, Revision 0, dated February 10, 2020. The FAA also reviewed Airbus Helicopters ASB No. AS332–56.00.18, Revision 0, Airbus Helicopters ASB No. AS332–56.00.20, Revision 0, and Airbus Helicopters ASB No. AS332–56.00.21, Revision 0, all dated September 23, 2020. The FAA reviewed Airbus Helicopters ASB No. EC225–56A013, Revision 1, Airbus Helicopters ASB No. EC225–56A015, Revision 0, Airbus Helicopters ASB No. EC225–56A016, Revision 0, and Airbus Helicopters ASB No. EC225–56A017, Revision 0, all dated February 10, 2020. This service information provides additional information pertaining to the jettisonable window system and the application of PTFE film to the jettisonable window frames.

Costs of Compliance

The FAA estimates that this AD affects approximately 39 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Depending on your model helicopter and configuration, installing PTFE tape takes about 8 work-hours and parts cost about $92, for an estimated cost of $772 per helicopter and approximately $30,108 for the U.S. fleet.

There are no costs of compliance with removing the PTFE tape and replacing the seals because there are no helicopters with a serial number identified by Airbus Helicopters with MOD 332P087140.00 installed on the U.S. Registry.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2020–20–08 Airbus Helicopters: Amendment 39–21264; Docket No. FAA–2019–1019; Product Identifier 2018–SW–011–AD.

(a) Applicability

This Airworthiness Directive (AD) applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters, certificated in any category, except:

(1) Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters with Modification (MOD) 07 28630, MOD 332P087142.09, or MOD 332P087142.12 installed,

(2) Airbus Helicopters Model AS332L2 helicopters with MOD 07 28630 or 332P087142.00 installed, and

(3) Airbus Helicopters Model EC225LP helicopters with MOD 07 28370, 332A087149.00, 332A087149.03, 332P087142.00, 332P087142.03, or 332P087142.06 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as excessive friction between the jettisonable cabin window and the airframe. This condition could result in the window failing to jettison, preventing occupants from exiting the helicopter during an emergency.

(c) Effective Date

This AD becomes effective December 11, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 110 hours time-in-service:

(1) For Model AS332C, AS332C1, AS332L, and AS332L1 helicopters; and Model AS332L2 and EC225LP helicopters without MOD 332P087140.00 installed, install skived polytetrafluoroethylene tape (PTFE tape) to each jettisonable cabin window frame by following the Accomplishment Instructions, paragraph 3.B.2., of Airbus Helicopters Alert Service Bulletin (ASB) No. AS332–05.01.05 or ASB No. EC225–05A046, both Revision 1 and dated February 8, 2018; or both Revision 2, dated April 10, 2019; or both Revision 3, dated February 10, 2020, or ASB No. AS332–05.01.05, Revision 4, dated September 23, 2020, as applicable to your model helicopter.

(2) For Model AS332L2 and EC225LP helicopters with MOD 332P087140.00 installed:

(i) Remove the PTFE tape, if installed between the VIP cabin window frame and seal, from each jettisonable cabin window by following the Accomplishment Instructions, paragraph 3.B.2., of Airbus Helicopters ASB No. AS332–56.90.13 (ASB AS332–56.90.13) or ASB No. EC225–56C012 (ASB EC225–56C012), both Revision 0 and dated February 8, 2018, as applicable to your model helicopter.

(ii) Replace each VIP jettisonable cabin window polychloroprene seal with a silicone seal by following the Accomplishment Instructions, paragraph 3.B.3., of ASB AS332–56.90.13 or ASB EC225–56C012, as applicable to your model helicopter.

Note 1 to paragraph (e)(2): Airbus Helicopters has identified the following

helicopters as having MOD 332P087140.00 installed: Model AS332L2 serial numbers (S/Ns) 2388, 2390, 2565, 2573, 2577, 2578, and 2587; and Model EC225LP S/Ns 2600, 2623, 2645, 2650, 2651, 2653, 2659, 2684, 2693, 2711, 2712, 2719, 2753, 2756, 2767, 2796, 2926, 2961, 2973, 2974, 2979, 3002, 3003, and 3012.

(3) After the effective date of this AD, do not install a jettisonable cabin window unless you comply with the requirements of paragraph (e)(1) or (e)(2) of this AD, as applicable to your model helicopter and configuration.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation and Rotorcraft Unit, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Airbus Helicopters Information Notice No. 3012–I–05, Revision 0, dated March 8, 2016, Airbus Helicopters ASB No. AS332–56.90.14, Revision 0, dated April 10, 2019, Airbus Helicopters ASB No. AS332–56.00.16, Revision 0, dated February 10, 2020, Airbus Helicopters ASB No. AS332–56.00.18, Revision 0, Airbus Helicopters ASB No. AS332–56.00.20, Revision 0, and Airbus Helicopters ASB No. AS332–56.00.21, Revision 0, all dated September 23, 2020, Airbus Helicopters ASB No. EC225–56A013, Revision 1, Airbus Helicopters ASB No. EC225–56A015, Revision 0, Airbus Helicopters ASB No. EC225–56A016, Revision 0, and Airbus Helicopters ASB No. EC225–56A017, Revision 0, all dated February 10, 2020, which are not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD No. 2018–0039R1, dated September 25, 2020. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2019–1019.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Helicopters Alert Service Bulletin (ASB) No. AS332–05.01.05, Revision 1, dated February 8, 2018.

(ii) Airbus Helicopters ASB No. AS332–05.01.05, Revision 2, dated April 10, 2019.

(iii) Airbus Helicopters ASB No. AS332–05.01.05, Revision 3, dated February 10, 2020.

(iv) Airbus Helicopters ASB No. AS332–05.01.05, Revision 4, dated September 23, 2020.

(v) Airbus Helicopters ASB No. AS332–56.90.13, Revision 0, dated February 8, 2018.

(vi) Airbus Helicopters ASB No. EC225–05A046, Revision 1, dated February 8, 2018.

(vii) Airbus Helicopters ASB No. EC225–05A046, Revision 2, dated April 10, 2019.

(viii) Airbus Helicopters ASB No. EC225–05A046, Revision 3, dated February 10, 2020.

(ix) Airbus Helicopters ASB No. EC225–56C012, Revision 0, dated February 8, 2018.

(3) For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on November 2, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–24626 Filed 11–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9919]

RIN 1545–BO86

Gain or Loss of Foreign Persons From Sale or Exchange of Certain Partnership Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and temporary regulations.

SUMMARY: This document contains regulations that provide guidance for certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in a trade or business within the United States. The regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

DATES: *Effective date:* These regulations are effective on November 6, 2020.

Applicability dates: For dates of applicability, see §§ 1.864(c)(8)–1(j) and 1.897–7(c).

FOR FURTHER INFORMATION CONTACT: Chadwick Rowland or Ronald M. Gootzeit, (202) 317–6937 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2018, the Department of the Treasury (the ''Treasury Department'') and the IRS published proposed regulations (REG–113604–18) under section 864(c)(8) in the **Federal Register** (83 FR 66647) (the ''proposed regulations''). Section 864(c)(8) was added to the Internal Revenue Code (the ''Code'') by the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''), which was enacted on December 22, 2017. The proposed regulations provide rules for determining the amount of gain or loss treated as effectively connected with the conduct of a trade or business within the United States (''effectively connected gain'' or ''effectively connected loss'') under section 864(c)(8), including certain rules that coordinate section 864(c)(8) with other relevant sections of the Code.

The Treasury Department and the IRS received written comments with respect to the proposed regulations. All written comments received in response to the proposed regulations are available at *www.regulations.gov* or upon request.

No public hearing on the proposed regulations was requested or held.

The Treasury Department and the IRS have also published proposed regulations (REG–105476–18) in the **Federal Register** relating to the withholding of tax and information reporting with respect to certain dispositions by a foreign person of an interest in a partnership that is engaged in the conduct of a trade or business within the United States (the ''proposed withholding regulations''). See 84 FR 21198 (May 13, 2019). The Treasury Department and the IRS plan to publish final withholding and information reporting regulations in a later issue of the **Federal Register**.

Summary of Comments and Explanation of Revisions

I. Overview

The final regulations retain the basic approach and structure of the proposed regulations with certain revisions. This Summary of Comments and Explanation of Revisions section discusses the comments received in response to the solicitation of comments in the proposed regulations and explains the revisions made in response to those comments.

II. Comments and Revisions to Proposed § 1.864(c)(8)–1

A. Determining Deemed Sale EC Gain or Deemed Sale EC Loss

Section 864(c)(8)(A) provides that gain or loss of a nonresident alien individual or foreign corporation (a ''foreign transferor'') from the sale, exchange, or other disposition (''transfer'') of an interest in a partnership that is engaged in any trade or business within the United States is treated as effectively connected gain or loss to the extent such gain or loss does not exceed the amount determined under section 864(c)(8)(B). In general, section 864(c)(8)(B) limits the amount of effectively connected gain or loss to the portion of the foreign transferor's distributive share of gain or loss that would have been effectively connected if the partnership had sold all of its assets at fair market value (the deemed sale limitation). The proposed regulations illustrate how to determine the deemed sale limitation described in section 864(c)(8)(B), which the proposed regulations refer to as the aggregate deemed sale EC (''ADSEC'') amount. Once the ADSEC amount has been determined for each applicable category of gain or loss, the foreign transferor's outside gain or loss in each category is compared to the relevant ADSEC gain or ADSEC loss amount for that category to determine the amount of effectively connected gain or effectively connected loss under section 864(c)(8). In general, this amount is determined through a three-step process. Step one determines the amount of gain or loss from each partnership asset as if the partnership conducted a deemed sale of all of its assets on the date of transfer (these amounts, deemed sale gain or deemed sale loss). Step two determines the amount of the deemed sale gain or loss that would be treated as effectively connected gain or loss with respect to each asset (these amounts are referred to as deemed sale EC gain or deemed sale EC loss). Finally, step three determines the foreign transferor's distributive share of the deemed sale EC gain or deemed sale EC loss amounts determined in step two.

As noted in the preceding paragraph, step two requires the gain or loss from the deemed sale of each partnership asset to be analyzed to determine if the gain or loss is properly characterized as effectively connected gain or effectively connected loss. Sourcing determinations are often material in determining whether gain or loss is effectively connected with the conduct of a trade or business within the United States. See, for example, sections 864(c)(2) and (3). Because the sourcing rules in the Code and regulations are generally fact-specific, the application of these rules in the context of the deemed sale required by section 864(c)(8)(B) is unclear. For example, it is unclear how to apply the sourcing rules and principles contained in sections 865(e)(2)(A) and (e)(3) (and the regulations implementing those sections) (the U.S. office rule) to the deemed sale of partnership property required by section 864(c)(8)(B). Specifically, the application of the U.S. office rule depends upon factual determinations made regarding the underlying sale; that is, whether it is attributable to an office or other fixed place of business in the United States, and, with respect to inventory property, whether it is sold for use, disposition, or consumption outside the United States and whether an office or other fixed place of business maintained by the taxpayer in the foreign country materially participated in the sale. In a deemed sale, however, the required facts are generally not determinable because a sale has not actually occurred. Therefore, to address this lack of required facts and provide guidance on how to apply the sourcing provisions to deemed sales, the proposed regulations provide rules that serve as a proxy for the factual determinations that apply for purposes of sourcing deemed sale gain and loss and, in turn, for determining deemed sale EC gain and loss.

In general, proposed § 1.864(c)(8)–1(c)(2)(i) treats all deemed sale gain and loss as attributable to an office or other fixed place of business maintained by the partnership in the United States, and does not treat inventory property as sold for use, disposition, or consumption outside the United States in a sale in which an office or other fixed place of business maintained by the partnership in a foreign country materially participates. Thus, the rule in proposed § 1.864(c)(8)–1(c)(2)(i) provides simplifying factual assumptions that generally treat deemed sale gain and loss as U.S. source. An exception to this rule is provided in the proposed regulations if, during the ten-year period ending on the date of transfer, the asset in question produced no income or gain that was taxable as income that was effectively connected with the conduct of a trade or business within the United States by the partnership (or a predecessor), and the asset has not been used, or held for use, in the conduct of a trade or business within the United States by the partnership (or a predecessor) (the ''ten-year exception''). Proposed § 1.864(c)(8)–1(c)(2)(ii).

A comment on the interaction between section 864(c)(8) and the sourcing rules suggested that the simplifying factual assumptions supplied by the rule in proposed § 1.864(c)(8)–1(c)(2)(i) may overstate the amount of effectively connected gain or loss on a deemed sale of the partnership's assets, as compared to an actual asset sale, by treating all gain or loss from the deemed sale as attributable to a U.S. office of the partnership, subject only to the ten-year exception. As a result, the proposed regulations would similarly overstate the amount of the deemed sale limitation. To address this concern, the comment suggested that in determining deemed sale EC gain and loss, the final regulations should aim to provide a result that is no better or worse than the result that would occur upon an actual asset sale by the partnership, but the comment acknowledged the difficulty in achieving this objective because the underlying source rules largely rely on fact-specific determinations.

The Treasury Department and the IRS generally agree with the broad principles described in the comment regarding proposed § 1.864(c)(8)–1(c)(2). While these final regulations retain the basic framework of the proposed regulations, including the factual determinations regarding office attribution provided in proposed

§ 1.864(c)(8)–1(c)(2)(i), these final regulations adjust their effects by adding rules for sourcing gain or loss from specific assets that may be particularly difficult to source in a deemed sale. § 1.864(c)(8)–1(c)(2)(ii)(B) through (E).

1. Ten-Year Exception

The final regulations provide that deemed sale EC gain and loss is determined by applying section 864 and the regulations thereunder. § 1.864(c)(8)–1(c)(2)(i)(A). These final regulations retain the ten-year exception as an exception to the determination of deemed sale EC gain and loss under § 1.864(c)(8)–1(c)(2)(i)(A). The ten-year exception is intended to remove assets that have no nexus to the United States from the deemed sale EC gain and loss determination; therefore, for these assets, a foreign transferor does not need to apply the rules described in § 1.864(c)(8)–1(c)(2)(ii) to determine deemed sale EC gain and loss. One comment requested that the final regulations clarify that the ten-year exception applies to assets that were not held by the partnership for the full ten-year period. As requested by the comment, these final regulations modify the relevant testing period for the ten-year exception to account for a partnership (including a predecessor of the partnership) that has not existed for at least ten years, or that has not held an asset for at least ten years, by shortening the relevant testing period to the lesser of the ten-year period ending on the date of the transfer or the period during which the partnership (and a predecessor of the partnership) held the asset. § 1.864(c)(8)–1(c)(2)(i)(B). In addition, to ensure that the ten-year exception is properly applied, these final regulations also modify the relevant testing period to include any period during which the foreign transferor (and a predecessor of the foreign transferor) held the asset. Id. Accordingly, an asset will not qualify for the ten-year exception if it generated effectively connected income or effectively connected gain for the foreign transferor (or a predecessor of the foreign transferor), or if the asset was used in the conduct of a trade or business within the United States by the foreign transferor (or a predecessor of the foreign transferor), within the relevant testing period. Id.

2. Rules for Sourcing Deemed Sale Gain and Loss for Purposes of Determining Deemed Sale EC Gain and Loss

Proposed § 1.864(c)(8)–1(c)(2)(i) treats all gain or loss from the deemed sale of an asset as attributable to an office or other fixed place of business maintained by the partnership in the United States, and does not treat inventory property as sold for use, disposition, or consumption outside the United States in a sale in which an office or other fixed place of business maintained by the partnership in a foreign country materially participated. These final regulations make several changes to the general rule provided in proposed § 1.864(c)(8)–1(c)(2)(i) in response to the comment described in section II.A of this Summary of Comments and Explanation of Revisions; these final regulations also clarify the scope of this rule. First, these final regulations clarify that the general rule applies only for purposes of applying section 865(e)(2)(A) to personal property held by the partnership on the date of the deemed sale. § 1.864(c)(8)–1(c)(2)(ii)(A). Second, these final regulations provide additional sourcing rules for determining the foreign source portion of deemed sale gain and loss attributable to specific assets included in the deemed sale. § 1.864(c)(8)–1(c)(2)(ii)(B) through (E). The specific assets are inventory, intangibles, and depreciable personal property. Additional sourcing rules are needed because gain or loss from actual sales of each of these assets would be subject to specific sourcing rules under the Code, but sourcing deemed sale gain or loss under those rules would generally require facts that are not determinable in a deemed sale. These final regulations also clarify that if the partnership does not maintain an office or other fixed place of business in the United States (within the meaning of section 864(c)(5)(A) and § 1.864–7), neither the U.S. office attribution described in § 1.864(c)(8)–1(c)(2)(ii)(A), nor the additional sourcing rules described in § 1.864(c)(8)–1(c)(2)(ii)(B) through (E), will apply. § 1.864(c)(8)–1(c)(2)(ii)(A). Finally, the final regulations reorganize the proposed regulations to account for the changes described in this section II.A.2 of this Summary of Comments and Explanation of Revisions, and the phrase in proposed § 1.864(c)(8)–1(c)(2)(i) regarding use, disposition, or consumption outside the United States is removed to conform with changes made to the general rule and the addition of a specific inventory sourcing rule.

The asset-specific rules provided in § 1.864(c)(8)–1(c)(2)(ii)(B) through (E) utilize available facts as a proxy for the sourcing results, and the attendant effectively connected determinations, that would occur in an actual sale by the partnership of inventory, intangibles, or depreciable personal property. These asset-specific rules use existing sourcing rules and principles to provide fair, administrable rules that can be applied consistently. Specifically, the foreign source portion of deemed sale gain or loss attributable to inventory property (as defined in section 865(i)(1)) is determined using a proxy method that is based on historical data (as suggested by the comment); the foreign source portion of deemed sale gain and loss attributable to intangibles (as defined in section 865(d)(2)) is determined using a proxy method that is based on the partnership's historic income; and the foreign source portion for certain deemed sale gain or loss attributable to depreciable personal property (as defined in section 865(c)(4)(A)) is determined under a recapture principle and, to the extent applicable, a proxy method that is also based on historical data. Additionally, these final regulations add a material change in circumstances rule in § 1.864(c)(8)–1(c)(2)(ii)(E) that applies if, based on a material change in circumstances, the asset-specific rules for inventory property or intangibles do not reach an appropriate sourcing result.

Thus, to the extent that deemed sale gain or loss is attributable to inventory, intangibles, or depreciable personal property, the sourcing result for these assets is determined by first applying § 1.864(c)(8)–1(c)(2)(ii)(A) and then, to the extent applicable, the asset-specific rules provided in § 1.864(c)(8)–1(c)(2)(ii)(B) through (D), or the material change in circumstances rule provided in § 1.864(c)(8)–1(c)(2)(ii)(E). Accordingly, the U.S. office attribution rule described in § 1.864(c)(8)–1(c)(2)(ii)(A) applies to these assets only to the extent that the deemed sale gain or loss exceeds the relevant foreign source portion determined under the relevant rule provided in § 1.864(c)(8)–1(c)(2)(ii)(B) through (E).

i. Look-Back Rule for Inventory Property

The comment on the interaction between section 864(c)(8) and the sourcing rules recommended that the Treasury Department and IRS consider a separate rule for sourcing deemed sales of inventory based on historical data showing how inventory sales were sourced by the partnership over a specified period. The Treasury Department and the IRS agree with the suggestion.

Section 1.864(c)(8)–1(c)(2)(ii)(B) provides a look-back rule for determining the foreign source portion of deemed sale gain or loss attributable to inventory property (as defined in section 865(i)(1), but not including gain sourced by reference to section

865(c)(2)) that is held by the partnership on the date of the deemed sale. Specifically, the general rule provided in § 1.864(c)(8)–1(c)(2)(ii)(A) will not apply, and the deemed sale of inventory property will not be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States, to the extent of foreign source inventory gain or loss. This amount is determined by multiplying deemed sale gain and loss attributable to inventory by a fraction that determines the foreign source inventory ratio. The numerator of the fraction includes the gross income of the partnership that is attributable to foreign source gain or loss from inventory property (as determined under the rules of sections 865(b) and 865(e)) sold within the shorter of the period comprised of the partnership's three taxable years immediately preceding the date of the deemed sale, or the existence of the partnership (measured by partnership taxable years); the denominator of the fraction is the total gross income of the partnership that is attributable to inventory over that period.

This approach addresses the concerns raised in the comment by looking to the partnership's past operations to determine the relevant sourcing result for inventory property, instead of assuming that all of the gain or loss from the deemed sale of inventory property is attributable to a U.S. office (unless the ten-year exception is met). That is, because sourcing the deemed sale gain or loss attributable to inventory property will require facts that are not available in a deemed sale, this approach sources the deemed sale gain or loss by reference to the actual sourcing results from prior sales of inventory property during the look-back period, as evidenced by the foreign source inventory ratio. This rule can be applied by taxpayers and administered by the government with certainty.

ii. Look-Back Rule for Intangibles

The comment on the interaction between section 864(c)(8) and the sourcing rules also discussed how the simplifying factual assumptions supplied by the rule in proposed § 1.864(c)(8)–1(c)(2)(i) may overstate the amount of effectively connected gain or loss with respect to a deemed sale of intangibles held by the partnership. While acknowledging the difficulty of determining the source of deemed sale gain and loss attributable to intangibles, the comment described an approach that would apply a separate rule to determine the source of deemed sale gain and loss attributable to intangibles in lieu of the simplifying factual assumptions supplied by the rule in proposed § 1.864(c)(8)–1(c)(2)(i) as it applies to intangibles. The Treasury Department and the IRS agree that it is difficult to source deemed sale gain or loss attributable to intangibles and that a single, administrable rule to address this issue is preferable. To minimize the difficulty of applying the sourcing rules to intangible property and to provide more certainty, the final regulations provide a separate rule for intangibles (including going concern value) that determines the foreign source portion of deemed sale gain or loss attributable to intangibles by using a proxy method that is based on the source of the partnership's historic gross ordinary income.

Section 1.864(c)(8)–1(c)(2)(ii)(C) provides a look-back rule for determining the foreign source portion of deemed sale gain or loss attributable to an intangible (as defined in section 865(d)(2)) held by the partnership on the date of the deemed sale. This rule is similar to the look-back rule for inventory property because it provides that the deemed sale of an intangible will not be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States to the extent of a foreign source amount. This amount is determined by multiplying deemed sale gain or loss attributable to an intangible by the foreign source intangible ratio.

Thus, the approach for determining the foreign source amount with respect to intangibles employs the same general approach provided for inventory property, with certain modifications. Deemed sale gain or loss attributable to intangibles, like that attributable to inventory property, cannot be reliably sourced in a deemed sale because an actual sale has not occurred. However, unlike inventory property, intangibles may not have relevant historical data indicating how deemed sale gain and loss would be sourced in an actual sale (for example, some intangibles do not generate an identifiable income stream on which a sourcing proxy could be based). To address this issue, the numerator of the foreign source intangible ratio includes the foreign source gross ordinary income of the partnership (other than from dispositions of depreciable or amortizable property) during the shorter of the period comprised of the partnership's three taxable years preceding the date of the deemed sale or the existence of the partnership (measured by partnership taxable years), to the extent that such income was not effectively connected with the conduct of a trade or business within the United States; the denominator includes the total gross ordinary income of the partnership (other than from dispositions of depreciable or amortizable property) during that period. § 1.864(c)(8)–1(c)(2)(ii)(C)(*1*) and (*2*). This foreign source intangible ratio looks specifically to the historic gross ordinary income of the partnership (as opposed to all the historic gross income of the partnership) in order to more accurately reflect the partnership's income derived from the use of the intangibles in the ordinary course of its trade or business. This rule does not apply to the extent of any depreciation adjustments (as defined in section 865(c)(4)(B)) with respect to an amortizable intangible; instead, the rules regarding depreciable personal property will apply to such adjustments.

iii. Special Rules for Foreign Source Inventory Ratio and Foreign Source Intangible Ratio

The foreign source inventory ratio and foreign source intangible ratio may in certain circumstances cause mathematically impossible results or unclear application if cost of goods sold exceed gross receipts. Additional rules were added to address these concerns. First, the foreign source inventory ratio and the foreign source intangible ratio cannot exceed one. § 1.864(c)(8)–1(c)(2)(ii)(B) and (C). Second, if the foreign source gross income attributable to inventory or the foreign gross ordinary income is not positive, then respectively the foreign source inventory ratio or the foreign source intangible ratio is zero. Id. Third, if the foreign source gross income attributable to inventory is positive, but the total gross income attributable to inventory is not positive, or if the foreign gross ordinary income is positive, but the total gross ordinary income is not positive, then respectively the foreign source inventory ratio or the foreign source intangible ratio is one. Id.

iv. Depreciable Personal Property

Section 1.864(c)(8)–1(c)(2)(ii)(D) provides a two-part approach for determining the foreign source portion of deemed sale gain and loss attributable to depreciable personal property: The first part applies a recapture principle to the extent of depreciation adjustments taken with respect to the property, and the second part focuses on where the property is located to the extent the property has deemed sale gain in excess of its depreciation adjustments or if the property has deemed sale loss.

Section 1.864(c)(8)–1(c)(2)(ii)(D)(*1*) applies a recapture principle by

providing that the deemed sale of depreciable personal property (as defined in section 865(c)(4)(A)), or the deemed sale of an amortizable intangible (as defined in section 865(d)(2)), will not be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States to the extent the deemed sale gain is treated as sourced outside the United States after applying section 865(c)(1) at the time of the deemed sale. In contrast to the other sourcing rules that could apply to assets held by the partnership on the date of the deemed sale, the recapture rule provided in section 865(c)(1) can be applied with certainty at the time of the deemed sale because it is based on data that is available at the time of the deemed sale.

For deemed sale gain in excess of the depreciation adjustments with respect to depreciable personal property (other than an amortizable intangible), or for deemed sale loss from depreciable personal property (other than an amortizable intangible), § 1.864(c)(8)–1(c)(2)(ii)(D)(*2*) provides that the relevant sourcing determination is made based on where the property is located. See § 1.864(c)(8)–1(c)(2)(ii)(C) and section II.A.2.ii of this Summary of Comments and Explanation of Revisions for the rule that applies to gain in excess of depreciation adjustments with respect to an amortizable intangible. Although section 865(c)(2) sources the excess gain as if it were attributable to inventory property, such treatment would require further clarification for purposes of these final regulations. Specifically, in contrast to inventory property, depreciable personal property may not have historical data readily available that evidences the location of the economic activity associated with the property or that otherwise indicates how the excess gain or loss would be sourced in an actual sale. To address this issue, while also providing a clear and administrable rule, § 1.864(c)(8)–1(c)(2)(ii)(D)(*2*) sources the excess gain or loss attributable to depreciable personal property based on the location of the property.

v. Material Change in Circumstances Rule

Section 1.864(c)(8)–1(c)(2)(ii)(E) provides a material change in circumstances rule for inventory and intangibles. If this rule applies, the foreign source portion of deemed sale gain or loss attributable to inventory property or intangibles may be determined by applying the relevant rule of § 1.864(c)(8)–1(c)(2)(ii)(B) or (C) by reference to a modified look-back period.

The Treasury Department and the IRS have determined that the general rule provided in § 1.864(c)(8)–1(c)(2)(ii)(A) and the asset-specific determinations provided in § 1.864(c)(8)–1(c)(2)(ii)(B) and (C) will reach an appropriate sourcing result in most cases; that is, an actual sale of the partnership's assets has not occurred, so relevant sourcing information with respect to an actual sale of the assets on the date of the deemed sale will not be readily determinable in most cases, and the look-back rules use the partnership's past operations as a proxy for reaching a sourcing determination with respect to certain assets included in the deemed sale. See sections II.A.2.i and II.A.2.ii of this Summary of Comments and Explanation of Revisions.

The Treasury Department and the IRS realize, however, that the look-back rules provided in § 1.864(c)(8)–1(c)(2)(ii)(B) and (C) for inventory property and intangibles could reach incorrect sourcing results in certain cases; specifically, if a material change in circumstances occurred during the relevant look-back period described in paragraph § 1.864(c)(8)–1(c)(2)(ii)(B)(*1*) or § 1.864(c)(8)–1(c)(2)(ii)(C)(*1*), the partnership's historical data for the entire look-back period may not be an accurate proxy for reaching a sourcing determination with respect to deemed sale gain or loss attributable to such property. In these cases, the final regulations allow taxpayers to use this material change in circumstances rule to remedy an incorrect sourcing result with respect to inventory property and intangibles.

The application of § 1.864(c)(8)–1(c)(2)(ii)(E), therefore, is limited to situations in which a material change in circumstances causes the look-back rule provided in § 1.864(c)(8)–1(c)(2)(ii)(B), or the look-back rule provided in § 1.864(c)(8)–1(c)(2)(ii)(C), to reach an inappropriate sourcing result; that is, a sourcing result that is materially different from the sourcing result that would occur if the applicable look-back period began on the date on which the material change in circumstance occurred and ended on the last day of the partnership's taxable year immediately preceding the year in which the deemed sale occurs (the modified look-back period).[1] If the material change in circumstances rule applies, the applicable sourcing rule for inventory or intangibles may be applied by reference to the modified look-back period. § 1.864(c)(8)–1(c)(2)(ii)(E). The determination of whether a sourcing result is materially different is determined by comparing the foreign source inventory ratio or foreign source intangible ratio provided in § 1.864(c)(8)–1(c)(2)(ii)(B) or (C) (as applicable) with the foreign source inventory ratio or foreign source intangible ratio if that ratio were determined by reference to the modified look-back period. The sourcing result is not materially different unless the percentage point difference between the two ratios described in the preceding sentence is at least 30 percentage points. Id. See *Example 2* in § 1.864(c)(8)–1(c)(2)(iii).

B. Treaty Coordination

A comment questioned whether the rules provided in proposed § 1.864(c)(8)–1(c) for determining a foreign transferor's deemed sale EC gain or deemed sale EC loss were intended to apply in the treaty context without regard to whether the partnership in fact had a permanent establishment in the United States under the terms of an income tax treaty at the time of the transfer.

These final regulations clarify that the U.S. office attribution rule described in § 1.864(c)(8)–1(c)(2)(ii)(A) does not apply unless the partnership maintains an office or other fixed place of business in the United States. A partnership without a U.S. office or other fixed place of business will also generally not have a permanent establishment in the United States. In addition, the treaty coordination rule in § 1.864(c)(8)–1(f) takes into account an applicable treaty when computing the amount of a foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss. As a result, for purposes of § 1.864(c)(8)–1(c)(3) (that is, the third step in the three-step process to determine the foreign transferor's aggregate deemed sale EC items), gain or loss derived by the foreign transferor attributable to assets deemed sold that would be exempt from tax under an applicable U.S. income tax treaty if disposed of by the partnership are not taken into account.

The final regulations retain the general rule that prevents taxation of gain on assets that do not form part of a permanent establishment, but also address certain gains that may be taxed

[1] The material change in circumstances rule cannot apply to a change in circumstances that occurs in the year of the deemed sale because such a change does not occur during the relevant look-back period and, in that case, there is no modified look-back period against which to measure the results that otherwise occur under § 1.864(c)(8)–1(c)(2)(ii)(B) or (C).

without regard to whether there is a permanent establishment (for example, gains from the disposition of certain U.S. real property interests). The final regulations also modify the structure of proposed § 1.864(c)(8)–1(f) by consolidating proposed § 1.864(c)(8)–1(f)(1) through (3) into a single paragraph and make three additional changes.

First, § 1.864(c)(8)–1(f) clarifies that a foreign transferor is eligible for benefits under an income tax treaty only if the transferor meets the requirements of a limitation on benefits article, if any, in the treaty between the jurisdiction in which the foreign transferor is resident and the United States.

Second, § 1.864(c)(8)–1(f) modifies proposed § 1.864(c)(8)–1(f)(2), which stated that ''[t]reaty provisions applicable to gains from the alienation of property forming part of a permanent establishment, including gains from the alienation of a permanent establishment in the United States, apply to the transfer by a foreign transferor of an interest in a partnership with a permanent establishment in the United States.'' The final regulations clarify that a gains article that permits the taxation of gain from the alienation of property forming part of a permanent establishment or fixed place of business in the United States also permits the taxation of gain from the alienation of a partnership interest, to the extent the partnership's assets deemed sold under section 864(c)(8) form a part of the U.S. permanent establishment or fixed place of business of the partnership. Thus, the final regulations remove from the description of an applicable gains provision the phrase ''including gains from the alienation of a permanent establishment,'' as that phrase, as used in certain treaties, merely illustrates one application of the underlying words and is not a separate rule. This approach also is consistent with the statutory framework under section 864(c)(8), which determines the amount of effectively connected gain or loss of a foreign transferor based on the amount of the transferor's distributive share of gain or loss that would have been effectively connected if the partnership had sold all of its assets at fair market value.

Finally, § 1.864(c)(8)–1(f) adds a rule coordinating these regulations with treaty provisions governing the disposition of United States real property interests, which allow the United States to tax gain derived from the disposition of the United States real property interest without regard to whether the U.S. real property interest forms a part of a partnership's permanent establishment or fixed place of business in the United States. Under this coordination rule, if, after applying treaty benefits in paragraph (c)(3) of this section, the only gains or losses that would be taken into account are gains or losses attributable to United States real property interests, the foreign transferor determines its effectively connected gain and effectively connected loss pursuant to section 897 and not under section 864(c)(8). This addition is consistent with the approach taken in the proposed regulations that the gain would be computed under section 897 rather than section 864(c)(8). See section IV of the Explanation of Provisions section of the preamble to the proposed regulations.

C. Partner-Specific Exclusions and Exceptions

A comment requested that the final regulations more clearly address the interaction of section 864(c)(8) and § 1.864(c)(8)–1 with provisions of the Code providing for an exemption from U.S. federal income tax. The Treasury Department and the IRS agree with this suggestion; accordingly, the final regulations provide that a foreign transferor's distributive share of deemed sale EC gain or loss does not include any amount that is excluded from the foreign transferor's gross income or otherwise exempt from U.S. Federal income tax by reason of an applicable provision of the Code. Section 1.864(c)(8)–1(c)(3)(i). For this purpose, the final regulations refer to sections 864(b)(2), 872(b), and 883 as examples. Id.

Similarly, § 1.864(c)(8)–1(c)(3) is modified to provide that a foreign transferor's distributive share of deemed sale EC gain or deemed sale EC loss does not include any amount to which an exception under section 897 applies, such as section 897(k) or section 897(l), provided that amount is not otherwise treated as effectively connected income under a provision of the Code. This rule, which was provided in proposed § 1.864(c)(8)–1(c)(2) as part of the determination of a foreign transferor's deemed sale EC gain and deemed sale EC loss, is moved to § 1.864(c)(8)–1(c)(3) in these final regulations because the exceptions under section 897(k) and section 897(l) are specific to the foreign transferor. This modification is intended to make the three step-process for determining the foreign transferor's aggregate deemed sale EC amounts more cohesive by placing all partner-specific adjustments in step 3.

D. Section 731 Distributions

Under the proposed regulations, a foreign transferor determines the amount of outside gain and loss recognized on the transfer of a partnership interest under all relevant provisions of the Code and regulations, including any applicable nonrecognition provision. Proposed § 1.864(c)(8)–1(b)(2). Although section 864(c)(8)(E) authorizes regulations or other guidance with respect to the application of section 864(c)(8) to nonrecognition transactions, the proposed regulations generally do not provide special rules that apply to nonrecognition transactions. But see proposed § 1.864(c)(8)–1(h) (the anti-stuffing rule). However, the Treasury Department and the IRS recognized that certain nonrecognition transactions, for example certain section 731 distributions, may have the effect of reducing gain or loss that would be taken into account under the rules provided in the proposed regulations. The preamble to the proposed regulations, therefore, requested comments regarding whether sections of the Code other than section 864(c)(8) adequately address transactions that rely on section 731 distributions to reduce the scope of assets subject to U.S. federal income taxation as a result of section 864(c)(8) and proposed § 1.864(c)(8)–1. A comment identified several relevant Code sections and analyzed the application of these sections to transactions involving section 731 distributions. The Treasury Department and the IRS continue to study this issue and will, if necessary, address it through future rulemaking.

E. Information Exchange Between a Partnership and Non-Controlling Partners

A comment requested that foreign partners that do not own a controlling interest in a partnership be permitted to estimate their effectively connected gain or loss for purposes of section 864(c)(8) because non-controlling partners may not be able to obtain from the partnership the information required to perform the computations under these rules. The Treasury Department and the IRS have determined that such a rule is not needed under section 864(c)(8) because the proposed withholding regulations address this issue. Specifically, the proposed withholding regulations provide rules in proposed § 1.864(c)(8)–2 that facilitate and encourage the transfer of information between a foreign partner and a partnership for purposes of section 864(c)(8). The information reporting

requirements of the proposed withholding regulations require the partnership to provide the foreign partner with the information necessary to perform the computations under these rules, even if the foreign partner does not hold a controlling interest in the partnership. However, this comment will be considered as part of the proposed withholding regulations, which will be finalized separately in a later issue of the **Federal Register**.

F. Section 754 Elections

A comment requested a special rule for any foreign transferor that has a difference between its basis in the partnership interest and its share of the partnership's inside basis that occurs because no section 754 election is in effect at the time of transfer; this special rule would, in effect, deem a section 754 election. Specifically, the comment indicated that a foreign transferor may not have negotiated for the partnership to make a section 754 election upon acquisition of an interest in a partnership engaged in a trade or business within the United States because the transferor considered Rev. Rul. 91–32, 1991–1 C.B. 107, to be incorrect. As a result, upon a later transfer of the acquired partnership interest, the foreign transferor would have received a different result under the rules in the section 864(c)(8) proposed regulations than if the partnership had instead sold all of its assets and then liquidated. Because this result occurs due to the failure to make a section 754 election and the mismatches that follow from that failure, the Treasury Department and the IRS have determined that it would be inappropriate to adopt a special rule in these circumstances.

G. Clarification of Section 897 Coordination Rule With Respect to Nonrecognition Provisions

Proposed § 1.864(c)(8)–1(d) coordinates the taxation of United States real property interests under section 897(g) with section 864(c)(8) by providing that when a partnership holds United States real property interests and a transfer of an interest in that partnership is subject to section 864(c)(8) because the partnership is engaged in the conduct of a trade or business within the United States without regard to section 897, the amount of the foreign transferor's effectively connected gain or loss will be determined under section 864(c)(8) and not under section 897(g). However, the proposed regulations did not provide explicit guidance on the application of the section 897 coordination rule when a foreign transferor transfers its partnership interest in a nonrecognition transaction. The final regulations clarify the interaction between the section 897 coordination rule and the nonrecognition provision described in § 1.864(c)(8)–1(b)(2)(ii). Specifically, § 1.864(c)(8)–1(d) provides that any transfer of an interest in a partnership as part of a nonrecognition transaction will not be subject to section 864(c)(8) to the extent that the gain or loss on the transfer is not recognized; instead, if the partnership owns one or more United States real property interests, section 897(g) and the regulations thereunder will apply with respect to the unrecognized gain or loss.

III. Applicability Dates

The proposed regulations were proposed to apply to transfers occurring on or after November 27, 2017. Because the provisions contained in this rulemaking are finalized after June 22, 2019, these regulations generally apply to transfers occurring on or after December 26, 2018 (that is, the date on which the proposed regulations were filed with the **Federal Register**). See sections 7805(b)(1)(B) and (b)(2) and §§ 1.864(c)(8)–1(j) and 1.897–7(c); see also the Applicability Dates section of the Preamble to the proposed regulations. While not subject to these final regulations, transfers occurring on or after November 27, 2017, but before December 26, 2018, are subject to section 864(c)(8). In addition, these final regulations apply to amounts taken into account on or after December 26, 2018, pursuant to an installment sale (as defined in section 453(b)) occurring on or after November 27, 2017, and before December 26, 2018. §§ 1.864(c)(8)–1(j) and 1.897–7(c). This rule is consistent with the manner in which installment sales are treated under existing law. See, *e.g., Snell* v. *Commissioner,* 97 F.2d 891 (5th Cir. 1938) (the tax laws in effect for the year the installment gain is recognized apply to the gain); see also *Estate of Kearns* v. *Commissioner,* 73 T.C. 1223 (1980); *Klein* v. *Commissioner,* 42 T.C. 1000 (1964); Rev. Rul. 79–22, 1979–1 C.B. 275.

Special Analyses

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

The Treasury Department and the IRS have assessed that the final regulations do not establish a new collection of information nor modify an existing collection that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Section 864(c)(8) and the final regulations generally apply to nonresident alien individuals and foreign corporations on the transfer of an interest in a partnership that is engaged in a trade or business within the United States, and not directly to the trade or business the partnership conducts in the United States. Under section 605 of the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Treasury Department and the IRS certify that the final regulations will not have a significant economic impact on a substantial number of small business entities. The reason is that the final regulations generally apply to nonresident alien individuals and foreign corporations on the transfer of an interest in a partnership and not directly to domestic small business entities. Pursuant to section 7805(f), the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal authors of these regulations are Chadwick Rowland and Ronald M. Gootzeit, Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability

Revenue rulings and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.864(c)(8)–1 also issued under 26 U.S.C. 864(c)(8) and 897(g).

* * * * *

Section 1.897–7 also issued under 26 U.S.C. 897(g).

* * * * *

■ **Par. 2.** Section 1.864(c)(8)–1 is added to read as follows:

§ 1.864(c)(8)–1 Gain or loss by foreign persons on the disposition of certain partnership interests.

(a) *Overview.* This section provides rules and definitions under section 864(c)(8). Paragraph (b) of this section provides the general rule treating gain or loss recognized by a nonresident alien individual or foreign corporation from the sale or exchange of a partnership interest as effectively connected gain or effectively connected loss. Paragraph (c) of this section provides rules for determining the limitations on the amount of effectively connected gain or effectively connected loss under section 864(c)(8) and paragraph (b) of this section. Paragraph (d) of this section provides rules regarding coordination with section 897. Paragraph (e) of this section provides rules regarding certain tiered partnerships. Paragraph (f) of this section provides rules regarding U.S. income tax treaties. Paragraph (g) of this section provides definitions. Paragraph (h) of this section provides a rule regarding certain contributions of property to a partnership. Paragraph (i) of this section contains examples illustrating the rules set forth in this section. Paragraph (j) of this section provides the applicability date.

(b) *Gain or loss treated as effectively connected gain or loss*—(1) *In general.* Notwithstanding any other provision of subtitle A of the Internal Revenue Code, if a foreign transferor owns, directly or indirectly, an interest in a partnership that is engaged in the conduct of a trade or business within the United States, outside capital gain, outside capital loss, outside ordinary gain, or outside ordinary loss (each as defined in paragraph (b)(2) of this section) recognized by the foreign transferor on the transfer of all (or any portion) of the interest is treated as effectively connected gain or effectively connected loss, subject to the limitations described in paragraph (b)(3) of this section. Except as provided in paragraph (d) of this section, this section does not apply to prevent any portion of the gain or loss that is otherwise treated as effectively connected gain or effectively connected loss under provisions of the Internal Revenue Code other than section 864(c)(8) from being so treated.

(2) *Determination of outside gain and loss*—(i) *In general.* The amount of gain or loss recognized by the foreign transferor in connection with the transfer of its partnership interest is determined under all relevant provisions of the Internal Revenue Code and the regulations thereunder. See, *e.g.,* §§ 1.741–1(a) and 1.751–1(a)(2). For purposes of this section, the amount of gain or loss that is treated as capital gain or capital loss under sections 741 and 751 is referred to as *outside capital gain* or *outside capital loss,* respectively. The amount of gain or loss that is treated as ordinary gain or ordinary loss under sections 741 and 751 is referred to as *outside ordinary gain* or *outside ordinary loss,* respectively.

(ii) *Nonrecognition provisions.* A foreign transferor's gain or loss recognized in connection with the transfer of its partnership interest does not include gain or loss to the extent that the gain or loss is not recognized by reason of one or more nonrecognition provisions of the Internal Revenue Code.

(3) *Limitations.* For purposes of applying this section, this paragraph (b)(3) limits the amount of gain or loss recognized by a foreign transferor that may be treated as effectively connected gain or effectively connected loss.

(i) *Capital gain limitation.* Outside capital gain recognized by a foreign transferor is treated as effectively connected gain to the extent it does not exceed aggregate deemed sale EC capital gain determined under paragraph (c)(3)(ii)(B) of this section.

(ii) *Capital loss limitation.* Outside capital loss recognized by a foreign transferor is treated as effectively connected loss to the extent it does not exceed aggregate deemed sale EC capital loss determined under paragraph (c)(3)(ii)(B) of this section.

(iii) *Ordinary gain limitation.* Outside ordinary gain recognized by a foreign transferor is treated as effectively connected gain to the extent it does not exceed aggregate deemed sale EC ordinary gain determined under paragraph (c)(3)(ii)(A) of this section.

(iv) *Ordinary loss limitation.* Outside ordinary loss recognized by a foreign transferor is treated as effectively connected loss to the extent it does not exceed aggregate deemed sale EC ordinary loss determined under paragraph (c)(3)(ii)(A) of this section.

(c) *Amount treated as effectively connected with the conduct of a trade or business within the United States.* This paragraph (c) describes the steps to be followed in computing the limitations described in paragraph (b)(3) of this section.

(1) *Step 1: Determine deemed sale gain and loss.* Determine the amount of gain or loss that the partnership would recognize with respect to each of its assets (other than interests in partnerships described in paragraph (e) of this section) upon a deemed sale of all of the partnership's assets on the date of the transfer of the partnership interest described in paragraph (b)(1) of this section (deemed sale). For this purpose, a deemed sale is treated as a sale by the partnership to an unrelated person of each of its assets (tangible and intangible) in a fully taxable transaction for cash in an amount equal to the fair market value of each asset (taking into account section 7701(g)) immediately before the partner's transfer of the interest in the partnership. For rules concerning the deemed sale of certain partnership interests, see paragraph (e) of this section.

(2) *Step 2: Determine deemed sale EC gain and loss*—(i) *In general*—(A) *Effectively connected determination.* With respect to each asset deemed sold in paragraph (c)(1) of this section, determine the amount of gain or loss from the deemed sale that would be treated as effectively connected gain or effectively connected loss (including by reason of section 897). Gain described in this paragraph (c)(2) is referred to as *deemed sale EC gain,* and loss described in this paragraph (c)(2) is referred to as *deemed sale EC loss.* Section 864 and the regulations thereunder apply for purposes of determining whether deemed sale gain or loss would be treated as effectively connected gain or loss. See paragraph (c)(2)(ii) of this section for sourcing rules that apply for purposes of determining deemed sale EC gain and deemed sale EC loss.

(B) *10-year exception.* For purposes of applying paragraph (c)(2)(i)(A) of this section, gain or loss from the deemed sale of an asset (other than a United States real property interest within the meaning of section 897(c)) will not be treated as deemed sale EC gain or deemed sale EC loss if—

(*1*) No income or gain produced by the asset was taxable as income that was effectively connected with the conduct of a trade or business within the United States by the partnership (or the foreign transferor, a predecessor of the foreign transferor, or a predecessor of the partnership) during the lesser of the ten-year period ending on the date of the transfer or the period for which the partnership (and, if applicable, the foreign transferor, a predecessor of the foreign transferor, and a predecessor of the partnership) held the asset; and

(*2*) The asset has not been used, or held for use, in the conduct of a trade

or business within the United States by the partnership (or the foreign transferor, a predecessor of the foreign transferor, or a predecessor of the partnership) during that same period.

(ii) *Sourcing rules for determining deemed sale EC gain and deemed sale EC loss*—(A) *In general.* For purposes of applying section 865(e)(2)(A) in connection with the determination of deemed sale EC gain and deemed sale EC loss under this paragraph (c)(2)(ii)(A), except to the extent provided in paragraphs (c)(2)(ii)(B) through (E) of this section, the deemed sale of an asset will be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States. However, if the partnership does not maintain an office or other fixed place of business in the United States (within the meaning of section 864(c)(5)(A) and § 1.864–7), neither the office attribution described in this paragraph (c)(2)(ii)(A), nor the rules of paragraphs (c)(2)(ii)(B) through (E) of this section, will apply.

(B) *Look-back rule for sale of inventory property.* The deemed sale of inventory property (as defined in section 865(i)(1)) will not be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States to the extent of *foreign source inventory gain or loss.* Foreign source inventory gain or loss is determined by multiplying the deemed sale gain or deemed sale loss attributable to inventory property by the foreign source inventory ratio. The foreign source inventory ratio cannot exceed one. If the amount in paragraph (c)(2)(ii)(B)(*1*) of this section is not positive, the foreign source inventory ratio is zero. If the amount in paragraph (c)(2)(ii)(B)(*1*) of this section is positive, but the amount in paragraph (c)(2)(ii)(B)(*2*) of this section is not positive, the foreign source inventory ratio is one. The foreign source inventory ratio is—

(*1*) The gross income of the partnership from sources without the United States (as determined under sections 865(b) and 865(e)(2)) that was attributable to inventory property sold during the lesser of—

(*i*) The period comprised of the partnership's three taxable years immediately preceding the date of the deemed sale, or

(*ii*) The period beginning on the date the partnership (or any of its predecessors) was formed and ending on the last day of the partnership's taxable year immediately preceding the date of the deemed sale; over

(*2*) The total gross income of the partnership that was attributable to inventory property sold during that same period.

(C) *Look-back rule for intangibles.* The deemed sale of an intangible (as defined in section 865(d)(2), including going concern value) will not be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States to the extent of *foreign source intangible gain or loss.* Foreign source intangible gain or loss is determined by multiplying the deemed sale gain or deemed sale loss from an intangible, without regard to any gain described in section 865(d)(4)(A), by the foreign source intangible ratio. The foreign source intangible ratio cannot exceed one. If the amount in paragraph (c)(2)(ii)(C)(*1*) of this section is not positive, the foreign source intangible ratio is zero. If the amount in paragraph (c)(2)(ii)(C)(*1*) of this section is positive, but the amount in paragraph (c)(2)(ii)(C)(*2*) of this section is not positive, the foreign source inventory ratio is one. The foreign source intangible ratio is—

(*1*) The gross ordinary income (other than from dispositions of depreciable or amortizable property) of the partnership from sources without the United States that was not effectively connected with the conduct of a trade or business within the United States, during the lesser of—

(*i*) The period comprised of the partnership's three taxable years immediately preceding the date of the deemed sale, or

(*ii*) The period beginning on the date the partnership (or any of its predecessors) is formed and ending on the last day of the partnership's taxable year immediately preceding the year in which the deemed sale occurs; over

(*2*) The total gross ordinary income (other than from dispositions of depreciable or amortizable property) of the partnership during that period.

(D) *Depreciable personal property*—(*1*) *Depreciation recapture.* The deemed sale of depreciable personal property (as defined in section 865(c)(4)(A)), including from the sale of an amortizable intangible (as defined in section 865(d)(2)), will not be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States to the extent the deemed sale gain would be treated as from sources outside the United States after applying section 865(c)(1) at the time of the deemed sale.

(*2*) *Gain in excess of depreciation or loss with respect to depreciable personal property.* For purposes of this section, if the deemed sale of depreciable personal property (other than an amortizable intangible) results in deemed sale gain in excess of the property's depreciation adjustments (as defined in section 865(c)(4)(B)), or results in deemed sale loss, attribution to an office or other fixed place of business maintained by the partnership in the United States with respect to the excess deemed sale gain, or deemed sale loss, will be determined based on where the property is located: If the property is located outside the United States, the excess deemed sale gain, or the deemed sale loss, will not be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States; if the property is located within the United States, the excess deemed sale gain, or the deemed sale loss, will be treated as attributable to an office or other fixed place of business maintained by the partnership in the United States.

(E) *Material change in circumstances rule.* If a material change in circumstances occurred that causes the applicable rule provided in paragraph (c)(2)(ii)(B) or (C) of this section to provide a sourcing result that is materially different from the sourcing result that would occur if the applicable period described in paragraph (c)(2)(ii)(B)(*1*) or (c)(2)(ii)(C)(*1*) of this section began on the date on which the material change in circumstance occurred and ended on the last day of the partnership's taxable year immediately preceding the year in which the deemed sale occurs (the *modified look-back period*), the applicable rule provided in paragraph (c)(2)(ii)(B) or (C) of this section may be applied by reference to the modified look-back period. The difference between the sourcing results is determined by comparing the foreign source inventory ratio (as described in paragraph (c)(2)(ii)(B) of this section) or the foreign source intangible ratio (as described in paragraph (c)(2)(ii)(C) of this section), as applicable, with the foreign source inventory ratio or foreign source intangible ratio, as applicable, if that ratio were determined by reference to the modified look-back period. For purposes of this paragraph (c)(2)(ii)(E), the sourcing results will not be materially different unless the percentage point difference between the ratios described in the preceding sentence is at least 30 percentage points.

(iii) *Examples.* This paragraph (c)(2)(iii) provides examples that illustrate the rules of paragraph (c)(2)(ii) of this section. Except as otherwise provided, the following facts apply for purposes of this paragraph (c)(2)(iii). FP is a foreign corporation and a partner in PRS, a partnership that is engaged in the conduct of a trade or business within

the United States (the U.S. Business) and a business in Country A (the Country A Business). Both businesses purchase inventory property and sell the purchased inventory property to unrelated customers; this is the only income-generating activity carried on by the businesses. PRS maintains an office or fixed place of business within the U.S. (within the meaning of section 864(c)(5)(A) and § 1.864–7) and, for its U.S. business, PRS sells its inventory property through its U.S. office. For the Country A business, PRS sells its inventory property through its Country A office for consumption in Country A; PRS's Country A office materially participates in each sale. The gain or loss from the inventory sold through PRS's Country A office is treated as from sources without the United States and is not effectively connected with PRS's U.S. Business. In year 4, FP sells its entire interest in PRS, thereby triggering the deemed sale described in paragraph (c)(1) of this section. In the deemed sale, PRS recognizes $10x of gain on the sale of its inventory property (the only asset PRS holds other than goodwill and going concern value). The 10-year exception provided in paragraph (c)(2)(i)(B) of this section does not apply.

(A) *Example 1: Determining foreign source inventory gain*—(*1*) *Facts.* Based on PRS's sales records for the three taxable years immediately preceding the date of the deemed sale, PRS's gross income from sources without the United States that is attributable to sales of inventory property is $12x and PRS's total gross income attributable to sales of inventory property during that period is $30x.

(*2*) *Analysis.* To determine foreign source inventory gain or loss described in paragraph (c)(2)(ii)(B) of this section, the $10x deemed sale gain attributable to inventory property is multiplied by PRS's foreign source inventory ratio. PRS's foreign source inventory ratio is PRS's gross income from sources without the United States that are attributable to sales of inventory property within PRS's three taxable years preceding the date of the deemed sale, over PRS's total gross income attributable to sales of inventory property during the same period. Thus, based on PRS's sales records from the three taxable years preceding the date of the deemed sale, the foreign source inventory gain for PRS's inventory is $4x (the $10x deemed sale gain attributable to inventory multiplied by the foreign source inventory ratio of $12x over $30x).

(B) *Example 2: Determining deemed sale EC gain attributable to inventory property under the material change in circumstances rule*—(*1*) *Facts.* The facts are the same as in paragraph (c)(2)(iii)(A)(*1*) of this section (the facts of *Example 1* in this paragraph (c)(2)(iii)), except that at the beginning of year 3 (PRS's taxable year immediately preceding the date of the deemed sale), PRS started a new business in Country B (the Country B Business) to take advantage of favorable market prospects for its products in Country B. For the Country B Business, PRS sells its inventory property through its Country B office for consumption in Country B; PRS's Country B office materially participates in each such sale. The gain or loss from the inventory sold through PRS's Country B office is foreign source gain or loss. Also, at the beginning of year 3, PRS substantially reduced its U.S. Business as a result of market factors. As a result of these changes in year 3, 95% of PRS's inventory property is sold in its Country A Business and Country B Business (collectively, the Foreign Businesses) beginning on the date in which these changes occurred; accordingly, 5% of PRS' inventory property is sold in its U.S. Business after these changes. Based on PRS's sales records for the three taxable years preceding the date of the deemed sale, PRS's gross income from sources without the United States that are attributable to sales of inventory property is $15x and PRS's total gross income attributable to sales of inventory property during that period is $30x; for year 3, PRS's gross income from sources without the United States that are attributable to sales of inventory property is $9.5x, and PRS's total gross income attributable to sales of inventory property in Year 3 is $10x.

(*2*) *Analysis.* The material change in circumstances rule described in paragraph (c)(2)(ii)(E) of this section applies if due to a material change in circumstances, the sourcing rule provided in paragraph (c)(2)(ii)(B) of this section provides a sourcing result that is materially different from the sourcing result that would occur if that sourcing rule was applied by reference to the modified look-back period; that is, the period beginning on the date in which a material chance in circumstances occurred and ending on the last day of the PRS's taxable year immediately preceding the date of the deemed sale. For this purpose, the reduction in PRS's U.S. business in year 3, coupled with the creation of the Country B Business in the same year, qualifies as a material change in circumstances. Thus, the modified look-back period consists of year 3; that is, the period starting at the beginning of year 3, the date in which the material change in circumstances occurred, and ending of the last day of year 3, the last day of PRS's taxable year immediately preceding the date of the deemed sale. Based on PRS's sales records for the three taxable years preceding the deemed sale, the foreign source inventory ratio, expressed as a percentage, is 50% ($15x attributable to PRS's gross income from sources without the United States with respect to sales of its inventory property, over $30x attributable to PRS's total gross income with respect to sales of its inventory property). Due to the material change in circumstances, however, 95% of PRS's inventory property is sold in its Foreign Businesses. ($9.5x attributable to PRS's gross income from sources without the United States with respect to sales of its inventory property, over $10x attributable to PRS's total gross income with respect to sales of its inventory property.) Accordingly, if PRS applied the sourcing rule provided in paragraph (c)(2)(ii)(B) of this section by reference to the modified look-back period, 95% ($9.5x/$10x), or $9.5x, of the gain would be attributable to sales for PRS's Foreign Businesses (gain from sources without the United States), and only 5% ($.5x/$10x), or $0.5x, of the gain would be attributable to sales for PRS's U.S. Business (gain from United States sources). The excess of the foreign source inventory ratio determined by reference to the modified look-back period (expressed as a percentage), over the foreign source inventory ratio (also expressed as a percentage) is 45%; that is 95% (as determined under the modified look-back period) minus 50% (as determined under the foreign source inventory ratio). Accordingly, the sourcing results are materially different because the 45 percentage point difference is greater than the 30 percentage point threshold provided in paragraph (c)(2)(ii)(E) of this section. Thus, the material change in circumstances rule of paragraph (c)(2)(ii)(E) of this section applies and the foreign source inventory gain determined under paragraph (c)(2)(ii)(B) of this section, determined by reference to the modified look-back period, is $9.5x; that is, the deemed sale gain attributable to inventory property ($10x), multiplied by the foreign source inventory ratio determined by reference to the modified look-back period ($9.5x/$10x).

(3) *Step 3: Determine the foreign transferor's distributive share of deemed sale EC gain or deemed sale EC loss*—(i) *In general.* A foreign transferor's

distributive share of deemed sale EC gain or deemed sale EC loss with respect to each asset is the amount of the deemed sale EC gain and deemed sale EC loss determined under paragraph (c)(2) of this section that would have been allocated to the foreign transferor by the partnership under all applicable Internal Revenue Code sections (including section 704) upon the deemed sale described in paragraph (c)(1) of this section, taking into account allocations of tax items applying the principles of section 704(c), including any remedial allocations (see § 1.704–3(d)), and any section 743(b) basis adjustments (see § 1.743–1(j)(3)). For this purpose, a foreign transferor's distributive share of deemed sale EC gain or deemed sale EC loss does not include any amount that is excluded from the foreign transferor's gross income or otherwise exempt from U.S. Federal income tax by reason of an applicable provision of the Internal Revenue Code (including, for example, by reason of section 864(b)(2), 872(b), or 883). Similarly, a foreign transferor's distributive share of deemed sale EC gain or deemed sale EC loss does not include any amount to which an exception under section 897 applies, such as section 897(k) or section 897(l), if that amount is not otherwise treated as effectively connected under a provision of the Code. For rules regarding the determination of a foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss under an applicable U.S. income tax treaty, see paragraph (f) of this section.

(ii) *Aggregate deemed sale EC items*—(A) *Ordinary gain or loss.* A foreign transferor's *aggregate deemed sale EC ordinary gain* (if the net aggregate of the foreign transferor's distributive share of the deemed sale EC ordinary gain and loss is a gain) or *aggregate deemed sale EC ordinary loss* (if the net aggregate of the foreign transferor's distributive share of the deemed sale EC ordinary gain and loss is a loss) is determined by taking into account—

(*1*) The portion of the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss that is attributable to the deemed sale of the partnership's assets that are section 751(a) property; and

(*2*) Deemed sale EC gain and deemed sale EC loss from the deemed sale of assets that are section 751(a) property that would be allocated to the foreign transferor with respect to interests in partnerships that are engaged in the conduct of a trade or business within the United States under paragraph (e)(1)(ii) of this section upon the deemed asset sales described in paragraph (e)(1)(i) of this section.

(B) *Capital gain or loss.* A foreign transferor's *aggregate deemed sale EC capital gain* (if the net aggregate of the foreign transferor's distributive share of the deemed sale EC capital gain and loss is a gain) or *aggregate deemed sale EC capital loss* (if the net aggregate of the foreign transferor's distributive share of the deemed sale EC capital gain and loss is a loss) is determined by taking into account—

(*1*) The portion of the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss that is attributable to the deemed sale of assets that are not section 751(a) property; and

(*2*) Deemed sale EC gain and deemed sale EC loss from the sale of assets that are not section 751(a) property and that would be allocated to the foreign transferor with respect to all interests in partnerships that are engaged in the conduct of a trade or business within the United States under paragraph (e)(1)(ii) of this section upon the deemed asset sales described in paragraph (e)(1)(i) of this section.

(iii) *Partial transfers.* If a foreign transferor transfers less than all of its interest in a partnership, then for purposes of paragraph (c)(3)(i) of this section, the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss is determined by reference to the amount of deemed sale EC gain or deemed sale EC loss determined under paragraph (c)(3)(i) of this section that is attributable to the portion of the foreign transferor's partnership interest that was transferred.

(d) *Coordination with section 897.* If a foreign transferor transfers an interest in a partnership in a transfer that is subject to section 864(c)(8) and the partnership owns one or more United States real property interests (as defined in section 897(c)), then the foreign transferor determines its effectively connected gain and effectively connected loss under this section, and not pursuant to section 897(g). Accordingly, with respect to a transfer that is subject to section 864(c)(8), section 864(c)(8)(C) does not reduce the amount of gain or loss treated as effectively connected gain or loss under this section. For rules regarding a transfer not subject to section 864(c)(8) of an interest in a partnership that owns one or more United States real property interests, see section 897(g) and the regulations thereunder. If a foreign transferor transfers an interest in a partnership in the manner described in paragraph (b)(2)(ii) of this section, the transfer is treated as not subject to section 864(c)(8) to the extent of the gain or loss that is not recognized; instead, if the partnership owns one or more United States real property interests at the time of transfer, the rules of section 897(g) and the regulations thereunder apply to the unrecognized gain or loss.

(e) *Tiered partnerships*—(1) *Transfers of upper-tier partnerships.* Assets sold in a deemed sale described in paragraph (c)(1) of this section do not include interests in partnerships that are engaged in the conduct of a trade or business within the United States or interests in partnerships that hold, directly or indirectly, partnerships that are engaged in the conduct of a trade or business within the United States. Rather, if a foreign transferor transfers an interest in a partnership (upper-tier partnership) that owns, directly or indirectly, an interest in one or more partnerships that are engaged in the conduct of a trade or business within the United States, then—

(i) Beginning with the lowest-tier partnership that is engaged in the conduct of a trade or business within the United States in a chain of partnerships and going up the chain, each partnership that is engaged in the conduct of a trade or business within the United States is treated as selling its assets in a deemed sale in accordance with the principles of paragraph (c)(1) of this section; and

(ii) Each partnership must determine its deemed sale EC gain and deemed sale EC loss in accordance with the principles of paragraph (c)(2) of this section, and determine the distributive share of deemed sale EC gain and deemed sale EC loss for each partner that is either a partnership (in which the foreign transferor is a direct or indirect partner) or a foreign transferor, in accordance with the principles of paragraph (c)(3)(i) of this section.

(2) *Transfers by upper-tier partnerships.* If a foreign transferor is a direct or indirect partner in an upper-tier partnership and the upper-tier partnership transfers an interest in a partnership that is engaged in the conduct of a trade or business within the United States (including a partnership held indirectly through one or more partnerships), then the principles of this section (including paragraph (e)(1) of this section) apply with respect to the gain or loss on the transfer that is allocated to the foreign transferor by the upper-tier partnership.

(3) *Coordination with section 897.* For purposes of this paragraph (e), a lower-tier partnership that holds one or more United States real property interests is

treated as engaged in the conduct of a trade or business within the United States.

(f) *Treaty coordination.* This paragraph (f) describes how paragraph (c)(3) of this section applies in the case of a transfer of an interest in a partnership by a foreign transferor that is eligible for benefits under an applicable U.S. income tax treaty. As a general matter, a foreign transferor must satisfy the requirements of the limitation on benefits article, if any, in the treaty between the jurisdiction in which the transferor is resident and the United States to be eligible for treaty benefits. In the case of a foreign transferor that is entitled to treaty benefits, in determining the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss, gain or loss derived by the foreign transferor attributable to assets deemed sold that would be exempt from tax under an applicable U.S. income tax treaty if disposed of by the partnership are not taken into account under paragraph (c)(3) of this section. In general, gain or loss on the alienation of a partnership interest will be treated as effectively connected gain or loss under section 864(c)(8) to the extent that the gain or loss is either attributable to assets forming part of a U.S. permanent establishment or fixed place of business, or taxable under a provision governing the disposition of United States real property interests. Gain or loss from the alienation of a partnership interest will be considered gain or loss attributable to the alienation of assets forming part of a permanent establishment or fixed place of business in the United States to the extent the assets deemed sold under section 864(c)(8) form a part of the U.S. permanent establishment or fixed place of business of the partnership. If, however, after applying treaty benefits in paragraph (c)(3) of this section, the only gains or losses that would be taken into account are gains or losses attributable to United States real property interests, the foreign transferor determines its effectively connected gain and effectively connected loss pursuant to section 897 and not under this section.

(g) *Definitions.* The following definitions apply for purposes of this section.

(1) *Effectively connected gain.* The term *effectively connected gain* means gain that is treated as effectively connected with the conduct of a trade or business within the United States.

(2) *Effectively connected loss.* The term *effectively connected loss* means loss treated as effectively connected with the conduct of a trade or business within the United States.

(3) *Foreign transferor.* The term *foreign transferor* means a nonresident alien individual or foreign corporation.

(4) *Section 751(a) property.* The term *section 751(a) property* means unrealized receivables described in section 751(c) and inventory items described in section 751(d).

(5) *Transfer.* The term *transfer* means a sale, exchange, or other disposition, and includes a distribution from a partnership to a partner to the extent that gain or loss is recognized on the distribution, as well as a transfer treated as a sale or exchange under section 707(a)(2)(B).

(h) *Anti-stuffing rule.* If a foreign transferor (or a person that is related to a foreign transferor within the meaning of section 267(b) or 707(b)) transfers property (including another partnership interest) to a partnership in a transaction with a principal purpose of reducing the amount of gain treated as effectively connected gain, or increasing the amount of loss treated as effectively connected loss, under section 864(c)(8) or section 897, the transfer is disregarded for purposes of section 864(c)(8) or section 897, as appropriate.

(i) *Examples.* This paragraph (i) provides examples that illustrate the rules of this section. Except as otherwise provided, the following facts are presumed for purposes of this paragraph (i). FP is a foreign corporation. USP is a domestic corporation. PRS is a partnership that was formed on January 1, 2018, when FP and USP each contributed $100x in cash. PRS has made no distributions and received no contributions other than those described in the preceding sentence. FP's adjusted basis in its interest in PRS is $100x. X is a foreign corporation that is unrelated to FP, USP, or PRS. Upon the formation of PRS, FP and USP entered into an agreement providing that all income, gain, loss, and deduction of PRS will be allocated equally between FP and USP. PRS is engaged in the conduct of a trade or business within the United States (the U.S. Business) and an unrelated business in Country A (the Country A Business). In a deemed sale described in paragraph (c)(1) of this section, gain or loss on assets of the U.S. Business would be treated as effectively connected gain or effectively connected loss, and gain or loss on assets of the Country A Business would not be so treated (including by reason of paragraph (c)(2)(i)(B) of this section). PRS has no liabilities.

(1) *Example 1. Deemed sale limitation*—(i) *Facts.* On January 1, 2019, FP sells its entire interest in PRS to X for $105x. FP does not qualify for the benefits of an income tax treaty between the United States and another country. Immediately before the sale, PRS's balance sheet appears as follows:

	Adjusted basis	Fair market value
U.S. Business section 1231 asset	$100x	$104x
Country A Business capital asset	100x	106x
Total	200x	210x

(ii) *Analysis*—(A) *Outside gain or loss.* FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. For purposes of this example, for simplicity, PRS is assumed to hold no section 751(a) property and depreciation recapture is assumed to be zero. FP recognizes a $5x capital gain under section 741, which is an outside capital gain within the meaning of paragraph (b)(2)(i) of this section. Under paragraph (b)(1) of this section, FP's $5x capital gain is treated as effectively connected gain to the extent that it does not exceed the limitation described in paragraph (b)(3)(i) of this section, which is FP's aggregate deemed sale EC capital gain.

(B) *Deemed sale.* FP's aggregate deemed sale EC capital gain is determined according to the three-step process set forth in paragraph (c) of this section. First, the amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is a $4x gain with respect to the U.S. Business section 1231 asset and a $6x gain with respect to the Country A Business capital asset. Second, under paragraph (c)(2) of this section, PRS's

deemed sale EC gain is $4x. Third, under paragraph (c)(3)(ii)(B) of this section, FP's aggregate deemed sale EC capital gain is $2x (that is, the aggregate of its distributive share of deemed sale EC gain attributable to the deemed sale of assets that are not section 751(a) property, which is 50% of $4x).

(C) *Limitation.* Under paragraph (b)(3)(i) of this section, the $5x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's $2x aggregate deemed sale EC capital gain. Accordingly, FP recognizes $2x of capital gain that is treated as effectively connected gain.

(2) *Example 2. Outside gain limitation*—(i) *Facts.* On January 1, 2019, FP sells its entire interest in PRS to X for $110x. FP does not qualify for the benefits of an income tax treaty between the United States and another country. Immediately before the sale, PRS's balance sheet appears as follows:

	Adjusted basis	Fair market value
U.S. Business section 1231 asset	$100x	$150x
Country A Business capital asset	100x	70x
Total	200x	220x

(ii) *Analysis*—(A) *Outside gain or loss.* FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. For purposes of this example, for simplicity, PRS is assumed to hold no section 751(a) property and depreciation recapture is assumed to be zero. FP recognizes a $10x capital gain under section 741, which is an outside capital gain within the meaning of paragraph (b)(2)(i) of this section. Under paragraph (b)(1) of this section, FP's $10x capital gain is treated as effectively connected gain to the extent that it does not exceed the limitation described in paragraph (b)(3)(i) of this section, which is FP's aggregate deemed sale EC capital gain.

(B) *Deemed sale.* FP's aggregate deemed sale EC capital gain is determined according to the three-step process set forth in paragraph (c) of this section. First, the amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is a $50x gain with respect to the U.S. Business section 1231 asset and a $30x loss with respect to the Country A Business capital asset. Second, under paragraph (c)(2) of this section, PRS's deemed sale EC gain is $50x. Third, under paragraph (c)(3)(ii)(B) of this section, FP's aggregate deemed sale EC capital gain is $25x (that is, the aggregate of its distributive share of deemed sale EC gain attributable to the deemed sale of assets that are not section 751(a) property, which is 50% of $50x).

(C) *Limitation.* Under paragraph (b)(3)(i) of this section, the $10x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's $25x aggregate deemed sale EC capital gain. Accordingly, FP recognizes $10x of capital gain that is treated as effectively connected gain.

(3) *Example 3. Interaction with section 751(a)*—(i) *Facts.* On January 1, 2019, FP sells its entire interest in PRS to X for $95x. FP does not qualify for the benefits of an income tax treaty between the United States and another country. Through both its U.S. Business and its Country A Business, PRS holds inventory items and receivables that are section 751 property (as defined in § 1.751–1(a)). Immediately before the sale, PRS's balance sheet appears as follows:

	Adjusted basis	Fair market value
U.S. Business section 1231 asset	$20x	$50x
U.S. Business inventory and receivables	30x	50x
Country A Business capital asset	100x	80x
Country A Business inventory	50x	10x
Total	200x	190x

(ii) *Analysis*—(A) *Outside gain or loss.* FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. Under sections 741 and 751, FP recognizes a $10x ordinary loss and a $5x capital gain. See § 1.751–1(a). Under paragraph (b)(2)(i) of this section, FP has outside ordinary loss equal to $10x and outside capital gain equal to $5x. Under paragraph (b)(1) of this section, FP's outside ordinary loss and outside capital gain are treated as effectively connected loss and effectively connected gain to the extent that each does not exceed the applicable limitation described in paragraph (b)(3) of this section. In the case of FP's outside ordinary loss, the applicable limitation is FP's aggregate deemed sale EC ordinary loss. In the case of FP's outside capital gain, the applicable limitation is FP's aggregate deemed sale EC capital gain.

(B) *Deemed sale.* FP's aggregate deemed sale EC ordinary loss and aggregate deemed sale EC capital gain are determined according to the three-step process set forth in paragraph (c) of this section.

(*1*) *Step 1.* The amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is as follows:

Asset	Gain/(loss)
U.S. Business section 1231 asset	$30x
U.S. Business inventory and receivables	20x
Country A Business capital asset	(20x)
Country A Business inventory	(40x)

(*2*) *Step 2.* Under paragraph (c)(2) of this section, PRS's deemed sale EC gain and deemed sale EC loss must be

determined with respect to each asset. The amounts determined under paragraph (c)(2) of this section are as follows:

Asset	Deemed sale EC gain/(loss)
U.S. Business section 1231 asset	$30x
U.S. Business inventory and receivables	20x
Country A Business capital asset	0
Country A Business inventory	0

(*3*) *Step 3.* Under paragraph (c)(3)(ii)(B) of this section, FP's aggregate deemed sale EC capital gain is $15x (that is, the aggregate of its distributive share of deemed sale EC gain that is attributable to the deemed sale of assets that are not section 751(a) property, which is 50% of $30x) and FP's aggregate deemed sale EC ordinary loss is $0 (that is, the aggregate of its distributive share of deemed sale EC loss that is attributable to the deemed sale of assets that are section 751(a) property).

(C) *Limitation*—(i) *Capital gain.* Under paragraph (b)(3)(i) of this section, the $5x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's $15x aggregate deemed sale EC capital gain. Accordingly, the amount of FP's capital gain that is treated as effectively connected gain is $5x.

(ii) *Ordinary loss.* Under paragraph (b)(3)(iv) of this section, the $10x outside ordinary loss recognized by FP is treated as effectively connected loss to the extent that it does not exceed FP's $0 aggregate deemed sale EC ordinary loss. Accordingly, the amount of FP's ordinary loss that is treated as effectively connected loss is $0.

(4) *Example 4. Coordination with income tax treaties*—(i) *Facts*—(A) *Sale of interest.* On January 1, 2019, FP sells its entire interest in PRS to X for $105x. Immediately before the sale, PRS's balance sheet appears as follows:

	Adjusted basis	Fair market value
U.S. Business section 1231 asset	$100x	$104x
Country A Business capital asset	100x	106x
Total	200x	210x

(B) *Treaty benefits.* FP is a qualified resident of Country A under a U.S. income tax treaty between the United States and Country A that is similar or identical in all material respects to the 2006 U.S. Model Income Tax Convention (the Treaty). PRS is treated as fiscally transparent for purposes of Country A tax law. PRS does not carry on its U.S. Business through a U.S. permanent establishment (PE).

(ii) *Analysis*—(A) *Outside gain or loss.* FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. For purposes of this example, for simplicity, PRS is assumed to hold no section 751(a) property and depreciation recapture is assumed to be zero. FP recognizes a $5x capital gain under section 741, which is an outside capital gain within the meaning of paragraph (b)(2)(i) of this section. Under paragraph (b)(1) of this section, FP's $5x capital gain is treated as effectively connected gain to the extent that it does not exceed the limitation described in paragraph (b)(3)(i) of this section, which is FP's aggregate deemed sale EC capital gain.

(B) *Deemed sale.* FP's aggregate deemed sale EC capital gain is determined according to the three-step process set forth in paragraph (c) of this section by taking into account the treaty coordination rule under paragraph (f) of this section.

(*1*) *Step 1.* The amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is as follows:

Asset	Gain/(loss)
U.S. Business section 1231 asset	$4x
Country A Business capital asset	6x

(*2*) *Step 2.* Under paragraph (c)(2) of this section, PRS's deemed sale EC gain is as follows:

Asset	Gain/(loss)
U.S. Business section 1231 asset	$4x
Country A Business capital asset	0x

(*3*) *Step 3.* FP is eligible for benefits under the Treaty and derives the gain on the deemed sale of U.S. Business section 1231 asset. Under paragraph (c)(3)(i) and paragraph (f) of this section, because gain from the disposition of the U.S. Business section 1231 asset does not form part of a U.S. PE, the gain is exempt from U.S. tax under the Treaty, and is not taken into account in determining FP's distributive share of deemed sale EC gain under paragraphs (c)(3)(i) and paragraph (f) of this section. Therefore, FP's aggregate deemed sale EC capital gain is $0x under paragraph (c)(3)(ii)(B) of this section.

(C) *Limitation.* Under paragraph (b)(3)(i) of this section, the $5x outside capital gain recognized by FP is not treated as effectively connected gain since all of it would exceed FP's $0x aggregate deemed sale EC capital gain.

(j) *Applicability date.* This section applies to transfers occurring on or after December 26, 2018, and to amounts received on or after December 26, 2018, pursuant to an installment sale (as defined in section 453(b)) occurring on or after November 27, 2017.

■ **Par. 3.** Section 1.897–7 is added to read as follows:

§ 1.897–7 Treatment of certain partnership interests, trusts and estates under section 897(g).

(a) through (b) [Reserved]. For further guidance, see § 1.897–7T(a) through (b).

(c) *Coordination with section 864(c)(8).* Except as provided in § 1.864(c)(8)–1, the amount of any money, and the fair market value of any property, received by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership, trust, or estate will, to the extent attributable to United States real property interests, be considered as an amount received from the sale or exchange in the United States of such property. See also § 1.864(c)(8)–1(h) for an anti-stuffing rule that may apply to transactions subject to section 897. This paragraph applies to transfers occurring on or after December 26, 2018, and to amounts received on or after December 26, 2018, pursuant to an installment sale (as defined in section 453(b)) occurring on or after November 27, 2017.

■ **Par. 4.** Section 1.897–7T is amended by adding paragraph (c) to read as follows:

§ 1.897–7T Treatment of certain partnership interests as entirely U.S. real property interests under sections 897(g) and 1445(e) (temporary).

* * * * *

(c) *Coordination with section 864(c)(8).* [Reserved]. For further guidance, see § 1.897–7(c).

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 10, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–21165 Filed 11–5–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–119–FOR (Interim) OSM 2012–0013; WV–121–FOR; OSM–2013–0010 S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia is submitting a proposed amendment to revise the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) by creating a new section relating to the award of attorney fees and costs by the Surface Mine Board. On July 11, 2012, OSMRE on an interim basis, approved statutory amendments (WV–119) to the West Virginia regulatory program under SMCRA. West Virginia revised the WVSCMRA to effect changes concerning the special reclamation tax and apportionment of this tax.

DATE: The effective date is December 7, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Acting Director, Charleston Field Office, Telephone: (412) 937–2827. Email: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendments
III. OSMRE's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Statutory and Executive Order Reviews

I. Background on the West Virginia Program

Section 503(a) of the Act (30 U.S.C. 1253(a)) permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendments

By letter dated and received by OSMRE on September 11, 2013 (Administrative Record No. WV–1584), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to revise WVSCMRA. Enrolled Senate Bill 497 created a new section in the West Virginia Code, designated as § 22–3–33, relating to the award of attorney fees and costs by the Surface Mine Board (SMB), which replaced the Reclamation Board of Review (RBR), and Courts in appeals from actions taken by WVDEP under the approved State surface mining program.

In 1994, the West Virginia Legislature adopted House Bill 4065 (Administrative Record No. WV–933). This bill deleted the provisions dealing with the RBR and replaced them in another Chapter and Article of the West Virginia Code with provisions establishing the current SMB, which performs the same functions formerly performed by the RBR. OSMRE approved the provisions establishing the SMB on February 21, 1996, (61 FR 6511) (Administrative Record No. WV–1022).

On April 27, 2012, West Virginia submitted a program amendment, WV–119–FOR, to revise its WVSCMRA to effect changes concerning the special reclamation tax and apportionment of this tax. This amendment was intended to increase and extend the special reclamation tax. Moreover, a specific portion of this tax was allocated to the Special Reclamation Water Trust Fund for the purpose of designing, constructing and maintaining water treatment systems on forfeited mine sites. We approved the reinstatement of the special reclamation tax, its increase to twenty-seven and nine-tenths cents per ton of clean coal mined, as well as fifteen cents of the amount collected allocated for deposit to the Special Reclamation Water Trust Fund on a temporary basis. OSRME's approval took effect upon publication of this interim rule in the **Federal Register** on July 11, 2012 (77 FR 40793) (Administrative Record No. WV–1583).

III. OSMRE's Findings

A. WV–121–FOR: WVSCMRA § 22–3–33—Award of Attorney Fees, Costs, and Expenses.

A new section is created in the West Virginia Code, designated as § 22–3–33 to award attorney fees and costs by the SMB and courts of appeals from actions taken by the WVDEP under the approved State surface mining program. The SMB or the court may authorize an award to the petitioner the amount of cost and expenses, including attorney fees.

This action is being taken due to the deletion of State statutory provisions from the approved State program which provided that any person involved in any administrative or judicial proceeding is entitled to reimbursement of all costs and expenses, including attorney fees, incurred by his participation in proceedings as determined by the SMB or State court.

We find the proposed State statutory revisions, as amended, to be no less effective than the Federal requirements at 43 CFR 4.1295 and no less stringent than section 525(e) of SMCRA (30 U.S.C. 1275), which states that costs and expenses, including attorney fees that are reasonably incurred may be awarded, and can be approved.

B. WV–119–FOR: WVSCMRA § 22–3–11(h)(1)—Special Reclamation Tax

Subsection 22–3–11(h)(1) of the WVSCMRA is substantively amended by increasing the amount of the special reclamation tax to twenty-seven and nine-tenths cents per ton of clean coal mined. The former special reclamation tax, effective as of July 1, 2009, required remittance of fourteen and four-tenths cents per ton of clean coal mined; the

collection of this tax is eliminated and replaced with the aforementioned amount. Additionally, the amended language requires fifteen cents per ton of the collected twenty-seven and nine-tenths cents per ton, be deposited in the Special Reclamation Water Trust Fund (the Fund). Historically, although not codified, WVDEP allocated three cents per ton of clean coal mined to finance the Fund, resulting in a severely underfunded account at the time. It is forecasted that the imposition of the new rate enumerated in Senate Bill 579 will ease the strain placed on the Fund going forward.

Formatting and style changes have been effectuated via Senate Bill 579. Former paragraph (h)(1) is revised to add a caption entitled: *Rate, deposits and review;* additionally, the paragraph has been segregated to add four subparts that incorporate all the former language.

This amendment, was approved on a temporary basis in the **Federal Register** on July 11, 2012 (77 FR 40793) with an effective date of July 11, 2012. As amended, we find the proposed bonding revisions to be consistent with and no less effective than the Federal provisions at 30 CFR 800.11(e) and 800.14, and no less stringent than sections 509 and 519 of SMCRA (30 U.S.C. 1259 and 1269), and therefore, they can be approved on a permanent basis.

IV. Summary and Disposition of Comments

WV–121–FOR—Award of Attorney Fees, Costs and Expenses

Public Comments

We asked for public comments on the amendment, but none were received.

Federal Agency Comments

In accordance with 30 CFR 732.17(h)(11)(i) and (ii) and section 503(b) of SMCRA (30 U.S.C. 1253(b)), on May 27, 2014, OSMRE requested comments on the State's program amendment dated September 11, 2013, from those agencies with an actual or potential interest in the West Virginia program (Administrative Record No. WV–1586).

By letter received by OSMRE dated June 27, 2014 (Administrative Record No. WV–1590), the Mine Safety and Health Administration (MSHA) responded that it had no comments on the proposed changes to the State's statutes as written.

By letter received by OSMRE dated June 20, 2014 (Administrative Record No. WV–1594), the Natural Resources Conservation Service (NRCS) responded that it had no comments on the amendment. It stated that, while the surface coal mining industry needed to be accountable to the principles of the WVSCMCA, the industry should not be harassed with claims brought in bad faith.

WV–119–FOR —Bond Forfeiture Special Reclamation Tax

By letter dated July 7, 2011 (Administrative Record No. 1564), the NRCS responded that it had no comments regarding the proposed changes to the bonding requirements in this amendment.

By letter received on August 19, 2011 (Administrative Record No. 1565), the Army Corp of Engineers (COE) responded to our request for comments. The COE responded that they have no comments regarding the proposed changes to the bonding requirements at this time.

Environmental Protection Agency (EPA) Comments and Concurrence

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and (ii), we are required to solicit comments and get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) OSMRE has determined that none of the State revisions pertained to air or water quality standards; therefore, EPA's concurrence was not requested on this amendment. By letter received by OSMRE dated July 24, 2014 (Administrative Record No. 1595), the EPA acknowledged that it had no comments on WV–121–FOR. EPA concurrence was not requested for WV–119–FOR as it does not relate to air or water quality standards.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under Federal regulations at 30 CFR 732.17(h)(4), we are required to solicit comments from the SHPO and the ACHP on amendments that may have an effect on historic properties. Because OSMRE determined that none of the proposed State revisions pertained to historical preservation, the SHPO and the ACHP were not asked to comment on this amendment.

V. OSMRE's Decision

We are approving the changes in the approved State program made by HB 4065 regarding the deletion of former West Virginia Code Chapter 22, Article 4 about the RBR and also approving SB 497 and its authorization to make changes in the approved State program about the award of attorney fees and costs by the SMB and courts in appeals from actions taken by WVDEP.

Furthermore, as discussed above, we are approving, on a permanent basis, revisions to the increase in the State's special reclamation tax at WVSCMRA § 22–3–11(h)(1) to complete land reclamation and water treatment activities at bond forfeiture sites.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253(a)) requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule does not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of state program amendments is exempt from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department has determined that this **Federal Register** notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** notice and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the state regulatory program or to the program amendment that the State of West Virginia drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to ''grant the States the maximum administrative discretion possible'' with respect to Federal statutes and regulations administered by the States. West Virginia, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amendment to the West Virginia program submitted and drafted by the State, and thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the West Virginia program that does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director North Atlantic—Appalachian Region.

For the reasons set out in the preamble, the Office of Surface Mining Reclamation and Enforcement amends 30 CFR part 948 as follows:

PART 948—WEST VIRGINIA

■ 1. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. In § 948.15 amend the table by adding in chronological order by ''Date of publication of final rule'' entries for ''W.Va. Code 22–3–33, Attorney fees and costs'' and ''W.Va. Code 22–3–11(h)(1), Increase in Special Reclamation Tax'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description
*	*	*
September 11, 2013	November 6, 2020	W.Va. Code 22–3–33, Attorney fees and costs.
April 25, 2011	November 6, 2020	W.Va. Code 22–3–11(h)(1), Increase in Special Reclamation Tax.

[FR Doc. 2020–23214 Filed 11–5–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Parts 75 and 76

Office for Civil Rights

34 CFR Part 106

Office of Postsecondary Education

34 CFR Parts 606, 607, 608, and 609

[Docket ID ED–2019–OPE–0080]

RIN 1840–AD45

Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program

AGENCY: Office for Civil Rights, Office of Postsecondary Education, Department of Education.

ACTION: Final rule; corrections.

SUMMARY: In the **Federal Register** of September 23, 2020, the Department of Education (Department) published a final rule, Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program (the Final Rule). This document makes two technical corrections to the Final Rule.

DATES: This rule is effective November 23, 2020.

ADDRESSES: *Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc), to the extent reasonably practicable.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

FOR FURTHER INFORMATION CONTACT: Sophia McArdle, U.S. Department of Education, 400 Maryland Avenue SW, Room 290–44, Washington, DC 20202. Telephone: 202–453–6318. Email: *Sophia.McArdle@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In the Final Rule (85 FR 59916), amendatory instruction 10 stated that 34 CFR 76.784 was being added to subpart I of part 76 of the Department's regulations. However, that section is being added to subpart G of part 76, so we are issuing this correction to revise the instruction accordingly. In addition, we are correcting the document by removing one sentence which was inadvertently included in the preamble, regarding the Regulatory Identification Number.

Corrections

In FR Doc. 2020–20152 appearing on page 59916 of the **Federal Register** of September 23, 2020, the following corrections are made:

1. On page 59919, in the first column, the sentence, ''Consequently, there is a new Regulation Identification Number (RIN) for this rule (1840–AD45).'' is removed.

§ 76.784 [Corrected]

2. On page 59980, in the third column, instruction 10 is corrected to read ''Section 76.784 is added to subpart G to read as follows:''.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2020–21962 Filed 11–5–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0766; FRL–10015–19]

RIN 2070–AJ28

Tolerance Crop Grouping Program V

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the current pesticide tolerance crop grouping regulations, which allow the establishment of tolerances for multiple related crops based on data from a representative set of crops. Specifically, the final rule revises one commodity definition, adds three new commodity definitions, and amends the current herbs and spices crop group currently provided in Crop Group 19. The crops in the current ''Crop Group 19: Herbs and Spices Group'' are separated into two new crop groups, ''Crop Group 25: Herb Group'' and ''Crop Group 26: Spice Group'' and additional commodities are added to Crop Groups 25 and 26. These revisions will increase the utility and benefit of the crop grouping system for producers and other stakeholders involved in commercial agriculture. This is the fifth in a series of planned crop group updates.

DATES: This final rule is effective January 5, 2021.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2006–0766, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sara Kemme, Regulatory Support Branch, Mission Support Division, Office of Program Support, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number (703) 347–8533; email address: *kemme.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

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

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

B. What is the Agency's authority for taking this action?

This rule is issued under the authority of section 408(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA), which authorizes EPA to establish ''general procedures and requirements to implement (section 408).'' 21 U.S.C. 346a(e)(1)(C). Under section 408 of the FFDCA, EPA establishes tolerances for pesticide chemical residues in or on food, where there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue. A tolerance is the maximum permissible residue level established for a pesticide in raw agricultural commodities and processed foods. EPA establishes tolerances for each pesticide after assessing the potential risks to human health posed by that pesticide. The crop group regulations currently in 40 CFR 180.40 and 180.41 enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group.

C. What action is the Agency taking?

This final rule revises EPA's regulations governing crop group tolerances for pesticides. Specifically, this rule is finalizing a revision to one commodity definition, adding three new commodity definitions, and amending the current herbs and spices crop group currently provided in Crop Group 19. The crops in the current ''Crop Group 19: Herbs and Spices Group'' are separated into two new crop groups, ''Crop Group 25: Herb Group'' and ''Crop Group 26: Spice Group'' and additional commodities are added to Crop Groups 25 and 26. This final rule is the fifth in an ongoing series of crop group updates, including additional updates expected to be promulgated in the next several years.

D. Why is the Agency taking this action?

EPA sets tolerances, which are the maximum amount of a pesticide allowed to remain in or on a food, as part of the process of regulating pesticides that may leave residues in food. Crop groups are established when residue data for certain representative crops are used to establish pesticide tolerances for a group of crops that are botanically or taxonomically related. Representative crops of a crop group or subgroup are those whose residue data can be used to establish a tolerance for the entire group or subgroup.

With the establishment of crop groups such as the ones in this final rule, EPA seeks to:

- Enhance our ability to conduct food safety evaluations on herb and spice crops for tolerance-setting purposes;
- Promote global harmonization of food safety standards;
- Reduce regulatory burden; and
- Ensure food safety for agricultural goods.

E. What are the estimated incremental economic impacts of this action?

EPA prepared an Economic Analysis which shows that this is a burden-reducing regulation (Ref. 1). Crop grouping saves money by permitting the results of pesticide residue studies for some crops, called representative crops, to be applied to other, similar crops in the group. EPA expects these revisions to promote greater use of crop groupings for tolerance-setting purposes, both domestically and in countries that export food to the U.S.

The estimate of cost savings from creating the new, separate herb group and spice group is $51.8 million annually.

II. The Proposed Rule

EPA published a notice of proposed rulemaking in the **Federal Register** on August 27, 2019 (84 FR 44804) (FRL–9996–03). Eight parties submitted comments on the proposal: One private citizen; Hudson Trading Group; Canadian Specialty Agriculture Association; Alberta *Rhodiola Rosea* Growers Organization, Inc.; American Spice Trade Association; American Herbal Products Association; Aromatics, Inc.; and the Provincial Minor Use Coordinator for Alberta, Canada.

III. Response to Comments

In this unit, EPA describes the major provisions of the proposed rule, the comments received on the provisions and EPA's responses to the comments, and EPA's determination regarding the final rule.

A. Separation of Herbs and Spices in Crop Group 19: Herbs and Spices

EPA proposed to divide the current ''Crop Group 19: Herbs and Spices Group'' into two separate crop groups. In accordance with the process outlined in 40 CFR 180.40(j), Crop Group 19 will be retained in the CFR until all the tolerances for the pre-existing Crop Group 19 and its associated subgroups have been updated to comply with the new crop groups.

EPA received comments expressing support for the proposed rule. Commenters pointed out the potential for reducing the regulatory burden associated with establishing a tolerance while maintaining the safety of the food supply. In addition, commenters were supportive of EPA harmonizing standards with international partners such as Canada and Mexico, and with Codex Alimentarius Commission (Codex). EPA is finalizing the proposed approach of separating the current ''Crop Group 19: Herbs and Spices Group'' into two crop groups, ''Crop Group 25: Herb Group'' and ''Crop Group 26: Spice Group.''

B. Crop Group 25: Herb Group

EPA proposed to establish a new crop group, titled ''Crop Group 25: Herb Group.''

1. *Commodities.* EPA proposed to include 317 commodities in Crop Group 25. All the 317 proposed commodities are included in Crop Group 25 in this final rule. EPA added 101 new commodities directly to Crop Group 25 in response to commenter suggestions or, as discussed in the proposed rule, to include both fresh and dried forms of herb commodities whenever possible (84 FR 44811). EPA also added 25 commodities indirectly to Crop Group 25 by adding them to the definition in 40 CFR 180.1 of edible flowers, which is a commodity in Crop Group 25. A total of 418 commodities are included directly, and 25 indirectly through 40 CFR 180.1 to Crop Group 25.

Most of the commenters suggested that additional commodities be included in Crop Group 25. EPA evaluated whether these commodities should be included in Crop Group 25 by assessing whether the commodities are already in other crop groups and considering the same criteria used to determine the commodities included in the proposed rule: Similarities of growth habits, the herbs being either fresh or dried leaves, similar pest problems, sources of essential oil, lack of animal feed items, comparison of established tolerances, and international harmonization. EPA identified 101 new commodities that have been added directly to Crop Group 25 (54 commodities fresh and 47 commodities dried), plus 25 new commodities that have been added to the definition of edible flowers, and thus indirectly added to Crop Group 25. EPA determined that it is more appropriate to include some of the suggested commodities in other crop groups and that other commodities do not fit in any of the existing crop groups. The reasons for EPA's determinations are provided below.

EPA received four comments requesting that the Agency include *Rhodiola rosea* in the herb crop group. EPA is not adding *Rhodiola rosea* to the Herb Crop Group because EPA has determined that *R. rosea* is more appropriately placed in the Root and Tuber Vegetable Crop Group 1 as the edible part is the root. The Crop Group 1 will be revised as part of a future crop grouping regulation to include *R. rosea.* Rhodiola (also known as king's crown roots, golden root, rose root, Aaron's rod, Arctic root, or orpin rose) is better placed in the Root and Tuber Vegetable Crop Group than the Herb Crop Group 25, since the cultural practices are similar to other root and tuber crops.

EPA also received two comments, from Hudson Trading Group and the American Spice Trade Association (ASTA), requesting the addition of celery, dried leaves to Crop Group 25: Herb Group. EPA agrees this commodity is not currently covered by a crop group and has added celery, dried leaves, to the new Crop Group 25 and to subgroup 25B for dried herbs, since the cultural practices and pesticide residues are expected to be comparable to basil or mint, the representative commodities for the subgroup. The fresh leaves form of the commodity will remain in Stalk, Stem, and Leaf Petiole Vegetable Crop Group 22. As with some other crops (*e.g.,* cilantro, parsley, and chives), the fresh leaves commodity of celery is assigned to a different crop group based on similarity in cultural practices and pesticide residues compared to other commodities in the crop group.

One commenter, Aromatics, Inc., asked EPA to consider including additional commodities in Crop Group 25. ASTA also requested that EPA add *Echinacea purpurea,* dried, to Crop Group 25. Below are the commodities requested by Aromatics, Inc. followed by the Agency's responses:

- Skullcap (Scutellaria lateriflora) leaf
  - ''Skullcap, fresh leaves'' and ''Skullcap, dried leaves'' have been added to include the leaves of this commodity due to similarities to the Herb Crop Group.
- Echinacea (aerial parts and roots of *Echinacea purpurea* and *Echinacea pallida*)
  - The commodity name of ''Echinacea, dried leaves'' has been expanded to include ''*Echinacea* spp.'' to include the leaves of these commodities.
  - ''Echinacea, fresh leaves'' has been added and includes ''*Echinacea* spp.'' in the scientific name to include the leaves of these commodities.
  - Crop Group 1: Root and Tuber Vegetable Group will be revised in the future to include the roots of these commodities.
- Licorice (Glycyrrhiza glabra) root
  - Crop Group 1: Root and Tuber Vegetable Group will be revised to include the roots of this commodity.
- Blackberry leaf (*Rubus* spp.)
  - ''Chinese blackberry, fresh leaves'' and ''Chinese blackberry, dried leaves'' have been added to include the leaves of this commodity.
- Hibiscus (Hibiscus sabdariffa and Hibuscus lunariifolus)
  - The term ''Hibiscus (*Hibiscus* spp.)'' in the commodity definition of ''Flowers, edible, multiple species'' already includes these commodities.

The American Herbal Products Association (AHPA) requested that EPA include several hundred additional commodities in Crop Group 25 or Crop Group 26. Table 1 in the AHPA comments includes 195 commodities that were submitted to EPA in 2013. AHPA restated its 2013 request that EPA include these commodities in a crop group. EPA already assessed whether to include these commodities in its work to identify commodities for the proposed rule. (See Refs. 2, 3 and 4). Because AHPA resubmitted the same list, EPA did not revisit this previous analysis for this final rule, although to the extent that commodities in AHPA Table 1 were suggested by other commenters, EPA evaluated them independently, and those responses are reflected in this preamble.

AHPA also identified more than 230 additional commodities, included in Table 2 of their comments, and requested that these be added to Crop Group 25 or 26 or another crop group. EPA's assessment of these commodities

is included in separate Tables, (Ref. 5). Out of the commodities in Table 2 of the AHPA comments, 110 commodities were added to the Herb Crop Group 25 or the Spice Crop Group 26, with some commodities being added to both Crop Group 25 for their leaves and to the definition of edible flower, multiple species for their flower resulting in more 110 additional terms. Specifically, 25 commodities were added to the edible flower, multiple species definition in 40 CFR 180.1; 37 were added to the Herb Crop Group 25; and 51 commodities were added to the Spice Crop Group 26. Of the remaining commodities, 52 were determined to already be members of crop groups or were already proposed for inclusion with Crop Group 25 or 26; 53 are intended to be added to other crop groups; and 17 were not considered appropriate for inclusion within EPA crop groups.

AHPA identified a few instances where the commodities in proposed Crop Groups 25 and 26 included a common name that they say is not as well established as the common or usual name of the commodity. One instance included the herb *Mitchella repens,* which AHPA noted is better named as ''partridge berry'' than as ''squaw vine.'' Another instance involved changing the common name of *Angelica dahurica* to ''dahurian angelica.'' The commenter also suggested that EPA use AHPA's reference, *Herbs of Commerce,* which is used to identify the common or usual names of ingredients of dietary supplements that are botanicals.

EPA agrees with the suggested change in the common name for *Mitchella repens* from squaw vine to partridge berry. EPA also incorporated a change regarding *Angelica dahurica,* which is intended to capture the most well established and common name used and is not a substantive change from the proposal for the commodity.

EPA consults a variety of sources and references, including *Herbs of Commerce,* when determining common names for commodities. Additionally, the Agency relies on stakeholder feedback to ensure the common name for a commodity reflects what is commonly used in channels of trade. The Agency has used available information to identify suitable common names for the commodities listed in Herb Crop Group 25 and Spice Crop Group 26, in order to avoid confusion.

2. *Representative commodities.* In the absence of comments, EPA is finalizing the proposed approach and is establishing the following commodities as representative commodities for Crop Group 25: Basil, fresh leaves; mint, fresh leaves; basil, dried leaves; and mint, dried leaves.

3. *Crop subgroups.* EPA is finalizing the proposed approach of establishing two crop subgroups for the new ''Crop Group 25: Herb Group'': Subgroup 25A for fresh herbs and subgroup 25B for dried herbs.

EPA did not receive comments specifically addressing Subgroups 25A and 25B, although EPA revised these subgroups to include the commodities that were added to Subgroup 25. Also, EPA revised the herb subgroups to include commodities in both subgroups wherever possible, as discussed in the proposed rule (84 FR 44811). In the proposed rule, 11 commodities were included in Crop Group 25 only in their fresh leaves form. For the final rule Crop Group 25 and Crop Subgroup 25B, it also includes the dried leaves form of these commodities. Similarly, 19 commodities that were included in the proposed rule only in their dried leaves form are also included in the final rule in their fresh leaves form in Crop Group 25 and Crop Subgroup 25A.

4. *Commodity definitions.* In conjunction with the new Crop Group 25, this final rule establishes commodity definitions in 40 CFR 180.1(g) for basil and mint and amends the commodity definition for marjoram with no changes from the proposal. The final rule also establishes a commodity definition for flowers, edible, multiple species, but EPA revised the proposed definition to include 25 additional commodities that commenters suggested should be included in the herb subgroup due to similarities of the suggested commodities to the fresh Crop Group.

5. *Other comments related to the herb subgroup.* EPA received several other comments that relate to Herb Crop Group 25. Specifically, one commenter noted that the proposed rule does not include a definition or description of the term ''herbs'' or of the term ''spices'' that clarifies the Agency's current thinking on the scope of the parts and types of plants proposed for inclusion in new Crop Groups 25 and 26. The commenter noted that in previous rulemakings EPA described ''herbs'' as ''. . . grown largely in temperate climatic areas, mostly for their leaves and stems and may be used fresh or dried, such as basil.'' EPA also described ''spices'' as ''. . . grown mostly in tropical climatic areas and consisting mostly of aromatic seeds, dried roots, flowers, fruit, and/or bark, such as allspice.'' (58 FR 44990, August 25, 1993). The commenter writes that it appears that the Agency is primarily including only crops that are used as an ''herb'' or a ''spice'' as those terms apply to culinary uses of botanical crops in foods to impart taste or aroma. Such limitation, however, does not recognize that the word ''herb'' is also used to describe other products that use plant commodities as ingredients. These include, for example, herbal tea as well as many cosmetic products. This commenter also suggested the possibility of including a separate group for ''other botanicals'' to include the commodities they suggested in a crop group.

While EPA did not specifically define ''herbs'' or ''spices'' in the 2019 proposal, the proposed rule explained that the 317 members of proposed Crop Group 25 were determined on a number of factors including similarities of growth habits, the herbs being either fresh or dried leaves, similar pest problems, sources of essential oil, lack of animal feed items, comparison of established tolerances, and international harmonization. (84 FR 44809). The proposed rule also explained that over 2,000 commodities were researched for being members of Spice Crop Group 26. The 166 members of proposed Crop Group 26 were determined based on similarities of growth habits and edible plant parts that are exposed similarly to pesticides, geographical distribution, lack of animal feed items, comparison of established tolerances and international harmonization. These criteria are more relevant for setting tolerances than the culinary uses. Additionally, EPA establishes tolerances for commodities that are used as food and feed, so it is not within EPA's authority to establish tolerances for herbs used for other purposes, such as cosmetics. In general, dietary supplements are considered food, except as provided for in section 201(ff) of the FFDCA, 21 U.S.C. 321(ff), and, as food, are included in Crop Groups 25 or 26. It is not necessary to add a separate crop group for other botanicals because the suggested commodities that are dietary supplements are included in Crop Groups 25 or 26. EPA evaluated the potential additional commodities suggested by all of the commenters and added them to Crop Groups 25 or 26 directly or indirectly added them to Herb Crop Group 25 by adding them to the commodity definition of edible flowers as they are considered fresh, dried and/or edible flowers.

Comment: Dehydration factor. EPA received one comment requesting that EPA clarify the source of the statement in the proposed rule that ''tolerances for dried herbs are often significantly higher (4x to 7.3x) than fresh herbs.'' This commenter also asked whether a dehydration factor could be used to

calculate a tolerance for dried herbs and spices, which could reduce the data burden for establishing a tolerance on a dried commodity.

EPA response. The statement that tolerances for dried herbs are 4x to 7.3x higher than tolerances on fresh herbs was based on comparing actual tolerances, not on a dehydration factor. The Agency is not planning on using dehydration factors for herbs because the agricultural practices for many dried and fresh herbs may be very different depending on the target is the fresh or dried market. For spices, it is appropriate to adjust for the loss in moisture content when comparing pesticide residues in the dried commodity to the tolerance for the raw commodity (assuming the tolerance is not restricted to the fresh form of the commodity) because the agricultural practices are the same or similar for both the fresh and dried versions of these commodities. See the discussion below in response to the comment requesting that EPA add the dried version of commodities including red pepper, paprika, and onion and dried ginger to Spice Crop Group 26 for more details.

EPA considered the implications of using processing studies in place of field trials for dried herbs. While this would alleviate some of the regulatory and data burdens on a registrant, this burden is not significant because the registrant can use the same crop for both the fresh and dried trials when conducting a field residue study. The Agency also considered using a default dehydration factor to establish tolerance levels for dried herbs. While there is allowance for this approach for determining tolerance levels in some processed commodities, the approach is not suitable for determining tolerance levels in representative commodities, which is the case for dried herbs. Therefore, EPA has concluded that based on the minimal burden incurred by supplying residue data from both fresh and dried samples and the increased robustness of the resulting tolerance level, it is appropriate to require field trial data on both fresh and dried herbs to support a crop group tolerance on herbs or tolerances on the fresh and dried herb subgroups. Finally, EPA acknowledges that one commenter did not agree with some of the Agency's rationale for concluding that fresh herbs are grown in a different way than dried herbs. However, both the Agency and the commenter agree that both herb subgroups are important and may have different pest pressures and, thus, pest control practices.

C. Crop Group 26: Spice Group

1. *Commodities.* EPA proposed to include 166 commodities in a new crop group, titled ''Crop Group 26: Spice Group.'' The final rule includes 162 of the 166 proposed commodities in Spice Crop Group 26; the other 4 of the 166 proposed commodities (*i.e.,* the leaves of dahurian angelica, damiana, gynema, and pipsissewa) were moved to Crop Group 25, and EPA added 43 additional commodities that were suggested by commenters due to similarities of the suggested commodities to the Spice Crop Group. The final rule includes 205 commodities in the Spice Crop Group.

EPA received requests from several commenters requesting changes to the commodities in Spice Crop Group 26.

EPA received a comment from the AHPA suggesting minor corrections to some commodity names. EPA is making the following revisions in response to the comment by changing the common names of *Phyllanthus amarus* to ''amla'' from ''amia,'' *Agathosma betulina* to ''buchu'' from ''buchi,'' and *Frangula purshiana* to ''cascara sagrada'' from ''cascada buckthorn.'' EPA incorporated these changes, which are intended to capture the most well-established and common names used and are not substantive changes from the proposal in the commodities covered.

AHPA suggested using different names for certain commodities in proposed Crop Groups 25 and 26 to better reflect what AHPA considers to be the common or usual name of the commodity, including two of the proposed spice commodities. AHPA commented that *Acacia* spp. is commonly known as ''wattle'' but is listed as ''wattleseed'' and that *Achillea erba-rotta* subsp. *moschata* is more commonly known as ''milfoil'' as opposed to ''iva.''

EPA disagrees with these suggestions. *Acacia* spp. includes over 120 species and is commonly referred to in literature as ''wattleseed,'' which is the preferred term since it includes the raw agricultural commodity of interest (*i.e.,* seed). For *Achillea millefolium,* EPA selected the common name ''yarrow,'' which is widely referred to in the literature (including the AHPA reference, *Herbs of Commerce*) as a synonym for ''milfoil.'' However, the related subspecies *Achillea erba-rotta* subsp. *moschata* is more commonly known as ''iva;'' see, for example, the Food and Drug Administration (FDA) has identified ''iva'' as the common name for *Achillea moschata,* 21 CFR 172.510.

As discussed above regarding the commodities in Herb Crop Group 25, AHPA submitted two lists of several hundred commodities each and requested that EPA include those commodities in Crop Group 25, Group 26, or another Crop Group. EPA's responses to that request are provided above in Unit III.B.1. of this preamble and in separate Response Tables (Ref. 5).

Another commenter, Aromatics, Inc., asked EPA to consider including additional commodities to Crop Group 26. ASTA also requested adding ''elderberry, dried'' and sesame to Crop Group 26. Below are the commodities requested by Aromatics, Inc. followed by the Agency's responses:

- Cardamom, Green (*Elettaria cardamomum* L.) fruit, dry
  - The commodity term ''Cardamom, green'' in Spice Crop Group 26 already includes this commodity.
- Elderberry (*Sambucus nigra*) fruit, dry and Elderberry (*Sambucus ebulus*) fruit, dry, and Elderberry, dried (*Sambucus* spp.)
  - The commodity term ''Elderberry'' in Berry and Small Fruit Crop Group 13–07 already includes these commodities.
- Sesame (*Sesamum indicum L.*)
  - Sesame, seed (*Sesamum indicum L.*) will be added to Crop Group 26 in order to cover varieties grown for culinary purposes which are different from the varieties grown for oilseed currently covered by Crop Group 20.

ASTA also requested that the following commodities be added to Crop Group 26 in their dried form as spices: Red pepper, dried (*Capsicum frutescens L.* or *Capsicum annuum L.*); paprika, dried (*Capsicum annuum L.*); ginger, dried (*Zingiber officinale*); turmeric, dried (*Curcuma longa L.*); arrowroot, dried (*Maranta arundinacea*); garlic, dried (*Allium sativum*); and onion, dry bulb and green, dried (*Allium cepa, A. fistulosum*). ASTA acknowledges that these commodities are in other crop groups in their fresh forms, but that dried or powdered versions of these are considered spices.

These commodities are in the following crop groups: Red pepper, the raw agricultural commodity for red pepper, dried and paprika, dried, is in Crop Group 8–10: Fruiting Vegetables; ginger, turmeric, and arrowroot are in Crop Group 1: Root and Tuber Vegetables; and garlic, dry bulb onion, and green onion are in Crop Group 3–07: Bulb Vegetables.

It is not necessary to include the dried version of the commodities suggested by Aromatics and ASTA in Spice Crop

Group 26 because the tolerances for the fresh version of those commodities apply to and are sufficient to address the residues in the dried form of the commodities. In the absence of a tolerance for the dried form of a commodity, the tolerance for the raw commodity (assuming it is not restricted to the fresh form of the commodity) is applied, after correcting for the loss in moisture content. Since the agricultural practices are the same or similar for both the fresh and dried versions of these commodities, adjustments to the tolerance to account for differences in moisture content would be appropriate. Thus, residues in the dried form are covered by tolerance listings for the raw commodity, either individually or as a member of a crop group. In contrast, the agricultural practices for many dried and fresh herbs may be very different depending on the target is the fresh or dried market, which is why EPA is establishing specific tolerances for the fresh and dried forms of the herb commodities.

ASTA requested that EPA add pink pepper, dried (*Schinus terebinthifolius*) to Spice Crop Group 26. This commenter also asked that EPA combine all types of pepper, including black and white pepper (*Piper nigrum* L.) into one group of pepper that is listed as a commodity in Crop Group 26, so other types of pepper that are the same species, such as green pepper, are included.

EPA has added both ''pepper, pink'' and ''peppercorn, green'' to Spice Crop Group 26. However, EPA has not combined black and white pepper into one group of pepper. In the current Crop Group 19: Herb and Spice Group, black pepper and white pepper have been listed as separate commodities for years with no previous objections from stakeholders. Although they are from the same plant, white pepper and black pepper are the kernels harvested at different maturity stages, whereas green peppercorn is the unripe fruit of the pepper plant, dried green.

2. *Representative commodities.* EPA proposed to adopt the following commodities as representative commodities for the new Crop Group 26: Celery seed or dill seed. One commenter requested that EPA create a system to allow other commodities within the spice category to serve as the representative crop.

The Agency considered the use of field trial data on any spice to establish a spice group tolerance. Due to the fact that the majority of spices are grown overseas, EPA has concluded that it is highly unlikely that the Agency would receive field trial data for most of the spices in Spice Group 26. This is also borne out by the fact that EPA has received very few, if any, field trial residue data for black pepper, a current representative commodity for Spice Subgroup 19B. EPA maintains the position that celery seed or dill seed are appropriate representative crops for the spice crop group for the following reasons and is finalizing the selection of dill, seed or celery, seed as the representative crops for Spice Group 26:

a. These commodities are the only spice crops with significant acres grown in the United States;

b. These commodities are the only spice crops for which there is any real expectation of getting field trial data;

c. While not strictly representative of other spices, field trial residues from these commodities will cover expected monitoring-data residues in other spices; and

d. U.S. produced spices are not extensively exported, so the higher tolerance, compared to what would be established based on monitoring data, is not a trade irritant to U.S. growers.

3. *Crop subgroups.* EPA did not propose to establish subgroups in Spice Crop Group 26. One comment was supportive of not establishing crop subgroups since establishing subgroups would require submission of additional field trial data in order to establish a tolerance for the entire group. As with the proposal, the final rule does not establish subgroups for Spice Crop Group 26. As explained below, EPA will consider establishing individual tolerances for multiple spices based on extrapolations of submitted monitoring data to other spices on a case-by-case basis, using Codex spice subgroups as a reference for grouping spices based on various similarities (Ref. 6).

D. Revisions to 40 CFR 180.40(j)

No comments were submitted on the proposed revisions to 40 CFR180.40(j); thus, EPA adopts its proposal without change.

E. Other Comments and EPA Responses

This section summarizes comments that did not specifically relate to the categories in Unit III.A. through III.D. and provides EPA's responses to those comments.

Comment: Monitoring data. ASTA generally supported EPA's practice of allowing the use of monitoring data to support the establishment of tolerances for imported spices and requested guidance on how that practice would work. ASTA requested clarification on whether monitoring data for the representative commodities of dill, seed or celery, seed for Crop Group 26 could be used to establish import tolerances for the entire crop group. Moreover, ASTA requested that EPA allow the use of monitoring data on any spice to establish a tolerance for the entire crop group. Finally, ASTA requested that EPA extend the policy for use of monitoring data to allow for the establishment of the Herb Group 25 tolerances.

EPA response: At this time, EPA does not support establishing entire crop group tolerances or subgroup tolerances based only on monitoring data for the representative commodities, due to the difficulty in ensuring that all commodities within the group (including both imported and domestically grown crops) would have residues represented by the monitoring data. Tolerances based on monitoring data may not be high enough to reflect the residues of commodities leaving the gate of U.S. growers. The field trial data will better represent the residues likely to be on the crops at harvest.

EPA disagrees that it will be difficult to obtain field trial data for the representative commodities for the Herb Group 25 and Spice Group 26. EPA has selected representative commodities for the Herb Group 25 and Spice Group 26 that are grown in the United States, in accordance with the Agency's practice of selecting representative commodities. Because dill seed and celery seed are grown in the United States and pesticides used on these crops will need U.S. registrations, EPA believes it is reasonable to expect field trial data to be generated to support these registrations and tolerances. Selecting crops grown in significant quantities in the United States as representative commodities makes it easier to obtain field trial data and thus obtain the crop group tolerances. This is supported by the strong history of tolerances being established for basil and mint (domestically grown crops and the representative commodities for the Herb Group 25) but not for black pepper (not grown domestically and one of the current representative commodities for Spice Subgroup 19B), indicating stronger economic support for conducting field trials on these commodities.

EPA also does not believe that is appropriate to allow the use of monitoring data for any spice to support the establishment of a tolerance for the entire Spice Group 26, which would essentially recognize any spice within the crop group as a potential representative commodity. EPA's Spice Group 26 contains a wide range of spices with different characteristics, and EPA is not aware of widespread

monitoring data on spices that supports the broad extrapolation from one spice to nearly 200 spices. As indicated in 40 CFR 180.40(d), EPA may allow the use of residue data on an alternative representative commodity that is determined to be a suitable substitute (*e.g.,* limes for lemons), but that decision is typically made on a case-by-case basis. In any event, EPA reiterates the concern that monitoring data alone may not be sufficient to support an entire crop group tolerance due to the wide range of crops in a crop group and the very likely potential for some of those crops to be grown domestically. EPA intends to continue allowing the use of monitoring data to support the establishment of individual tolerances for imported spices. EPA considers this practice to be reasonable in light of the special circumstances of the spice market. First, spices are primarily grown outside the United States. Second, spices are often inter-cropped with a primary crop, with pesticide treatments being based on the pest pressures on the primary crop. Third, spice production by a single grower is usually very small. Since the output from multiple growers is comingled prior to the spice entering international trade, tracing residues back to a grower or field is not possible. For these reasons, it is unlikely that adequate field trial data can be obtained for spices. Furthermore, unlike domestically grown produce, where field trials represent residues at the time commodities enter U.S. commerce, residues on imported spices at the point that they enter U.S. commerce are best represented by monitoring data. Therefore, the Agency has determined that it is appropriate to allow using monitoring residue data for the purpose of establishing import tolerances (*i.e.,* pesticide tolerances for which there is no corresponding domestic registered uses) for individual spice commodities, including the spice for which monitoring data are available and similar spices.

This approach allows EPA to make these determinations on a case-by-case basis using the specific monitoring data for the specific spice, which is a more scientifically sound approach. Assessing these tolerances on an individual basis allows EPA to consider the merits of the individual request for a tolerance on imported spices and the sufficiency of the submitted monitoring data to cover the request for one or more imported spice commodities. While individual tolerance decisions will be made on a case-by-case basis as petitions are submitted, EPA expects that some monitoring data may be acceptable as support for individual tolerances for imported spices or for extrapolation to certain related spices. For example, if a petitioner requested a tolerance for residues of a pesticide on an imported spice and submitted monitoring data for that specific compound-spice combination, EPA would evaluate the sufficiency of that submitted monitoring data to support the individual tolerance; when appropriate and safe under the FFDCA, a tolerance could be established for residues of that compound, without a U.S. registration, in/on that specific spice commodity. Similarly, a petitioner could submit a petition requesting tolerances for multiple related or similar imported spices (*e.g.,* spices contained within the same Codex spice subgroup (Ref. 6), based on physical characteristics or plant parts), along with monitoring data for a specific compound-spice combination. EPA will determine whether the submitted monitoring data is sufficiently robust to support the tolerances for the multiple spices requested. In evaluating whether the monitoring data submitted to EPA is sufficiently robust to support the tolerance for imported spices, EPA intends to follow the same analysis as laid out in the Food and Agriculture Organization (FAO) of the United Nations guidance (Ref. 7; *e.g.,* at least 59 samples with quantifiable residues, upper percentile calculation, etc.).

This approach allows flexibility in establishing import tolerances and avoids trade barriers for international growers using available monitoring data. This approach is also consistent with the approach used by Codex, which allows monitoring data on a particular spice to support a maximum residue level (MRL) for the specific spice subgroup that includes that spice.

Comment: Establish default tolerances to address inadvertent residues caused by drift. A commenter requested that EPA establish minimal (default) tolerances to account for pesticide drift, which can result in trace residues of compounds that are not labeled for a specific crop. This commenter pointed out that there are currently 52 tolerances for mint ''tops'' in the United States compared to 490 MRLs in the EU for basil and edible flowers, which includes mint leaves. This commenter also asked EPA to consider the global food supply chain and the impact of increased testing in the future. This commenter urged EPA and/or the FDA to consider implementing minimal (or default) tolerances for trace levels of pesticides.

EPA response. Unlike some countries and regions, EPA's laws and regulations do not automatically establish default tolerances. Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance only if EPA determines that the tolerance is ''safe.'' Therefore, EPA must actively make this determination for every new tolerance that is established. Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' In making this determination, EPA includes exposure through drinking water and in residential settings but does not include occupational exposure and gives special consideration to exposure of infants and children.

EPA's ability to determine safety is informed by both the hazard of the specific pesticide chemical residues at issue and the likely exposure to the pesticide residue. Because of the variability of hazard among various pesticides and without knowing likely exposures upon which to base a specific tolerance value, it is difficult to justify an *a priori* safety finding for all potential inadvertent residues on all herbs and spices in the crop groups. Moreover, without information about the magnitude of the residues associated with these likely exposures, it may be difficult to set a tolerance for such residues that would not result in exceedances for commodities being shipped in interstate commerce. While the Agency has authority to establish tolerances on its own initiative, EPA typically establishes tolerances in response to a petition requesting that such tolerances be established, as the submission of such a tolerance petition indicates a need or desire for such a tolerance and is submitted with data to support the establishment of such tolerances. For EPA to undertake the type of blanket tolerances for an undefined list of herbs for an undefined range of potential inadvertent pesticide chemical residues would represent a significant investment of resources that may not be aligned with need. The additional work for new Agency-initiated actions would utilize resources that are otherwise used to implement EPA's statutory obligations under FIFRA, including the Pesticide Registration Improvement Act, and the FFDCA.

Comment: Small serving size. The Agency received two comments requesting that EPA consider the small serving sizes of herbs and spices when establishing tolerances.

EPA response. EPA recognizes that these foods are a trivial part of the diet; however, tolerances for residues are needed for all commodities to allow them to be in trade, regardless of their consumption. Additionally, EPA's dietary exposure risk assessment accounts for the relatively small consumption amounts, as reflected in serving sizes, of herbs and spices when determining whether aggregate exposure to the pesticide is considered safe under FFDCA. More specifically, EPA uses food consumption information collected in national surveys by other federal agencies to estimate pesticide exposure to various food commodities, including herbs and spices.

Comment: Harmonization. An additional comment suggested that the Agency compare EPA tolerances to EU, Codex, and other international standards while in the process of developing new crop groupings or revising existing crop group pesticide residue tolerances.

EPA response. EPA considers Codex crop groups when revising the existing U.S. crop groups in 40 CFR part 180. EPA attempts to minimize differences within and among the United States and Codex crop groups and to develop representative commodities for each group that will be acceptable on an international basis, which could lead to the increased harmonization of tolerances and MRL recommendations.

In making individual tolerance decisions, including tolerances for crop groups, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international MRLs established by Codex as required by FFDCA section 408(b)(4), and often also considers the MRLs established by other countries and the European Union (EU). EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Comment: Automatic conversion or expansion to new crop groups. One commenter requested that EPA convert all existing tolerances on dill, seed to Herb Crop Group 25 tolerances and all current tolerances on Herb and Spices Crop Group 19 and its subgroups 19A and 19B to Herb Crop Group 25 and Spice Crop Group 26, respectively. The commenter noted that the proposal states EPA ''will convert tolerances for any pre-existing crop groups to tolerances with the coverage of the new crop group.''

EPA response. Established tolerances cannot be automatically expanded under current law and regulations. Conversion of a tolerance from a crop to a crop group or from an ''old'' crop group to a ''new'' crop group requires EPA to revise the dietary risk assessment to reflect all of the commodities in the new crop group, provide public notice that we are revising the tolerance, and issue a rulemaking to modify the existing tolerances in 40 CFR part 180. To the extent that commenter is requesting that EPA convert existing tolerances to the new crop groups in this final rule, EPA cannot undertake that action here since the safety of such tolerances have not been assessed and public notice of such action has not been provided. Such a request is beyond the scope of what was proposed and of this rulemaking. The FFDCA authorizes two processes for initiating rulemaking to convert existing tolerances and crop groups or subgroups to new crop groups or subgroups: Through a petition filed with EPA under section 408(d) of the FFDCA or through an Agency-initiated action under section 408(e). Upon receipt of a 408(d) petition requesting conversion of existing tolerances to crop groups or subgroups or of existing groups to the new groups, EPA will make such conversions upon a determination that the new tolerances would be safe. In addition, as indicated in Unit V., EPA intends to initiate tolerance rulemakings to update crop groups wherever appropriate during registration review.

IV. The Final Rule

As discussed in Unit III, EPA is adding some additional commodities to the crop groupings based on information provided by public comments and revising a limited number of common names in order to capture the most well-established and common names. EPA is otherwise finalizing the rule as proposed and based on the rationales set forth in the proposed rule.

V. Implementation

When an existing crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will retain the pre-existing crop group in 40 CFR 180.41 and either insert the revised crop group immediately after the pre-existing crop group in 40 CFR 180.41 with a revised title or create new crop groups, like in this rulemaking.

As noted in 40 CFR 180.40(j), EPA will initially retain pre-existing crop groups that have been superseded by revised crop groups. EPA will not establish new tolerances under the pre-existing groups. Further, EPA plans to eventually convert tolerances for any pre-existing crop group to tolerances with coverage under the revised crop group. This conversion will occur through the registration review process and in the course of evaluating new uses for a pesticide registration. EPA requests that petitioners for tolerances utilize updated crop groupings in their petitions. For existing petitions for which a Notice of Filing has been published, the Agency will attempt to conform these petitions to this rule.

VI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents as well as other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA (2020). United States Environmental Protection Agency, Burden Reduction from the Expansion of Crop Grouping Program, prepared by the Biological and Economic Analysis Division, Office of Pesticide Programs, August 3, 2020.
2. EPA (2017). Schneider, Bernard A. EPA Memorandum: Crop Grouping—Part XVB: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(26) and Commodity Definitions [40 CFR 180.1(g)] Related to Crop Group 19 Herb and Spice Group. Emphasis on New Herb Crop Group 25. June 8, 2015. Updated March 21, 2017.
3. EPA (2017). Schneider, Bernard A. EPA Memorandum: Crop Grouping—Part XVC: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(26) and Commodity Definitions [40 CFR 180.1(g)] Related to Crop Group 19 Herb and Spice Group. Emphasis on New Spice Crop Group 26. August 21, 2015. Updated March 20, 2017.
4. EPA (2015). Schneider, Bernard A. EPA Memorandum: Crop Grouping—Part XVD: Appendices for the Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(26) and Commodity Definitions [40 CFR 180.1(g)] Related to Herb Crop Group 25 and Spice Crop Group 26. June 15, 2015.
5. EPA (2020). United States Environmental Protection Agency, Response to Tables from the AHPA comments.
6. Codex Committee on Pesticide Residues (CCPR), 2018. REP18/PR. Report of the 50th Session of the CCPR, Haikou, P.R. China, 9–14 April 2018. Agenda Item 7b: Revision of the Classification of Food and Feed (CXM 4–1989): Class A—Primary Commodities of Plant Origin—Type 05 Herbs and Spices, paras. 119–

120 and Appendix VIII. See page 10 for paragraphs 119–120 and pages 63–83 for Appendix VIII.
7. FAO Plant Production and Protection Paper No. 225. Manual on the submission and evaluation of pesticide residues data for the estimation of maximum residue levels in food and feed., Section 5.11, page 103ff. [*http://www.fao.org/3/a-i5452e.pdf*]. For further elaboration on specific details, see FAO Plant Production and Protection Paper No. 223. Pesticide residues in food 2015 Report of the Joint FAO/WHO Meeting on Pesticide Residues, page 335ff. *http://www.fao.org/3/a-i5186e.pdf.*

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735; October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule are summarized in Unit I.E. and can be found in EPA's analysis of the potential costs and benefits associated with this action (Ref. 1).

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection requirements that would require additional review or approval by OMB under the provisions of PRA, 44 U.S.C. 3501 *et seq.* However, this action is expected to reduce potential future paperwork burdens associated with seeking a tolerance. These crop groupings will enhance our ability to conduct food safety evaluations on herb and spice crops for tolerance-setting purpose; allowing for tolerances to be established for the defined crop groups rather than individually for each crop. This action will also have the effect of reducing the number of residue chemistry studies because fewer representative crops would need to be tested under a crop grouping scheme than would otherwise be required.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule (Ref. 1).

This final action provides regulatory relief and regulatory flexibility. The new crop groups ease the process for pesticide manufacturers to obtain pesticide tolerances on greater numbers of crops. Pesticides will be more widely available to growers for use on crops, particularly specialty crops. Rather than having any adverse impact on small businesses, this proposal would relieve regulatory burden for all directly regulated small entities. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 4, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (62 FR 19985, April 23, 1997) because it will not have any effect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risk

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards as specified in NTTAA section 12(d), 15 U.S.C. 272 note.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not address human health or environmental risks or otherwise have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Commodities, Environmental protection, Pesticides and pests.

Dated: October 21, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I to read as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

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

■ 2. In § 180.1:

■ a. Add alphabetically the entries for ''Basil'' ''Flowers, edible, multiple species'' and ''Mint'' to the table in paragraph (g).

■ b. Revise the entry for ''Marjoram'' in the table in paragraph (g).

The additions and revision read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) * * *

A	B
*	*
Basil (*Ocimum* spp.)	Basil (*Ocimum basilicum* L.); Basil, American (*Ocimum americanum* L.); Basil, Greek (*Ocimum minimum* L.); Basil, holy (*Ocimum tenuiflorum* L.); Basil, lemon (*Ocimum x citriodorum* Vis.); Basil, Russian (*Ocimum gratissimum* L.)
*	*
Flowers, edible, multiple species	Acacia blossoms (*Acacia senegal* (L.) Willd.); Alyssum, sweet (*Lobularia maritima* (L.) Desv.); Anchusa, garden (*Anchusa azurea* Mill.); Angelica (*Angelica archangelica* L.); Apricot, Japanese (*Prunus mume* Siebold & Zucc.); Arnica (*Arnica montana* L.); Arugula (*Eruca sativa* Mill.); Balm (*Melissa officinalis* L.); Banana (*Musa* spp.); Basil (*Ocimum* spp.); Begonia, tuberous (*Begonia x tuberhybrida* Voss); Bilimbi (*Averrhoa bilimbi* L.); Bisnaga (*Ammi visnaga* (L.) Lam.); Blue thistle (*Centaurea benedicta* (L.) L.); Borage (*Borago officinalis* L.); Broccoli (*Brassica oleracea* L. var. *italica* Plenck); Bugelweed (*Lycopus* spp.); Burnet (*Sanguisorba* spp.); Calendula (*Calendula officinalis* L.); Canadian goldenrod (*Solidago canadensis* L.); Caper (*Capparis spinosa* L.); Carambola (*Averrhoa carambola* L.); Carnation (*Dianthus caryophyllus* L.); Celandine, greater (*Chelidonium majus* L.); Chamomile (*Chamaemelum* spp. and *Matricaria* spp.); Chaparral (*Larrea tridentata* (DC.) Coville); Chervil (*Anthriscus cerefolium* (L.) Hoffm.); Chicory (*Cichorium intybus* L.); Chive, Chinese (*Allium tuberosum* Rottler ex Spreng.); Chrysanthemum (*Chrysanthemum* spp.); Clary (*Salvia sclarea* L.); Cleavers (*Galium aparine* L); Clove (*Syzygium aromaticum* (L.) Merr. & L. M. Perry); Clover, red (*Trifolium pratense* L.); Coriander/Cilantro (*Coriandrum sativum* L.); Cornflower (*Centaurea cyanus* L.); Costmary (*Tanacetum balsamita* L. subsp. *balsamita);* Daisy, English (*Bellis perennis* L.); Dames rocket (*Hesperis matronalis* L.); Damiana (*Turnera diffusa* Willd); Dandelion (*Taraxacum officinale* F. H. Wigg. aggr.); Daylily (*Hemerocallis fulva* (L.) L.); Dill (*Anethum graveolens* L.); Elder (*Sambucus nigra* L.); Eyebright (*Euphrasia* spp.); Feijoa (*Acca sellowiana* (O. Berg) Burret); Fennel (common) (*Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare*); Frangipani (*Plumeria rubra* L.); Fuchsia (*Fuchsia* spp.); Gardenia (*Gardenia jasminoides* J. Ellis); Geranium (*Pelargonium* spp.); Geranium, lemon (*Pelargonium crispum* (P.J. Bergius) L'Her.); Geranium, rose (*Pelargonium graveolens* L'Hér.); Ginger, white (*Hedychium coronarium* J. Koenig); Gladiolus (*Gladiolus* spp.); Greater periwinkle (*Vinca* major L.); Hawthorn (*Crataegus monogyna* Jacq. *Crataegus* spp.); Hibiscus (*Hibiscus* spp.); Hibiscus, Chinese (*Hibiscus rosa-sinensis* L.); Hollyhock (*Alcea rosea* L.); Honeysuckle, Japanese (*Lonicera japonica* Thunb.); Horehound (*Marrubium vulgare* L.); Hyssop (*Hyssopus officinalis* L.); Hyssop, anise (*Agastache foeniculum* (Pursh) Kuntze); Impatiens (*Impatiens walleriana* Hook. f.); Jasmine, Arabian (*Jasminum sambac* (L.) Aiton); Kewra (*Pandanus fascicularis* Lam.); Lavender (*Lavandula angustifolia* Mill.); Lemon (*Citrus limon* (L.) Burm. f.); Lilac (*Syringa vulgaris* L.); Lily (*Lilium* spp.); Lily, mariposa (*Calochortus gunnisonii* S. Watson); Lily, sego (*Calochortus nuttallii* Torr. & A. Gray); Lotus (*Nelumbo nucifera* Gaertn.); Lovage (*Levisticum officinale* W. D. J. Koch); Mallow, high (*Malva sylvestris* L.); Marigold (*Tagetes* spp.); Marjoram (*Origanum* spp.); Meadowsweet (*Filipendula ulmaria* (L.) Maxim.); Mint (*Mentha* spp.); Mioga (*Zingiber mioga* (Thunb.) Roscoe); Monarda (*Monarda* spp.); Motherwort (*Leonurus cardiaca* L.); Mullein (*Verbascum thapsus* L., *Verbascum* spp.); Mustard (*Brassica* spp. and *Sinapis* spp.); Nasturtium (*Tropaeolum* spp.); Okra (*Abelmoschus esculentus* (L.) Moench); Orange, bitter (*Citrus aurantium* L.); Passion flower (*Passiflora* spp.); Pea blossoms (*Pisum sativum* L. subsp. *sativum* var. *sativum);* Peach (*Prunus persica* (L.) Batsch var. *persica);* Peony, common (*Paeonia officinalis* L.); Perilla (*Perilla frutescens* (L.) Britton); Petunia (*Petunia x hybrida* hort. ex E. Vilm.); Primrose (*Primula vulgaris* Huds.); Puget sound gumweed (*Grindelia integrifolia* DC.); Purslane, winter (*Claytonia perfoliata* Donn ex Willd.); Radish (*Raphanus sativus* L.); Redbud (*Cercis canadensis* L.); Rose (*Rosa* spp.); Rosemary (*Rosmarinus officinalis* L.); Rose-of-Sharon ((*Hibiscus syriacus* L.); Runner bean, scarlet (*Phaseolus coccineus* L.); Safflower (*Carthamus tinctorius* L.); Sage (*Salvia officinalis* L.); Sage, pineapple (*Salvia elegans*); Savory, summer (*Satureja hortensis* L.); Saxifrage, burnet (*Pimpinella saxifraga* L.); Scotch broom (*Cytisus scoparius* (L.) Link); Shepherd's purse (*Capsella bursa-pastoris* (L.) Medik.); Snapdragon (*Antirrhinum majus* L.); Sorrel, garden (*Rumex acetosa* L.); Sorrel, wood (*Oxalis acetosella* L.); Spilanthes (*Blainvillea acmella* (L.) Philipson); Squash (*Cucurbita* spp.); Stock, gillyflower (*Matthiola incana* (L.) W. T. Aiton); Stoneroot (*Collinsonia canadensis* L.); Sunflower (*Helianthus annuus* L.); Sweet william (*Dianthus barbatus* L.); Sweet wormwood (*Artemisia annua* L.); Thyme (*Thymus vulgaris* L.); Tuberose (*Polianthes tuberosa* L.); Tulip (*Tulipa* spp.); Verbena, blue (*Verbena hastate* L.); Verbena, lemon (*Aloysia citrodora* Palau); Violet (*Viola* spp.); Wormwood (*Artemisia absinthium* L); Yarrow (*Achillea millefolium* L.); Yucca (*Yucca* spp.); and other edible flowers.
*	*
Marjoram (*Origanum* spp.)	Marjoram (*Origanum* spp.); Marjoram, pot (*Origanum onites* L.); Marjoram, sweet *(Origanum majorana* L.); Oregano (*Origanum vulgare* L.)
*	*
Mint (*Mentha* spp.)	Mint (*Mentha* spp.); Applemint (*Mentha suaveolens* Ehrh.); Horsemint (*Mentha longifolia* (L.) Huds.); Mint, corn (*Mentha arvensis* L.); Peppermint (*Mentha. x piperita* L.); Spearmint, (*Mentha spicata* L.); Spearmint, Scotch (*Mentha x gracilis* Sole); Watermint (*Mentha aquatica* L.); Pennyroyal (*Mentha pulegium* L.)
*	*

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■ 3. Amend § 180.40 by revising paragraph (j) to read as follows:

§ 180.40 Tolerances for crop groups.

* * * * *

(j)(1) When EPA amends a crop group in a manner that expands or contracts the commodities that are covered by the group, EPA will initially retain the pre-existing as well as the revised crop group in the CFR.

(2) Where the revised crop group has the same number as the pre-existing crop group, the revised crop group number will be followed by a hyphen and the final two digits of the year in which it was established (*e.g.,* if Crop Group 1 is amended in 2007, the revised group will be designated as Crop Group 1–07). If the pre-existing crop group had crop subgroups, these subgroups will be numbered in a similar fashion in the revised crop group. The name of the revised crop group will not be changed from the pre-existing crop group unless the revision so changes the composition of the crop group that the pre-existing name is no longer accurate.

(3) Where EPA amends a crop group by creating one or more different crop groups, the revised crop groups will have different numbers and names (*e.g.,* the amendment of Crop Group 19 through the creation of Crop Groups 25 and 26). The pre-existing crop group will be amended to identify the revised crop group(s).

(4) Once a revised crop group is established, EPA will no longer establish tolerances under the pre-existing crop group. At appropriate times, EPA will amend tolerances for crop groups that have been superseded by revised crop groups to conform the pre-existing crop group to the revised crop group. Once all of the tolerances for the pre-existing crop group have been updated, the pre-existing crop group will be removed from the CFR.

* * * * *

■ 4. In § 180.41:

■ a. Add a paragraph (c)(28)(iv) after table 2 in paragraph (c)(28)(iii).

■ b. Add paragraphs (c)(34) and (35).

The additions read as follows:

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(28) * * *

* * * * *

(iv) After November 6, 2020, new herb crop group and subgroup tolerances will be established as Crop Group 25 or subgroups 25A and 25B, and new spice crop group tolerances will be established as Crop Group 26.

* * * * *

(34) *Crop Group 25.* Herb Group.

(i) *Representative commodities.* Basil, dried leaves; Basil, fresh leaves; Mint, dried leaves; and Mint, fresh leaves.

(ii) *Commodities.* The following Table 1 lists all commodities included in Crop Group 25 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 25: HERB GROUP

Commodities	Related crop subgroup
Agrimony, fresh leaves, *Agrimonia eupatoria* L	25A
Agrimony, dried leaves, *Agrimonia eupatoria* L	25B
Amla, fresh leaves, *Phyllanthus amarus* Schumach	25A
Amla, dried leaves, *Phyllanthus amarus* Schumach	25B
Angelica, fresh leaves, *Angelica archangelica* L	25A
Angelica, dried leaves, *Angelica archangelica* L	25B
Angelica, dahurian, fresh leaves, *Angelica dahurica* (Hoffm.) Benth & Hook. F. ex Franch. & Sav	25A
Angelica, dahurian, dried leaves, *Angelica dahurica* (Hoffm.) Benth & Hook. F. ex Franch. & Sav	25B
Applemint, fresh leaves, *Mentha suaveolens* Ehrh	25A
Applemint, dried leaves, *Mentha suaveolens* Ehrh	25B
Avarum, fresh leaves, *Senna auriculata* (L.) Roxb	25A
Avarum, dried leaves, *Senna auriculata* (L.) Roxb	25B
Balloon pea, fresh leaves, *Lessertia frutescens* (L.) Goldblatt & J. C. Manning	25A
Balloon pea, dried leaves, *Lessertia frutescens* (L.) Goldblatt & J. C. Manning	25B
Balm, fresh leaves, *Melissa officinalis* L	25A
Balm, dried leaves, *Melissa officinalis* L	25B
Barrenwort, fresh leaves, *Epimedium grandiflorum* C. Morren	25A
Barrenwort, dried leaves, *Epimedium grandiflorum* C. Morren	25B
Basil, fresh leaves, *Ocimum basilicum* L	25A
Basil, dried leaves, *Ocimum basilicum* L	25B
Basil, American, fresh leaves, *Ocimum americanum* L	25A
Basil, American, dried leaves, *Ocimum americanum* L	25B
Basil, Greek, fresh leaves, *Ocimum minimum* L	25A
Basil, Greek, dried leaves, *Ocimum minimum* L	25B
Basil, holy, fresh leaves, *Ocimum tenuiflorum* L	25A
Basil, holy, dried leaves, *Ocimum tenuiflorum* L	25B
Basil, lemon, fresh leaves, *Ocimum x citriodorum* Vis	25A
Basil, lemon, dried leaves, *Ocimum x citriodorum* Vis	25B
Basil, Russian, fresh leaves, *Ocimum gratissimum* L	25A
Basil, Russian, dried leaves, *Ocimum gratissimum* L	25B
Bay, fresh leaves, *Laurus nobilis* L	25A
Bay, dried leaves, *Laurus nobilis* L	25B
Bearberry, fresh leaves, *Arctostaphylos uva ursi* (L.) Spreng	25A
Bearberry, dried leaves, *Arctostaphylos uva ursi* (L.) Spreng	25B
Bisongrass, fresh leaves, *Anthoxanthum nitens* (Weber) Y. Schouten & Veldkamp	25A
Bisongrass, dried leaves, *Anthoxanthum nitens* (Weber) Y. Schouten & Veldkamp	25B
Blue mallow, fresh leaves, *Malva sylvestris* L	25A
Blue mallow, dried leaves, *Malva sylvestris* L	25B
Boneset, fresh leaves, *Eupatorium perfoliatum* L	25A
Boneset, dried leaves, *Eupatorium perfoliatum* L	25B
Borage, fresh leaves, *Borago officinalis* L	25A
Borage, dried leaves, *Borago officinalis* L	25B
Borage, Indian, fresh leaves, *Plectranthus amboinicus* (Lour.) Spreng	25A
Borage, Indian, dried leaves, *Plectranthus amboinicus* (Lour.) Spreng	25B
Burnet, fresh leaves, *Sanguisorba* spp	25A
Burnet, dried leaves, *Sanguisorba* spp	25B
Burnet, garden, fresh leaves, *Sanguisorba officinalis* L	25A
Burnet, garden, dried leaves, *Sanguisorba officinalis* L	25B
Burnet, salad, fresh leaves, *Sanguisorba minor* Scop	25A
Burnet, salad, dried leaves, *Sanguisorba minor* Scop	25B
Butterbur, fresh leaves, *Petasites hybridus* (L.) G. Gaertn. Et al., *P. frigidus* (L.) Fr	25A
Butterbur, dried leaves, *Petasites hybridus* (L.) G. Gaertn. Et al., *P. frigidus* (L.) Fr	25B

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroup
Calamint, fresh leaves, *Clinopodium* spp	25A
Calamint, dried leaves, *Clinopodium* spp	25B
Calamint, large-flower, fresh leaves, *Clinopodium grandiflorum* (L.) Kuntze	25A
Calamint, large-flower, dried leaves, *Clinopodium grandiflorum* (L.) Kuntze	25B
Calamint, lesser, fresh leaves, *Clinopodium nepeta* (L.) Kuntze	25A
Calamint, lesser, dried leaves, *Clinopodium nepeta* (L.) Kuntze	25B
Calendula, fresh leaves, *Calendula officinalis* L	25A
Calendula, dried leaves, *Calendula officinalis* L	25B
Caltrop, fresh leaves, *Tribulus terrestris* L	25A
Caltrop, dried leaves, *Tribulus terrestris* L	25B
Camomile (Chamomile), fresh leaves, *Chamaemelum* spp. and *Matricaria* spp	25A
Camomile (Chamomile), dried leaves, *Chamaemelum* spp. and *Matricaria* spp	25B
Camomile (Chamomile), German, fresh leaves, *Matricaria recutita* L	25A
Camomile (Chamomile), German, dried leaves, *Matricaria recutita* L	25B
Camomile (Chamomile), Roman, fresh leaves, *Chamaemelum nobile* (L.) All	25A
Camomile (Chamomile), Roman, dried leaves, *Chamaemelum nobile* (L.) All	25B
Caraway, fresh leaves, *Carum carvi* L	25A
Caraway, dried leaves, *Carum carvi* L	25B
Cat's claw, fresh leaves, *Uncaria tomentosa* (Willd.) DC., *U. guianensis* (Aubl.) J. F. Gmel	25A
Cat's claw, dried leaves, *Uncaria tomentosa* (Willd.) DC., *U. guianensis* (Aubl.) J. F. Gmel	25B
Catnip, fresh leaves, *Nepeta cataria* L	25A
Catnip, dried leaves, *Nepeta cataria* L	25B
Catnip, Japanese, fresh leaves, *Schizonepeta multifida* (L.) Briq	25A
Catnip, Japanese, dried leaves, *Schizonepeta multifida* (L.) Briq	25B
Celandine, greater, fresh leaves, *Chelidonium majus* L	25A
Celandine, greater, dried leaves, *Chelidonium majus* L	25B
Celandine, lesser, fresh leaves, *Ficaria verna* Huds	25A
Celandine, lesser, dried leaves, *Ficaria verna* Huds	25B
Celery, dried leaves, *Apium graveolens* L. var. *dulce* (Mill.) DC	25B
Centaury, fresh leaves, *Centaurium erythrarae* Rafn	25A
Centaury, dried leaves, *Centaurium erythrarae* Rafn	25B
Chaste tree, fresh leaves, *Vitex agnus-castus* L	25A
Chaste tree, dried leaves, *Vitex agnus-castus* L	25B
Chaste tree, Chinese, fresh leaves, *Vitex negundo* L	25A
Chaste tree, Chinese, dried leaves, *Vitex negundo* L.	25B
Chervil, dried leaves, *Anthriscus cerefolium* (L.) Hoffm	25B
Chinese blackberry, fresh leaves, *Rubus stipulates* L.H. Bailey	25A
Chinese blackberry, dried leaves, *Rubus stipulates* L.H. Bailey	25B
Chinese foxglove, fresh leaves, *Rehmannia glutinosa* (Gaertn.) Steud	25A
Chinese foxglove, dried leaves, *Rehmannia glutinosa* (Gaertn.) Steud	25B
Chive, dried leaves, *Allium schoenoprasum* L	25B
Chive, Chinese, dried leaves, *Allium tuberosum* Rottler ex Spreng	25B
Cicely, sweet, fresh leaves, *Myrrhis odorata* (L.) Scop	25A
Cicely, sweet, dried leaves, *Myrrhis odorata* (L.) Scop	25B
Cilantro, dried leaves, *Coriandrum sativum* L	25B
Clary, fresh leaves, *Salvia sclarea* L	25A
Clary, dried leaves, *Salvia sclarea* L	25B
Coriander, Bolivian, fresh leaves, *Porophyllum ruderale* (Jacq.) Cass	25A
Coriander, Bolivian, dried leaves, *Porophyllum ruderale* (Jacq.) Cass	25B
Coriander, Vietnamese, fresh leaves, *Persicaria odorata* (Lour.) Sojak	25A
Coriander, Vietnamese, dried leaves, *Persicaria odorata* (Lour.) Sojak	25B
Costmary, fresh leaves, *Tanacetum balsamita* L. subsp. *Balsamita*	25A
Costmary, dried leaves, *Tanacetum balsamita* L. subsp. *Balsamita*	25B
Creat, fresh leaves, *Andrographis paniculata* (Burm. f.) Wall. Ex Nees	25A
Creat, dried leaves, *Andrographis paniculata* (Burm. f.) Wall. Ex Nees	25B
Culantro, fresh leaves, *Eryngium foetidum* L	25A
Culantro, dried leaves, *Eryngium foetidum* L	25B
Curry leaf, fresh leaves, *Bergera koenigii* L	25A
Curry leaf, dried leaves, *Bergera koenigii* L	25B
Curryplant, fresh leaves, *Helichrysum italicum* (Roth) G. Don	25A
Curryplant, dried leaves, *Helichrysum italicum* (Roth) G. Don	25B
Cut leaf, fresh leaves, *Prostanthera incisa* R. Br	25A
Cut leaf, dried leaves, *Prostanthera incisa* R. Br	25B
Damiana, fresh leaves, *Turnera diffusa* Willd	25A
Damiana, dried leaves, *Turnera diffusa* Willd	25B
Dillweed, dried leaves, *Anethum graveolens* L	25B
Dokudami, fresh leaves, *Houttuynia cordata* Thunb	25A
Dokudami, dried leaves, *Houttuynia cordata* Thunb	25B
Echinacea, fresh leaves, *Echinacea angustifolia* DC., *Echinacea* spp	25A
Echinacea, dried leaves, *Echinacea angustifolia* DC., *Echinacea* spp	25B
Epazote, fresh leaves, *Dysphania ambrosioides* (L.) Mosyakin & Clemants	25A

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroup
Epazote, dried leaves, *Dysphania ambrosioides* (L.) Mosyakin & Clemants	25B
Eucommia, fresh leaves, *Eucommia ulmoides* Oliv	25A
Eucommia, dried leaves, *Eucommia ulmoides* Oliv	25B
Evening primrose, fresh leaves, *Oenothera biennis* L	25A
Evening primrose, dried leaves, *Oenothera biennis* L	25B
Eyebright, fresh leaves, *Euphrasia officinalis* L.	25A
Eyebright, dried leaves, *Euphrasia officinalis* L.	25B
Fennel, common, fresh leaves, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare*	25A
Fennel, common, dried leaves, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare*	25B
Fennel, Florence, dried leaves, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *azoricum* (Mill.) Thell	25B
Fennel, Spanish, fresh leaves, *Nigella* spp	25A
Fennel, Spanish, dried leaves, *Nigella* spp	25B
Fenugreek, fresh leaves, *Trigonella foenum-graecum* L	25A
Fenugreek, dried leaves, *Trigonella foenum-graecum* L	25B
Feverfew, fresh leaves, *Tanacetum parthenium* (L.) Sch. Bip	25A
Feverfew, dried leaves, *Tanacetum parthenium* (L.) Sch. Bip	25B
Field pennycress, fresh leaves, *Thlaspi arvense* L	25A
Field pennycress, dried leaves, *Thlaspi arvense* L	25B
Flowers, edible, fresh, multiple species	25A
Flowers, edible, dried, multiple species	25B
Fumitory, fresh leaves, *Fumaria officinalis* L	25A
Fumitory, dried leaves, *Fumaria officinalis* L	25B
Galbanum, fresh leaves, *Ferula gummosa* Boiss	25A
Galbanum, dried leaves, *Ferula gummosa* Boiss	25B
Galega, fresh leaves, *Galega officinalis* L	25A
Galega, dried leaves, *Galega officinalis* L	25B
Gambir, fresh leaves, *Uncaria gambir* (W. Hunter) Roxb	25A
Gambir, dried leaves, *Uncaria gambir* (W. Hunter) Roxb	25B
Geranium, fresh leaves, *Pelargonium* spp.	25A
Geranium, dried leaves, *Pelargonium* spp	25B
Geranium, lemon, fresh leaves, *Pelargonium crispum* (P. J. Bergius) L'Her	25A
Geranium, lemon, dried leaves, *Pelargonium crispum* (P. J. Bergius) L'Her	25B
Geranium, rose, fresh leaves, *Pelargonium graveolens* L'Her	25A
Geranium, rose, dried leaves, *Pelargonium graveolens* L'Her	25B
Germander, golden, fresh leaves, *Teucrium polium* L	25A
Germander, golden, dried leaves, *Teucrium polium* L	25B
Goldenrod, European, fresh leaves, *Solidago virgaurea* Scop	25A
Goldenrod, European, dried leaves, *Solidago virgaurea* Scop	25B
Goldenseal, fresh leaves, *Hydrastis canadensis* L	25A
Goldenseal, dried leaves, *Hydrastis canadensis* L	25B
Gotu kola, fresh leaves, *Centella asiatica* (L.) Urb	25A
Gotu kola, dried leaves, *Centella asiatica* (L.) Urb	25B
Greater periwinkle, fresh leaves, *Vinca major* L	25A
Greater periwinkle, dried leaves, *Vinca major* L	25B
Guayusa, fresh leaves, *Ilex guayusa* Loes	25A
Guayusa, dried leaves, *Ilex guayusa* Loes	25B
Gumweed, fresh leaves, *Grindelia camporum* Greene	25A
Gumweed, dried leaves, *Grindelia camporum* Greene	25B
Gymnema, fresh leaves, *Gymnema sylvestre* (Retz.) Schult	25A
Gymnema, dried leaves, *Gymnema sylvestre* (Retz.) Schult	25B
Gypsywort, fresh leaves, *Lycopus europaeus* L	25A
Gypsywort, dried leaves, *Lycopus europaeus* L	25B
Hawthorn, fresh leaves, *Crataegus monogyna* Jacq.; *Crataegus* spp	25A
Hawthorn, dried leaves, *Crataegus monogyna* Jacq.; *Crataegus* spp	25B
Heal-all, fresh leaves, *Prunella vulgaris* L	25A
Heal-all, dried leaves, *Prunella vulgaris* L	25B
Hemp nettle, fresh leaves, *Galeopsis segetum* Neck., *Galeopsis* spp	25A
Hemp nettle, dried leaves, *Galeopsis segetum* Neck., *Galeopsis* spp	25B
Honewort, fresh leaves, *Cryptotaenia canadensis* (L.) DC	25A
Honewort, dried leaves, *Cryptotaenia canadensis* (L.) DC	25B
Honeybush, fresh leaves, *Cyclopia genistoides* (L.) R. Br	25A
Honeybush, dried leaves, *Cyclopia genistoides* (L.) R. Br	25B
Horehound, fresh leaves, *Marrubium vulgare* L	25A
Horehound, dried leaves, *Marrubium vulgare* L	25B
Horsemint, fresh leaves, *Mentha longifolia* (L.) Huds	25A
Horsemint, dried leaves, *Mentha longifolia* (L.) Huds	25B
Horsetail, fresh leaves, *Equisetum arvense* L, *E. ttelmateia* Ehrh	25A
Horsetail, dried leaves, *Equisetum arvense* L, *E. ttelmateia* Ehrh	25B
Hyssop, fresh leaves, *Hyssopus officinalis* L	25A
Hyssop, dried leaves, *Hyssopus officinalis* L	25B
Hyssop, anise, fresh leaves, *Agastache foeniculum* (Pursh) Kuntze	25A

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroup
Hyssop, anise, dried leaves, *Agastache foeniculum* (Pursh) Kuntze	25B
Indian tobacco, fresh leaves, *Lobelia inflata* L	25A
Indian tobacco, dried leaves, *Lobelia inflata* L	25B
Ironwort, fresh leaves, *Sideritis scardica* Griseb., *Sideritis* spp	25A
Ironwort, dried leaves, *Sideritis scardica* Griseb., *Sideritis* spp	25B
Ivy, fresh leaves, *Hedera helix* L	25A
Ivy, dried leaves, *Hedera helix* L	25B
Jamaica dogwood, fresh leaves, *Piscidia piscipula* (L.) Sarg	25A
Jamaica dogwood, dried leaves, *Piscidia piscipula* (L.) Sarg	25B
Jasmine, dried leaves, *Jasminum officinale* L., *J. odoratissimum* L	25B
Jasmine, fresh leaves, *Jasminum officinale* L., *J. odoratissimum* L	25A
Labrador tea, fresh leaves, *Rhododendron groenlandicum* (Oeder) Kron & Judd, *R. tomentosum* Harmaja	25A
Labrador tea, dried leaves, *Rhododendron groenlandicum* (Oeder) Kron & Judd, *R. tomentosum* Harmaja	25B
Lavender, fresh leaves, *Lavandula angustifolia* Mill	25A
Lavender, dried leaves, *Lavandula angustifolia* Mill	25B
Lemon verbena, fresh leaves, *Aloysia citrodora* Palau	25A
Lemon verbena, dried leaves, *Aloysia citrodora* Palau	25B
Lemongrass, fresh leaves, *Cymbopogon citratus* (DC.) Stapf	25A
Lemongrass, dried leaves, *Cymbopogon citratus* (DC.) Stapf	25B
Lovage, fresh leaves, *Levisticum officinale* W.D.J. Koch	25A
Lovage, dried leaves, *Levisticum officinale* W.D.J. Koch	25B
Love-in-a-mist, fresh leaves, *Nigella damascena* L	25A
Love-in-a-mist, dried leaves, *Nigella damascena* L	25B
Mamaki, fresh leaves, *Pipturus arborescens* (Link) C. B. Rob	25A
Mamaki, dried leaves, *Pipturus arborescens* (Link) C. B. Rob	25B
Marigold, fresh leaves, *Tagetes* spp	25A
Marigold, dried leaves, *Tagetes* spp	25B
Marigold, African, fresh leaves, *Tagetes erecta* L	25A
Marigold, African, dried leaves, *Tagetes erecta* L	25B
Marigold, Aztec, fresh leaves, *Tagetes minuta* L	25A
Marigold, Aztec, dried leaves, *Tagetes minuta* L	25B
Marigold, French, fresh leaves, *Tagetes patula* L	25A
Marigold, French, dried leaves, *Tagetes patula* L	25B
Marigold, Irish lace, fresh leaves, *Tagetes filifolia* Lag	25A
Marigold, Irish lace, dried leaves, *Tagetes filifolia* Lag	25B
Marigold, licorice, fresh leaves, *Tagetes micrantha* Cav	25A
Marigold, licorice, dried leaves, *Tagetes micrantha* Cav	25B
Marigold, Mexican mint, fresh leaves, *Tagetes lucida* Cav	25A
Marigold, Mexican mint, dried leaves, *Tagetes lucida* Cav	25B
Marigold, signet, fresh leaves, *Tagetes tenuifolia* Cav	25A
Marigold, signet, dried leaves, *Tagetes tenuifolia* Cav	25B
Marjoram, fresh leaves, *Origanum* spp	25A
Marjoram, dried leaves, *Origanum* spp	25B
Marjoram, pot, fresh leaves, *Origanum onites* L	25A
Marjoram, pot, dried leaves, *Origanum onites* L	25B
Marjoram, sweet, fresh leaves, *Origanum majorana* L	25A
Marjoram, sweet, dried leaves, *Origanum majorana* L	25B
Marshmallow, fresh leaves, *Althaea officinalis* L	25A
Marshmallow, dried leaves, *Althaea officinalis* L	25B
Meadowsweet, fresh leaves, *Filipendula ulmaria* (L.) Maxim	25A
Meadowsweet, dried leaves, *Filipendula ulmaria* (L.) Maxim	25B
Mint, fresh leaves, *Mentha* spp	25A
Mint, dried leaves, *Mentha* spp	25B
Mint, corn, fresh leaves, *Mentha arvensis* L	25A
Mint, corn, dried leaves, *Mentha arvensis* L	25B
Mint, Korean, fresh leaves, *Agastache rugosa* (Fisch. & C.A. Mey.) Kun	25A
Mint, Korean, dried leaves, *Agastache rugosa* (Fisch. & C.A. Mey.) Kun	25B
Monarda, fresh leaves, *Monarda* spp	25A
Monarda, dried leaves, *Monarda* spp	25B
Moringa, fresh leaves, *Moringa oleifera* L	25A
Moringa, dried leaves, *Moringa oleifera* L	25B
Motherwort, fresh leaves, *Leonurus cardiaca* L	25A
Motherwort, dried leaves, *Leonurus cardiaca* L	25B
Mountainmint, fresh leaves, *Pycnanthemum* spp	25A
Mountainmint, dried leaves, *Pycnanthemum* spp	25B
Mountainmint, clustered, fresh leaves, *Pycnanthemum muticum* (Michx.) Pers	25A
Mountainmint, clustered, dried leaves, *Pycnanthemum muticum* (Michx.) Pers	25B
Mountainmint, hoary, fresh leaves, *Pycnanthemum incanum* Michx	25A
Mountainmint, hoary, dried leaves, *Pycnanthemum incanum* Michx	25B
Mountainmint, Virginia, fresh leaves, *Pycnanthemum virginianum* (L.) T. Durand & B.D. Jacks. Ex B.L. Rob. & Fernald	25A
Mountainmint, Virginia, dried leaves, *Pycnanthemum virginianum* (L.) T. Durand & B.D. Jacks. ex B.L. Rob. & Fernald	25B

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroup
Mountainmint, whorled, fresh leaves, *Pycnanthemum verticillatum* (Michx.) Pers	25A
Mountainmint, whorled, dried leaves, *Pycnanthemum verticillatum* (Michx.) Pers	25B
Mugwort, fresh leaves, *Artemisia vulgaris* L	25A
Mugwort, dried leaves, *Artemisia vulgaris* L	25B
Mulberry, white, fresh leaves, *Morus alba* L	25A
Mulberry, white, dried leaves, *Morus alba* L	25B
Mullein, fresh leaves, *Verbascum densiflorum* Bertol., *Verbascum* spp	25A
Mullein, dried leaves, *Verbascum densiflorum* Bertol., *Verbascum* spp	25B
Mustard, hedge, fresh leaves, *Sisymbrium officinale* (L.) Scop	25A
Mustard, hedge, dried leaves, *Sisymbrium officinale* (L.) Scop	25B
Nasturtium, fresh leaves, *Tropaeolum* spp	25A
Nasturtium, dried leaves, *Tropaeolum* spp	25B
Nasturtium, bush, fresh leaves, *Tropaeolum minus* L	25A
Nasturtium, bush, dried leaves, *Tropaeolum minus* L	25B
Nasturtium, garden, fresh leaves, *Tropaeolum majus* L	25A
Nasturtium, garden, dried leaves, *Tropaeolum majus* L	25B
Nettle, stinging, fresh leaves, *Urtica dioica* L	25A
Nettle, stinging, dried leaves, *Urtica dioica* L	25B
Oregano, fresh leaves, *Origanum vulgare* L	25A
Oregano, dried leaves, *Origanum vulgare* L	25B
Oregano, Mexican, fresh leaves, *Lippia graveolens* Kunth	25A
Oregano, Mexican, dried leaves, *Lippia graveolens* Kunth	25B
Oregano, Puerto Rico, fresh leaves, *Lippia micromera* Schauer	25A
Oregano, Puerto Rico, dried leaves, *Lippia micromera* Schauer	25B
Oswego tea, fresh leaves, *Monarda didyma* L	25A
Oswego tea, dried leaves, *Monarda didyma* L	25B
Pandan leaf, fresh leaves, *Pandanus amaryllifolius* Roxb	25A
Pandan leaf, dried leaves, *Pandanus amaryllifolius* Roxb	25B
Pansy, fresh leaves, *Viola tricolor* L	25A
Pansy, dried leaves, *Viola tricolor* L	25B
Paracress, fresh leaves, *Acmella oleracea* (L.) R.K. Jansen	25A
Paracress, dried leaves, *Acmella oleracea* (L.) R.K. Jansen	25B
Parsley, dried leaves, *Petroselinum crispum* (Mill.) Fuss	25B
Partridge berry, fresh leaves, *Mitchella repens* L	25A
Partridge berry, dried leaves, *Mitchella repens* L	25B
Patchouli, fresh leaves, *Pogostemon cablin* (Blanco) Benth	25A
Patchouli, dried leaves, *Pogostemon cablin* (Blanco) Benth	25B
Pennyroyal, fresh leaves, *Mentha pulegium* L	25A
Pennyroyal, dried leaves, *Mentha pulegium* L	25B
Pepper leaf, black, fresh leaves, *Piper nigrum* L	25A
Pepper leaf, black, dried leaves, *Piper nigrum* L	25B
Peppermint, fresh leaves, *Mentha X piperita* L	25A
Peppermint, dried leaves, *Mentha X piperita* L	25B
Perilla, fresh leaves, *Perilla frutescens* (L.) Britton	25A
Perilla, dried leaves, *Perilla frutescens* (L.) Britton	25B
Pill bearing spurge, fresh leaves, *Euphorbia hirta* L	25A
Pill bearing spurge, dried leaves, *Euphorbia hirta* L	25B
Pipsissewa, fresh leaves, *Chimaphila umbellata* (L.) W. P. C. Barton	25A
Pipsissewa, dried leaves, *Chimaphila umbellata* (L.) W. P. C. Barton	25B
Plantain, common, fresh leaves, *Plantago major* L	25A
Plantain, common, dried leaves, *Plantago major* L	25B
Rooibos, fresh leaves, *Aspalathus linearis* (Burm. f.) R. Dahlgren	25A
Rooibos, dried leaves, *Aspalathus linearis* (Burm. f.) R. Dahlgren	25B
Rose, fresh leaves, *Rosa* spp	25A
Rose, dried leaves, *Rosa* spp	25B
Rosemary, fresh leaves, *Rosmarinus officinalis* L	25A
Rosemary, dried leaves, *Rosmarinus officinalis* L	25B
Sage, fresh leaves, *Salvia officinalis* L	25A
Sage, dried leaves, *Salvia officinalis* L	25B
Sage, Greek, fresh leaves, *Salvia fruticosa* Mill	25A
Sage, Greek, dried leaves, *Salvia fruticosa* Mill	25B
Sage, Spanish, fresh leaves, *Salvia lavandulifolia* Vahl	25A
Sage, Spanish, dried leaves, *Salvia lavandulifolia* Vahl	25B
Sage, white, fresh leaves, *Salvia apiana* Jeps	25A
Sage, white, dried leaves, *Salvia apiana* Jeps	25B
Savory, summer, fresh leaves, *Satureja hortensis* L	25A
Savory, summer, dried leaves, *Satureja hortensis* L	25B
Savory, winter, fresh leaves, *Satureja montana* L	25A
Savory, winter, dried leaves, *Satureja montana* L.	25B
Senna, fresh leaves, *Senna alexandrina* Mill	25A
Senna, dried leaves, *Senna alexandrina* Mill	25B

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroup
Siberian fir, fresh leaves, *Abies sibirica* Ledeb	25A
Siberian fir, dried leaves, *Abies sibirica* Ledeb	25B
Skullcap, fresh leaves, *Scutellaria lateriflora* L	25A
Skullcap, dried leaves, *Scutellaria lateriflora* L	25B
Small flower willow head, fresh leaves, *Epilobium parviflorum* Schreb	25A
Small flower willow head, dried leaves, *Epilobium parviflorum* Schreb	25B
Sorrel, fresh leaves, *Rumex* spp	25A
Sorrel, dried leaves, *Rumex* spp	25B
Sorrel, French, fresh leaves, *Rumex scutatus* L	25A
Sorrel, French, dried leaves, *Rumex scutatus* L	25B
Sorrel, garden, fresh leaves, *Rumex acetosa* L	25A
Sorrel, garden, dried leaves, *Rumex acetosa* L	25B
Southernwood, fresh leaves, *Artemisia abrotanum* L	25A
Southernwood, dried leaves, *Artemisia abrotanum* L	25B
Spearmint, fresh leaves, *Mentha spicata* L	25A
Spearmint, dried leaves, *Mentha spicata* L	25B
Spearmint, Scotch, fresh leaves, *Mentha x gracilis* Sole	25A
Spearmint, Scotch, dried leaves, *Mentha x gracilis* Sole	25B
Spilanthes, fresh leaves, *Blainvillea acmella* (L.) Philipson	25A
Spilanthes, dried leaves, *Blainvillea acmella* (L.) Philipson	25B
Spotted beebalm, fresh leaves, *Monarda punctata* L	25A
Spotted beebalm, dried leaves, *Monarda punctata* L	25B
St John's Wort, fresh leaves, *Hypericum perforatum* L	25A
St John's Wort, dried leaves, *Hypericum perforatum* L	25B
Stevia, fresh leaves, *Stevia rebaudiana* (Bertoni) Bertoni	25A
Stevia, dried leaves, *Stevia rebaudiana* (Bertoni) Bertoni	25B
Stoneroot, fresh leaves, *Collinsonia canadensis* L	25A
Stoneroot, dried leaves, *Collinsonia canadensis* L	25B
Swamp leaf, fresh leaves, *Limnophila chinensis* (Osbeck) Merr	25A
Swamp leaf, dried leaves, *Limnophila chinensis* (Osbeck) Merr	25B
Tansy, fresh leaves, *Tanacetum vulgare* L	25A
Tansy, dried leaves, *Tanacetum vulgare* L	25B
Tarragon, fresh leaves, *Artemisia dracunculus* L	25A
Tarragon, dried leaves, *Artemisia dracunculus* L	25B
Thuja, fresh leaves, *Thuja occidentalis* L	25A
Thuja, dried leaves, *Thuja occidentalis* L	25B
Thyme, fresh leaves, *Thymus* spp	25A
Thyme, dried leaves, *Thymus* spp	25B
Thyme, creeping, fresh leaves, *Thymus serpyllum* L	25A
Thyme, creeping, dried leaves, *Thymus serpyllum* L	25B
Thyme, lemon, fresh leaves, *Thymus* ×*citriodorus* (Pers.) Schreb	25A
Thyme, lemon, dried leaves, *Thymus* ×*citriodorus* (Pers.) Schreb	25B
Thyme, mastic, fresh leaves, *Thymus mastichina* (L.) L	25A
Thyme, mastic, dried leaves, *Thymus mastichina* (L.) L	25B
Toon, Chinese, fresh leaves, *Toona sinensis* (A. Juss.) M. Roem	25A
Toon, Chinese, dried leaves, *Toona sinensis* (A. Juss.) M. Roem	25B
Toothed clubmoss, fresh leaves, *Huperzia serrata* (Thunb.) Trevis	25A
Toothed clubmoss, dried leaves, *Huperzia serrata* (Thunb.) Trevis	25B
Trailing arbutus, fresh leaves, *Epigaea repens* L	25A
Trailing arbutus, dried leaves, *Epigaea repens* L	25B
Vasaka, fresh leaves, *Justicia adhatoda* L	25A
Vasaka, dried leaves, *Justicia adhatoda* L.	25B
Verbena, blue, fresh leaves, *Verbena hastata* L	25A
Verbena, blue, dried leaves, *Verbena hastata* L	25B
Veronica, fresh leaves, *Veronica officinalis* L	25A
Veronica, dried leaves, *Veronica officinalis* L	25B
Violet, fresh leaves, *Viola odorata* L	25A
Violet, dried leaves, *Viola odorata* L	25B
Watermint, fresh leaves, *Mentha aquatica* L	25A
Watermint, dried leaves, *Mentha aquatica* L	25B
Waterpepper, fresh leaves, *Persicaria hydropiper* (L.) Delarbre	25A
Waterpepper, dried leaves, *Persicaria hydropiper* (L.) Delarbre	25B
Wild bergamot, fresh leaves, *Monarda fistulosa* L	25A
Wild bergamot, dried leaves, *Monarda fistulosa* L	25B
Wintergreen, fresh leaves, *Gaultheria procumbens* L	25A
Wintergreen, dried leaves, *Gaultheria procumbens* L	25B
Wood betony, fresh leaves, *Stachys officinalis* (L.) Trevis	25A
Wood betony, dried leaves, *Stachys officinalis* (L.) Trevis	25B
Woodruff, fresh leaves, *Galium odoratum* (L.) Scop	25A
Woodruff, dried leaves, *Galium odoratum* (L.) Scop	25B
Wormwood, fresh leaves, *Artemisia absinthium* L.	25A

TABLE 1—CROP GROUP 25: HERB GROUP—Continued

Commodities	Related crop subgroup
Wormwood, dried leaves, *Artemisia absinthium* L	25B
Wormwood, Roman, fresh leaves, *Artemisia pontica* L	25A
Wormwood, Roman, dried leaves, *Artemisia pontica* L	25B
Yarrow, fresh leaves, *Achillea millefolium* L	25A
Yarrow, dried leaves, *Achillea millefolium* L	25B
Yellow gentian, fresh leaves, *Gentiana lutea* L	25A
Yellow gentian, dried leaves, *Gentiana lutea* L	25B
Yerba santa, fresh leaves, *Eriodictyon californicum* (Hook. & Arn.) Torr	25A
Yerba santa, dried leaves, *Eriodictyon californicum* (Hook. & Arn.) Torr	25B
Yomogi, fresh leaves, *Artemisia princeps* L	25A
Yomogi, dried leaves, *Artemisia princeps* L	25B
Cultivars, varieties, and hybrids of these commodities	

(iii) *Crop subgroups.* The following Table 2 identifies the crop subgroups for Crop Group 25, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 25: SUBGROUP LISTING

Representative commodities	Commodities
Crop subgroup 25A. Herb fresh leaves subgroup	
Basil, fresh leaves and mint, fresh leaves.	Agrimony, fresh leaves; Amla, fresh leaves; Angelica, fresh leaves; Angelica, dahurian, fresh leaves; Applemint, fresh leaves; Avarum, fresh leaves; Balloon pea, fresh leaves; Balm, fresh leaves; Barrenwort, fresh leaves; Basil, fresh leaves; Basil, American, fresh leaves; Basil, Greek, fresh leaves; Basil, holy, fresh leaves; Basil, lemon, fresh leaves; Basil, Russian, fresh leaves; Bay, fresh leaves; Bearberry, fresh leaves; Bisongrass, fresh leaves; Blue mallow, fresh leaves; Boneset, fresh leaves; Borage, fresh leaves; Borage, Indian, fresh leaves; Burnet, fresh leaves; Burnet, garden, fresh leaves; Burnet, salad, fresh leaves; Butterbur, fresh leaves; Calamint, fresh leaves; Calamint, large-flower, fresh leaves; Calamint, lesser, fresh leaves; Calendula, fresh leaves; Caltrop, fresh leaves; Camomile (Chamomile), fresh leaves; Camomile (Chamomile), German, fresh leaves; Camomile (Chamomile), Roman, fresh leaves; Caraway, fresh leaves; Cat's claw, fresh leaves; Catnip, fresh leaves; Catnip, Japanese, fresh leaves; Celandine, greater, fresh leaves; Celandine, lesser, fresh leaves; Centaury, fresh leaves; Chaste tree, fresh leaves; Chaste tree, Chinese, fresh leaves; Chinese blackberry, fresh leaves; Chinese foxglove, fresh leaves; Cicely, sweet, fresh leaves; Clary, fresh leaves; Coriander, Bolivian, fresh leaves; Coriander, Vietnamese, fresh leaves; Costmary, fresh leaves; Creat, fresh leaves; Culantro, fresh leaves; Curry leaf, fresh leaves; Curryplant, fresh leaves; Cut leaf, fresh leaves; Damiana, fresh leaves; Dokudami, fresh leaves; Echinacea, fresh leaves; Epazote, fresh leaves; Eucommia, fresh leaves; Evening primrose, fresh leaves; Eyebright, fresh leaves; Fennel, common, fresh leaves; Fennel, Spanish, fresh leaves; Fenugreek, fresh leaves; Feverfew, fresh leaves; Field pennycress, fresh leaves; Flowers, edible, fresh; Fumitory, fresh leaves; Galbanum, fresh leaves; Galega, fresh leaves; Gambir, fresh leaves; Geranium, fresh leaves; Geranium, lemon, fresh leaves; Geranium, rose, fresh leaves; Germander, golden, fresh leaves; Goldenrod, European, fresh leaves; Goldenseal, fresh leaves; Gotu kola, fresh leaves; Greater periwinkle, fresh leaves; Guayusa, fresh leaves; Gumweed, fresh leaves; Gymnema, fresh leaves; Gypsywort, fresh leaves; Hawthorn, fresh leaves; Heal-all, fresh leaves; Hemp nettle, fresh leaves; Honewort, fresh leaves; Honeybush, fresh leaves; Horehound, fresh leaves; Horsemint, fresh leaves; Horsetail, fresh leaves; Hyssop, fresh leaves; Hyssop, anise, fresh leaves; Indian tobacco, fresh leaves; Ironwort, fresh leaves; Ivy, fresh leaves; Jamaica dogwood, fresh leaves; Jasmine, fresh leaves; Labrador tea, fresh leaves; Lavender, fresh leaves; Lemon verbena, fresh leaves; Lemongrass, fresh leaves; Lovage, fresh leaves; Love-in-a-mist, fresh leaves; Mamaki, fresh leaves; Marigold, fresh leaves; Marigold, African, fresh leaves; Marigold, Aztec, fresh leaves; Marigold, French, fresh leaves; Marigold, Irish lace, fresh leaves; Marigold, licorice, fresh leaves; Marigold, Mexican mint, fresh leaves; Marigold, signet, fresh leaves; Marjoram, fresh leaves; Marjoram, pot, fresh leaves; Marjoram, sweet, fresh leaves; Marshmallow, fresh leaves; Meadowsweet, fresh leaves; Mint, fresh leaves; Mint, corn, fresh leaves; Mint, Korean, fresh leaves; Monarda, fresh leaves; Moringa, fresh leaves; Motherwort, fresh leaves; Mountainmint, fresh leaves; Mountainmint, clustered, fresh leaves; Mountainmint, hoary, fresh leaves; Mountainmint, Virginia, fresh leaves; Mountainmint, whorled, fresh leaves; Mugwort, fresh leaves; Mulberry, white, fresh leaves; Mullein, fresh leaves; Mustard, hedge, fresh leaves; Nasturtium, fresh leaves; Nasturtium, bush, fresh leaves; Nasturtium, garden, fresh leaves; Nettle, stinging, fresh leaves; Oregano, fresh leaves; Oregano, Mexican, fresh leaves; Oregano, Puerto Rico, fresh leaves; Oswego tea, fresh leaves; Pandan leaf, fresh leaves; Pansy, fresh leaves; Paracress, fresh leaves; Partridge berry, fresh leaves; Patchouli, fresh leaves; Pennyroyal, fresh leaves; Pepper leaf, black, fresh leaves; Peppermint, fresh leaves; Perilla, fresh leaves; Pill bearing spurge, fresh leaves; Pipsissewa, fresh leaves; Plantain, common, fresh leaves; Rooibos, fresh leaves; Rose, fresh leaves; Rosemary, fresh leaves; Sage, fresh leaves; Sage, Greek, fresh leaves; Sage, Spanish, fresh leaves; Sage, white, fresh leaves; Savory, summer, fresh leaves; Savory, winter, fresh leaves; Senna, fresh leaves; Siberian fir, fresh leaves; Skullcap, fresh leaves; Small flower willow head, fresh leaves; Sorrel, fresh leaves; Sorrel, French, fresh leaves; Sorrel, garden, fresh leaves; Southernwood, fresh leaves; Spearmint, fresh leaves; Spearmint, Scotch, fresh leaves; Spilanthes, fresh leaves; Spotted beebalm, fresh leaves; St. John's Wort, fresh leaves; Stevia, fresh leaves; Stoneroot, fresh leaves; Swamp leaf, fresh leaves; Tansy, fresh leaves; Tarragon, fresh leaves; Thuja, fresh leaves; Thyme, fresh leaves; Thyme, creeping, fresh leaves; Thyme, lemon, fresh leaves; Thyme, mastic, fresh leaves; Toon, Chinese, fresh leaves; Toothed clubmoss, fresh leaves; Trailing arbutus, fresh leaves; Vasaka, fresh leaves; Verbena, blue, fresh leaves; Veronica, fresh leaves; Violet, fresh leaves; Watermint, fresh leaves; Waterpepper, fresh leaves; Wild bergamot, fresh leaves; Wintergreen, fresh leaves; Wood betony, fresh leaves; Woodruff, fresh leaves; Wormwood, fresh leaves; Wormwood, Roman, fresh leaves; Yarrow, fresh leaves; Yellow gentian, fresh leaves; Yerba santa, fresh leaves; Yomogi, fresh leaves; Cultivars, varieties, and hybrids of these commodities.

TABLE 2—CROP GROUP 25: SUBGROUP LISTING—Continued

Representative commodities	Commodities
	Crop subgroup 25B. Herb dried leaves subgroup
Basil, dried leaves and mint, dried leaves.	Agrimony, dried leaves; Amla, dried leaves; Angelica, dried leaves; Angelica, dahurian, dried leaves; Applemint, dried leaves; Avarum, dried leaves; Balloon pea, dried leaves; Balm, dried leaves; Barrenwort, dried leaves; Basil, dried leaves; Basil, American, dried leaves; Basil, Greek, dried leaves; Basil, holy, dried leaves; Basil, lemon, dried leaves; Basil, Russian, dried leaves; Bay, dried leaves; Bearberry, dried leaves; Bisongrass, dried leaves; Blue mallow, dried leaves; Boneset, dried leaves; Borage, dried leaves; Borage, Indian, dried leaves; Burnet, dried leaves; Burnet, garden, dried leaves; Burnet, salad, dried leaves; Butterbur, dried leaves; Calamint, dried leaves; Calamint, large-flower, dried leaves; Calamint, lesser, dried leaves; Calendula, dried leaves; Caltrop, dried leaves; Camomile (Chamomile), dried leaves; Camomile (Chamomile), German, dried leaves; Camomile (Chamomile), Roman, dried leaves; Caraway, dried leaves; Cat's claw, dried leaves; Catnip, dried leaves; Catnip, Japanese, dried leaves; Celandine, greater, dried leaves; Celandine, lesser, dried leaves; Celery, dried leaves; Centaury, dried leaves; Chaste tree, dried leaves; Chaste tree, Chinese, dried leaves; Chervil, dried leaves; Chinese blackberry, dried leaves; Chinese foxglove, dried leaves; Chive, dried leaves; Chive, Chinese, dried leaves; Cicely, sweet, dried leaves; Cilantro, dried leaves; Clary, dried leaves; Coriander, Bolivian, dried leaves; Coriander, Vietnamese, dried leaves; Costmary, dried leaves; Creat, dried leaves; Culantro, dried leaves; Curry leaf, dried leaves; Curryplant, dried leaves; Cut leaf, dried leaves; Damiana, dried leaves; Dillweed, dried leaves; Dokudami, dried leaves; Echinacea, dried leaves; Epazote, dried leaves; Eucommia, dried leaves; Evening primrose, dried leaves; Eyebright, dried leaves; Fennel, common, dried leaves; Fennel, Florence, dried leaves; Fenugreek, dried leaves; Feverfew, dried leaves; Field pennycress, dried leaves; Flowers, edible, dried; Fumitory, dried leaves; Galbanum, dried leaves; Galega, dried leaves; Gambir, dried leaves; Geranium, dried leaves; Geranium, lemon, dried leaves; Geranium, rose, dried leaves; Germander, golden, dried leaves; Goldenrod, European, dried leaves; Goldenseal, dried leaves; Gotu kola, dried leaves; Greater periwinkle, dried leaves; Guayusa, dried leaves; Gumweed, dried leaves; Gymnema, dried leaves; Gypsywort, dried leaves; Hawthorn, dried leaves; Heal-all, dried leaves; Hemp nettle, dried leaves; Honewort, dried leaves; Honeybush, dried leaves; Horehound, dried leaves; Horsemint, dried leaves; Horsetail, dried leaves; Hyssop, dried leaves; Hyssop, anise, dried leaves; Indian tobacco, dried leaves; Ironwort, dried leaves; Ivy, dried leaves; Jamaica dogwood, dried leaves; Jasmine, dried leave; Labrador tea, dried leaves; Lavender, dried leaves; Lemon verbena, dried leaves; Lemongrass, dried leaves; Lovage, dried leaves; Love-in-a-mist, dried leaves; Mamaki, dried leaves; Marigold, dried leaves; Marigold, African, dried leaves; Marigold, Aztec, dried leaves; Marigold, French, dried leaves; Marigold, Irish lace, dried leaves; Marigold, licorice, dried leaves; Marigold, Mexican mint, dried leaves; Marigold, signet, dried leaves; Marjoram, dried leaves; Marjoram, sweet, dried leaves; Marshmallow, dried leaves; Meadowsweet, dried leaves; Mint, dried leaves; Mint, corn, dried leaves; Mint, Korean, dried leaves; Monarda, dried leaves; Moringa, dried leaves; Motherwort, dried leaves; Mountainmint, dried leaves; Mountainmint, clustered, dried leaves; Mountainmint, hoary, dried leaves; Mountainmint, Virginia, dried leaves; Mountainmint, whorled, dried leaves; Mugwort, dried leaves; Mulberry, white, dried leaves; Mullein, dried leaves; Mustard, hedge, dried leaves; Nasturtium, dried leaves; Nasturtium, bush, dried leaves; Nasturtium, garden, dried leaves; Nettle, stinging, dried leaves; Oregano, dried leaves; Oregano, Mexican, dried leaves; Oregano, Puerto Rico, dried leaves; Oswego tea, dried leaves; Pandan leaf, dried leaves; Pansy, dried leaves; Paracress, dried leaves; Parsley, dried leaves; Partridge berry, dried leaves; Patchouli, dried leaves; Pennyroyal, dried leaves; Pepper leaf, black, dried leaves; Peppermint, dried leaves; Perilla, dried leaves; Pill bearing spurge, dried leaves; Pipsissewa, dried leaves; Plantain, common, dried leaves; Rooibos, dried leaves; Rose, dried leaves; Rosemary, dried leaves; Sage, dried leaves; Sage, Greek, dried leaves; Sage, Spanish, dried leaves; Sage, white, dried leaves; Savory, summer, dried leaves; Savory, winter, dried leaves; Senna, dried leaves; Siberian fir, dried leaves; Skullcap, dried leaves; Small flower willow head, dried leaves; Sorrel, dried leaves; Sorrel, French, dried leaves; Sorrel, garden, dried leaves; Southernwood, dried leaves; Spearmint, dried leaves; Spearmint, Scotch, dried leaves; Spilanthes, dried leaves; Spotted beebalm, dried leaves; St. John's Wort, dried leaves; Stevia, dried leaves; Stoneroot, dried leaves; Swamp leaf, dried leaves; Tansy, dried leaves; Tarragon, dried leaves; Thuja, dried leaves; Thyme, dried leaves; Thyme, creeping, dried leaves; Thyme, lemon, dried leaves; Thyme, mastic, dried leaves; Toon, Chinese, dried leaves; Toothed clubmoss, dried leaves; Trailing arbutus, dried leaves; Vasaka, dried leaves; Verbena, blue, dried leaves; Veronica, dried leaves; Violet, dried leaves; Watermint, dried leaves; Waterpepper, dried leaves; Wintergreen, dried leaves; Wood betony, dried leaves; Woodruff, dried leaves; Wormwood, dried leaves; Wormwood, Roman, dried leaves; Yarrow, dried leaves; Yellow gentian, dried leaves; Yerba santa, dried leaves; Yomogi, dried leaves; Fennel, Spanish, dried leaves; Marjoram, pot, dried leaves; Wild bergamot, dried leaves; Cultivars, varieties, and hybrids of these commodities.

(35) *Crop Group 26.* Spice Group.

(i) *Representative commodities.* Dill seed or Celery seed.

(ii) *Commodities.* The following Table 3 lists all commodities included in Crop Group 26.

TABLE 1—CROP GROUP 26: SPICE GROUP

Commodities
Ajowan, seed, *Trachyspermum ammi* (L.) Sprague ex Turrill.
Alder buckhorn, *Frangula alnus* Mill.
Allspice, *Pimenta dioica* (L.) Merr.
Ambrette, seed, *Abelmoschus esculentus* (L.) Moench.
Amla, seed, *Phyllanthus amarus* Schumach.
Angelica, dahurian, seed, *Angelica dahurica* (Hoffm.) Benth. & Hook. F. ex Franch. & Sav.
Angelica, seed, *Angelica archangelica* L.
Angostura, bark, *Angostura trifoliata* (Willd.) T. S. Elias.
Anise pepper, *Zanthoxylum piperitum* (L.) DC.
Anise, seed, *Pimpinella anisum* L.
Anise, star, *Illicium verum* Hook. f.
Annatto, seed, *Bixa orellana* L.
Asafoetida, *Ferula assa-foetida* L.
Ashwagandha, fruit, *Withania somnifera* (L.) Dunal.
Autumn crocus, *Colchicum autumnale* L.
Balsam, Peruvian, *Myroxylon balsamum* (L.) Harms var. *pereirae* (Royle) Harms.
Barberry, bark, *Morella cerifera* L.
Batavia-cassia, bark, *Cinnamomum burmanni* (Nees & T. Nees) Blume.
Batavia-cassia, fruit, *Cinnamomum burmanni* (Nees & T. Nees) Blume.
Belleric myrobalan, *Terminalia bellirica* (Gaertn.) Roxb.
Betel vine, *Piper betle* L.
Birch, bark, *Betula* spp.
Bisnaga, seed, *Ammi visnaga* (L.) Lam.
Bitterwood, *Picrasma excelsa* (Sw.) Planch.
Black bread weed, *Nigella arvensis* L.
Bloodroot, *Sanguinaria canadensis* L.
Blue mallee, *Eucalyptus polybractea* R. T. Baker.
Blushwood, seed, *Fontainea picrosperma* L.
Boldo, leaf, *Peumus boldus* Molina.
Buchu, *Agathosma betulina* (P. J. Bergius) Pillans.
Calamus root, *Acorus calamus* L.
Candlebush, *Senna alata* (L.) Roxb.
Canella, bark, *Canella winterana* (L.) Gaertn.
Caper buds, *Capparis spinosa* L.
Caper spurge, seed, *Euphorbia lathyrus* L.
Caraway, black, *Nigella sativa* L.
Caraway, fruit, *Carum carvi* L.
Cardamom, black, *Amomum* spp.
Cardamom, Ethiopian, *Aframomum corrorima* (A. Braun) P. C. M. Jansen.
Cardamom, green, *Elettaria cardamomum* (L.) Maton.
Cardamom, Nepal, *Amomum subulatum* Roxb., *A. aromaticum* Roxb.
Cardamom-amomum, *Amomum compactum* Sol. ex Maton.
Cascara sagrada, *Frangula purshiana* (DC.) A. Gray.
Cassia, bark, *Cinnamomum* spp.
Cassia, Chinese, bark, *Cinnamomum aromaticum* Nees.
Cassia, Chinese, fruit, *Cinnamomum aromaticum* Nees.
Cassia, fruit, *Cinnamomum* spp.
Cat's claw, bark, *Uncaria tomentosa* (Willd.) DC., *U. guianensis* (Aubl.) J. F. Gmel.
Catechu, bark, *Senegalia catechu* (L.f.) P. J. H. Hurter & Mabb.
Celery, seed, *Apium graveolens* var. *dulce* (Mill.) Pers.
Chaste tree, berry, *Vitex agnus-castus* L.
Chaste tree, Chinese, roots, *Vitex negundo* L.
Chervil, seed, *Anthriscus cerefolium* (L.) Hoffm.
Chinese hawthorn, *Crataegus pinnatifida* Bunge.
Chinese nutmeg tree, *Torreya grandis* Fortune.
Chinese wineberry, fruit, *Aristotelia chilensis* (Molina) Stuntz.
Chinese-pepper, *Zanthoxylum simulans* Hance.
Cinnamon, bark, *Cinnamomum verum* J. Presl.
Cinnamon, fruit, *Cinnamomum verum* J. Presl.
Cinnamon, Saigon, bark, *Cinnamomum loureiroi* Nees.
Cinnamon, Saigon, fruit, *Cinnamomum loureiroi* Nees.
Clove buds, *Syzygium aromaticum* (L.) Merr. & L.M. Perry.
Clusterleaf, *Terminalia sericea* Burch. ex DC.
Comfrey, *Symphytum officinale* L., *Symphytum* spp.
Copaiba, *Copaifera officinalis* (Jacq.) L.
Coptis, *Coptis chinensis* Franch., *Coptis* spp.
Coriander, fruit, *Coriandrum sativum* L.
Coriander, seed, *Coriandrum sativum* L.
Cotton, bark, *Gossypium hirsutum* L.
Crampbark, *Virburnum opulus* L.
Cubeb, seed, *Piper cubeba* L. f.
Culantro, seed, *Eryngium foetidum* L.

TABLE 1—CROP GROUP 26: SPICE GROUP—Continued

Commodities
Culvers root, *Veronicastrum virginicum.*
Cumin, *Cuminum cyminum* L.
Cumin, black, *Bumium persicum* (Boiss.) B. Fedtsch.
Dill, seed, *Anethum graveolens* L.
Dorrigo pepper, berry, *Tasmannia stipitata* (Vick.) A.C. Smith.
Dorrigo pepper, leaf, *Tasmannia stipitata* (Vick.) A.C. Smith.
Dragon blood, *Croton lechleri* Müll. Arg.
Echinacea, seed, *Echinacea purpurea* (L.) Moench, *Echinacea* spp.
Epimedium, *Epimedium* spp.
Eucalyptus, *Eucalyptus* spp.
Eucommia, bark, *Eucommia ulmoides* Oliv.
European beech, *Fagus sylvatica* L.
Felty germander, *Teucrium polium* L.
Fennel flower, seed, *Nigella hispanica* L.
Fennel, common, fruit, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare.*
Fennel, common, seed, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *vulgare.*
Fennel, Florence, fruit, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *azoricum* (Mill.) Thell.
Fennel, Florence, seed, *Foeniculum vulgare* Mill. subsp. *vulgare* var. *azoricum* (Mill.) Thell.
Fenugreek, seed, *Trigonella foenum-graecum* L.
Fingerroot, *Boesenbergia rotunda* (L.) Mansf.
Flame lily, seed, *Gloriosa superba* L.
Frankincense, *Boswellia sacra* Flueck.
Frankincense, Indian, *Boswellia serrata* Roxb. ex Colebr.
Fringetree, bark, *Chionathus virginicus* L.
Galbanum, resin, *Ferula gummosa* Boiss.
Gambooge, *Garcinia gummi-gutta* (L.) N. Robson.
Grains of paradise, *Aframomum melegueta* K. Schum.
Grains of Selim, *Xylopia aethiopica* (Dunal) A. Rich.
Guaiac, *Guaiacum officinale* L.
Guarana, *Paullinia cupana* Kunt.
Guggul, *Commiphora wightii* (Arn.) Bhandari.
Gum arabic, *Senegalia senegal* (L.) Britton.
Gum ghatti, *Anogeissus latifolia* (Roxb. ex DC.) Wall. ex Guill. & Perr.
Gum karaya, *Stercula urens* Roxb.
Gum tragacanth, *Astragalus gummifer* Labill.
Haw, black, *Viburnum prunifolium* L.
Honewort, seed, *Cryptotaenia canadensis* (L.) DC.
Imperatoria, *Peucedanum officinale* L.
Indian tobacco, seed, *Lobelia inflata* L.
Iva, *Achillea erba-rotta* All. subsp. *moschata* (Wulfen) I. Richardson.
Jalap, *Ipomoea purga* (Wender.) Hayne.
Jamaica dogwood, bark, *Piscidia piscipula* (L.) Sarg.
Juniper berry, *Juniperus communis* L.
Kaffir lime, leaf, *Citrus hystrix* DC.
Kewra, *Pandanus fascicularis* Lam.
Kokam, *Garcinia indica* (Thouars) Choisy.
Linden, leaf, *Tilia americana* L.
Lovage, seed, *Levisticum officinale* W.D.J. Koch.
Mace, *Myristica fragrans* Houtt.
Magnolia, bark, *Magnolia officinalis* Rehder & E. H. Wilson.
Mahaleb, *Prunus mahaleb* L.
Malabar cardamom, *Amomum villosum* Lour.
Malabar-tamarind, *Garcinia* spp.
Malabathrum, *Cinnamomum tamala* (Buch-Ham.) Nees & Eberm.
Mastic, *Pistacia lentiscus* L.
Micromeria, white, *Micromeria fruticosa* (L.) Druce.
Milk thistle, *Silybum marianum* (L.) Gaertn.
Mioga, *Zingiber mioga* (Thunb.) Roscoe.
Miracle fruit, *Synsepalum dulcificum* (Schumach. & Thonn.) Daniell.
Mistletoe, *Viscum album* L.
Mojave yucca, *Yucca schidigera* Roezl ex Ortgies.
Muira puama, *Croton echioides* Müll. Arg.
Mustard, black, *Brassica nigra* (L.) W.D.J. Koch.
Mustard, brown, *Brassica juncea* (L.) Czern. var. *juncea.*
Mustard, seed, *Brassica* spp. and *Sinapis* spp.
Mustard, white, *Sinapis alba* L. ssp. *alba.*
Myrrh, *Commiphora myrrha* (Nees) Engl., *C. africana* (A. Rich.) Engl.
Myrrh, bisabol, *Commiphora kataf* (Forssk.) Engl.
Myrtle, anise, *Syzygium anisatum* (Vickery) Craven & Biffen.
Myrtle, leaf, *Myrtus communis* L.
Myrtle, lemon, *Backhousia citriodora* F. Muell.
Nasturtium, bush, pods, *Tropaeolum minus* L.

TABLE 1—CROP GROUP 26: SPICE GROUP—Continued

Commodities
Nasturtium, garden, pods, *Tropaeolum majus* L.
Nasturtium, pods, *Tropaeolum* spp.
Nettle, stinging, seed, *Urtica dioica* L.
Nutmeg, *Myristica fragrans* Houtt.
Osha, *Ligusticum porteri* J.M. Coult. & Rose.
Pepper, black, *Piper nigrum* L.
Pepper, Indian long, *Piper longum* L.
Pepper, Javanese long, *Piper retrofractum* Vahl.
Pepper, leaf, *Piper auritum* Kunth, *P. lolot* C.DC., *P. sanctum* (Miq.) Schltdl., *P. umbellatum* L.
Pepper, pink, *Schinus terebinthifolius* Raddi.
Pepper, Sichuan, *Zanthoxylum* spp.
Pepper, white, *Piper nigrum* L.
Pepperbush, berry, *Tasmannia* spp.
Pepperbush, leaf, *Tasmannia* spp.
Peppercorn, green, *Piper nigrum* L.
Peppertree, *Schinus* spp.
Peppertree, Peruvian, *Schinus molle* L.
Perilla, seed, *Perilla frutescens* (L.) Britton.
Phellodendron, *Phellodendron amurense* Rvpr.
Pine, maritime, *Pinus pinaster* Aiton.
Poppy, seed, *Papaver somniferum* L. subsp. *somniferum.*
Prickly ash, Chinese, *Zanthoxylum bungeanum* Maxim.
Prickly ash, Southern, bark, *Zanthoxylum clava-herculis* L.
Pygeum, *Prunus africana* (Hook. f.) Kalkman.
Qing hua jiao, *Zanthoxylum schinifolium* Siebold & Zucc.
Quassia, bark, *Quassia amara* L., *Picrasma excelsa* (Sw.) Planch.
Quebracho, bark, *Aspidosperma quebracho-blanco* Schltdl.
Quillaja, *Quillaja saponaria* Molina.
Quinine, *Cinchona pubescens* Vahl, *Cinchona* spp.
Rauwolfia, bark, *Rauwolfia vomitoria* Afzel.
Resin spurge, *Euphorbia resinifera* O. Berg.
Rue, *Ruta graveolens* L.
Saffron crocus, *Crocus sativus* L.
Sandalwood, seed, *Santalum album* L.
Sassafras, bark, *Sassafras albidum* (Nutt.) Nees.
Sassafras, leaf, *Sassafras albidum* (Nutt.) Nees.
Saunders, red, *Pterocarpus santalinus* L. f.
Saw palmetto, *Serenoa repens* (W. Bartram) Small.
Sesame, seed, *Sesamum indicum* L., *S. radiatum* Thonn. ex Hornem.
Silktree, bark, *Albizia julibrissin* Durazz., *A. lebbeck* (L.) Benth.
Simaruba, bark, *Simarouba amara* Aubl.
Skunk cabbage, root, *Symplocarpus foetidus* (L.) Salisb. ex W. P. C. Barton.
Slippery elm, *Ulmus rubra* Muhl.
Stemona, root, *Stemona sessilifolia* (Miq.) Miq.
Suma, *Hebanthe eriantha* (Poir.) Pedersen.
Sumac, fragrant, *Rhus aromatica* Aiton.
Sumac, smooth, leaf, *Rhus glabra* L.
Taheebo, bark, *Handroanthus impetiginosus* (Mart. ex DC.) Mattos.
Tamarind, seed, *Tamarindus indica* L.
Tasmanian pepper, berry, *Tasmannia lanceolata* (Poir.) A. C. Sm.
Tasmanian pepper, leaf, *Tasmannia lanceolata* (Poir.) A. C. Sm.
Threeleaf caper, *Crataeva magna* (Lour.) DC.
Tsaoko, *Amomum tsao-ko* Crevost & Lemarié.
Vanilla, *Vanilla planifolia* Jacks.
Wattleseed, *Acacia* spp.
White willow, *Salix alba* L.
Willow, *Salix* spp.
Witch hazel, *Hamamelis virginiana* L.
Yaw root, *Stillingia sylvatica* L.
Yellow gentian, roots, *Gentiana lutea* L.
Yohimbe, *Pausinystalia johimbe* (K. Schum.) Pierre.
Cultivars, varieties, and hybrids of these commodities.

[FR Doc. 2020–23874 Filed 11–5–20; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0068; FRL–10015–56]

Mefentrifluconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of mefentrifluconazole in or on multiple commodities that are identified and discussed later in this document. BASF Corporation requested these tolerances under section 346a of the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 6, 2020. Objections and requests for hearings must be received on or before January 5, 2021 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0068, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please note that due to the public health crisis, visitor access to the Public Reading Room and OPP Docket are subject to restrictions. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Acting Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–8578; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0068 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before January 5, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0068, by one of the following methods:

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

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 15, 2020 (85 FR 20910) (FRL–10006–54), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F8796) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528. The petition requested that 40 CFR 180.705 be amended by establishing tolerances for residues of the fungicide mefentrifluconazole, α-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-α-methyl-1*H*-1,2,4-triazole-1-ethanol, in or on berry, low growing, subgroup 13–07G at 2 parts per million (ppm); bushberry, subgroup 13–07B at 5 ppm; caneberry, subgroup 13–07A at 3 ppm; cattle, fat at 0.8 ppm; cattle, kidney at 0.6 ppm; cattle, liver at 1.5 ppm; cattle, meat at 0.07 ppm; cattle, meat byproducts at 1.5 ppm; cotton, gin byproducts at 10 ppm; cottonseed subgroup 20C at 0.2 ppm; egg at 0.01 ppm; goat, fat at 0.8 ppm; goat, kidney at 0.6 ppm; goat, liver at 1.5 ppm; goat, meat at 0.07 ppm; goat, meat byproducts at 1.5 ppm; grass, crop group 17, forage at 50 ppm; grass, crop group 17, hay at 100 ppm; hog, fat at 0.02 ppm; hog, kidney at 0.03 ppm; hog, liver at 0.03 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.03 ppm; horse, fat at 0.8 ppm; horse, kidney at 0.6 ppm; horse, liver at 1.5 ppm; horse, meat at 0.07 ppm; horse, meat byproducts at 1.5 ppm; melon subgroup 9A at 0.5 ppm; milk at 0.09 ppm; milk fat at 2.4 ppm; non-grass animal feed, forage, crop group 18 at 15 ppm; non-grass animal feed, hay, crop group 18 at 40 ppm; onion, bulb, subgroup 3–07A at 0.2 ppm; onion, green, subgroup 3–07B at 4 ppm; poultry, fat at 0.015 ppm; poultry, liver at 0.01 ppm; poultry, meat

at 0.015 ppm; poultry, meat byproducts at 0.015 ppm; sheep, fat at 0.8 ppm; sheep, kidney at 0.6 ppm; sheep, liver at 1.5 ppm; sheep, meat at 0.07 ppm; sheep, meat byproducts at 1.5 ppm; squash/cucumber subgroup 9B at 0.15 ppm; sugarcane, cane at 1.5 ppm; sunflower subgroup 20B at 0.15 ppm; tomato, dried at 5 ppm; vegetable, leafy, except *brassica,* crop group 4–16 at 30 ppm; vegetables, fruiting, crop group 8–10 at 0.9 ppm; vegetable, leaves of root and tuber, crop group 2 at 20 ppm; and vegetable, root, except sugar beet, subgroup 1B at 0.7 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing several tolerances at different levels than the petitioned-for tolerances and revised some commodity definitions. In addition, EPA is not establishing several tolerances that were petitioned-for. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

On June 28, 2019, EPA published in the **Federal Register** a final rule establishing tolerances for residues of mefentrifluconazole in or on many animal, corn, fruit, grain, nut and vegetable commodities based on the Agency's conclusion that aggregate exposure to mefentrifluconazole is safe for the general population, including infants and children. *See* (84 FR 30939) (FRL–9994–51). EPA is incorporating the following portions of that document by reference here, as they have not changed in the Agency's current assessment of mefentrifluconazole tolerances: The toxicological profile and points of departure, the cancer assessment, the conclusions about cumulative risk, and the Agency's determination regarding the children's safety factor. Additionally, EPA is incorporating the assumptions for exposure assessment from the June 28, 2019 final rule including the estimated drinking water concentrations, which have not changed except as explained in the following paragraph.

EPA's dietary (food and drinking water) exposure assessments have been updated to include the additional exposure from the new uses of mefentrifluconazole on root and tuber vegetables (crop group 1B), leaves of root and tuber vegetables (crop group 2), leafy vegetables (crop group 4–16), fruiting vegetables (crop group 8–10), cucurbit vegetables (crop group 9), berries (subgroups 13–07A, 13–07B, and 13–07G), grasses (crop group 17), non-grass animal feeds (crop group 18), sunflower (crop group 20B), and cotton (crop group 20C). EPA conducted an unrefined acute dietary (food and drinking water) exposure and risk assessment that incorporates tolerance-level residue values, 100% crop treated, and EPA's 2018 default processing factors. EPA conducted a partially refined chronic dietary (food and drinking water) exposure and risk assessment that incorporates 100% crop treated, empirical processing factors (when available), and average field trial residues for some commodities. As required under FFDCA 408(b)(2)(E), when EPA relies on anticipated residue data for supporting tolerances, EPA will require submission of data to demonstrate that the levels in food are not above the levels anticipated no later than 5 years from the date of issuance of these tolerances.

Acute dietary (food and drinking water) risks are below the Agency's level of concern of 100% of the acute population-adjusted dose (aPAD): They are less than 5.4% of the aPAD for females 13 to 49 years old, the only population group of concern. Chronic dietary risks are below the Agency's level of concern of 100% of the chronic population-adjusted dose (cPAD): They are less than 73% of the cPAD for children 1 to 2 years old, the population subgroup with the highest exposure estimate.

There are no handler or post-application residential exposures anticipated from the new uses of mefentrifluconazole. However, the currently registered use on golf courses will result in short-term (1 to 30 days) residential post-application dermal exposures to adults, youth 11 to less than 16 years old, and children 6 to less than 11 years old.

For aggregate risk assessment, the acute and chronic aggregate risk assessments include dietary (food and drinking water) exposures only; therefore, the acute and chronic aggregate assessments are equivalent to the acute and chronic dietary assessments, respectively, and are not of concern. The short-term aggregate risk assessment includes residential exposures (golfing activities on previously treated turf) and average dietary exposures. The short-term aggregate margins of exposure (MOEs) for adults (830) and children (6 to less than 11 years old, 640) are not of concern because they exceed EPA's level of concern (MOEs less than 100). Therefore, there are no acute, chronic, or short-term aggregate risk estimates of concern for mefentrifluconazole.

Based on the information summarized in this unit and in the supporting risk assessment, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to mefentrifluconazole residues. More detailed information can be found in the document titled ''Mefentrifluconazole. Human Health Risk Assessment in Support of the Petition for the Establishment of Permanent Tolerances and Registration for Use on Root and Tuber Vegetables (Crop Group 1B); Leaves of Root and Tuber Vegetables (Crop Group 2); Leafy Vegetables (Crop Group 4–16); Fruiting Vegetables (Crop Group 8–10); Cucurbit Vegetables (Crop Group 9); Berries (Subgroups 13–07A, 13–07B, and 13–07G), Grasses (Crop Group 17); Non-Grass Animal Feeds (Crop Group 18); Sunflower (Crop Group 20B); and Cotton (Crop Group 20C),'' dated October 9, 2020 in docket ID EPA–HQ–OPP–2020–0068.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies are available to enforce the tolerance expression. Multi-residue method QuEChERS (BASF method L0295/01) is the enforcement method for the determination of mefentrifluconazole residues in plant matrices. BASF Analytical Method No. L0272/01 is the enforcement method for the determination of residues of mefentrifluconazole in livestock commodities by liquid chromatography with tandem mass spectroscopy (LC–MS/MS).

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex has not established MRLs for mefentrifluconazole.

C. Revisions to Petitioned-For Tolerances

EPA revised the commodity definitions for animal feed, nongrass, group 18, forage; animal feed, nongrass, group 18, hay; grass, forage, fodder and hay, group 17, forage; grass, forage, fodder and hay, group 17, hay; milk, fat; vegetable, leafy, group 4–16; vegetable, fruiting, group 8–10; and vegetable, leaves of root and tuber, group 2. In addition, EPA determined that separate tolerances were not needed for the petitioned-for commodities for cattle, kidney at 0.6 ppm; cattle, liver at 1.5 ppm; goat, kidney at 0.6 ppm; goat, liver at 1.5 ppm; hog, kidney at 0.03 ppm; hog, liver at 0.03 ppm; horse; kidney at 0.6 ppm; horse, liver at 1.5 ppm; poultry, liver at 0.01 ppm; sheep, kidney at 0.6 ppm; and sheep, liver at 1.5 ppm because they are covered under their respective petitioned-for meat byproducts commodities.

Both the petitioner and EPA used the Organization for Economic Co-operation and Development (OECD) maximum residue limit (MRL) calculation procedures; however, differences were noted in the process for inputting the data. The petitioner appears to have inputted individual sample values, whereas EPA used the field trial average values per the OECD standard operating procedure (SOP). The petitioner also appears to have combined the results of residue data from the individual crops in a crop group for calculation of the crop group tolerance, whereas EPA calculated values for each crop individually. Based on these differences, EPA is establishing the tolerances for animal feed, nongrass, group 18, hay at 30 ppm (instead of 40 ppm) and for squash/cucumber subgroup 9B at 0.2 ppm (instead of 0.15 ppm).

For livestock commodities, both the petitioner and EPA used the Langmuir Model (ver. 1.4) to calculate all tolerance levels. In some cases, the values determined by EPA were higher than those determined by the petitioner. It is possible that the petitioner used average values from the livestock feeding studies, while the EPA used maximum values. Therefore, EPA determined the tolerances should be set at different levels for the following commodities (with the petitioned-for level in parentheses): Cattle, goat, horse and sheep, fat at 1 ppm (0.8 ppm); cattle, goat, horse and sheep, meat at 0.15 ppm (0.07 ppm); hog, fat at 0.015 ppm (0.02 ppm); milk at 0.15 ppm (0.09 ppm); and milk, fat at 4 ppm (2.4 ppm).

In addition, the tolerance for tomato, dried is being established at 4 ppm because EPA used the median processing factor while the petitioner proposed 5 ppm based on the average processing factor. Finally, EPA is setting a separate tolerance for lettuce, head at 5 ppm because it is more than 5 times less than the tolerance for vegetable, leafy, group 4–16 at 30 ppm.

V. Conclusion

Therefore, tolerances are established for residues of mefentrifluconazole, α-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-α-methyl-1*H*-1,2,4-triazole-1-ethanol, in or on Animal feed, nongrass, group 18, forage at 15 ppm; Animal feed, nongrass, group 18, hay at 30 ppm; Berry, low growing, subgroup 13–07G at 2 ppm; Bushberry, subgroup 13–07B at 5 ppm; Caneberry, subgroup 13–07A at 3 ppm; Cotton, gin byproducts at 10 ppm; Cottonseed subgroup 20C at 0.2 ppm; Grass, forage, fodder and hay, group 17, forage at 50 ppm; Grass, forage, fodder and hay, group 17, hay at 100 ppm; Lettuce, head at 5 ppm; Melon subgroup 9A at 0.5 ppm; Onion, bulb, subgroup 3–07A at 0.2 ppm; Onion, green, subgroup 3–07B at 4 ppm; Squash/cucumber subgroup 9B at 0.2 ppm, Sugarcane, cane at 1.5 ppm; Sunflower subgroup 20B at 0.15 ppm; Tomato, dried at 4 ppm; Vegetable, fruiting, group 8–10 at 0.9 ppm; Vegetable, leafy, group 4–16, except head lettuce at 30 ppm; Vegetable, leaves of root and tuber, group 2 at 20 ppm; Vegetable, root, except sugar beet, subgroup 1B at 0.7 ppm.

In addition, EPA is revising the tolerances for residues of mefentrifluconazole, α-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-α-methyl-1*H*-1,2,4-triazole-1-ethanol, in or on Cattle, fat at 1 ppm; Cattle, meat at 0.15 ppm; Cattle, meat byproducts at 1.5 ppm; Egg at 0.01 ppm; Goat, fat at 1 ppm; Goat, meat at 0.15 ppm; Goat, meat byproducts at 1.5 ppm; Hog, fat at 0.015 ppm; Hog, meat at 0.01 ppm; Hog, meat byproducts at 0.03 ppm; Horse, fat at 1 ppm; Horse, meat at 0.15 ppm; Horse, meat byproducts at 1.5 ppm; Milk at 0.15 ppm; Milk, fat at 4 ppm; Poultry, fat at 0.015 ppm; Poultry, meat at 0.015 ppm; Poultry, meat byproducts at 0.015 ppm; Sheep, fat at 1 ppm; Sheep, meat at 0.15 ppm; and Sheep, meat byproducts at 1.5 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 28, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

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

■ 2. In § 180.705, amend paragraph (a) by:

■ a. In the introductory text, removing ''the table below'' and ''specified below'' and adding ''Table 1 to this paragraph (a)'' and ''specified in Table 1 to this paragraph (a)'', respectively, in their places;

■ b. Designating the table as Table 1 to paragraph (a); and

■ c. In newly designated Table 1 to paragraph (a):

■ i. Adding entries for ''Animal feed, nongrass, group 18, forage'', ''Animal feed, nongrass, group 18, hay'', ''Berry, low growing, subgroup 13–07G'', ''Bushberry, subgroup 13–07B'' and ''Caneberry, subgroup 13–07A'' in alphabetical order;

■ ii. Revising the entries for ''Cattle, fat'', ''Cattle, meat'' and ''Cattle, meat byproducts'';

■ iii. Adding entries for ''Cotton, gin byproducts'' and ''Cottonseed subgroup 20C'' in alphabetical order;

■ iv. Revising the entries for ''Egg'', ''Goat, fat'', ''Goat, meat'' and ''Goat, meat byproducts'';

■ v. Adding entries for ''Grass, forage, fodder and hay, group 17, forage'' and ''Grass, forage, fodder and hay, group 17, hay'' in alphabetical order;

■ vi. Revising the entries for ''Hog, fat'', ''Hog, meat'', ''Hog, meat byproducts'', ''Horse, fat'', ''Horse, meat'' and ''Horse, meat byproducts'';

■ vii. Adding entries for ''Lettuce, head'' and ''Melon subgroup 9A'' in alphabetical order;

■ viii. Revising the entries for ''Milk'' and ''Milk, fat'';

■ ix. Adding entries for ''Onion, bulb, subgroup 3–07A'' and ''Onion, green, subgroup 3–07B'' in alphabetical order;

■ x. Revising the entries for ''Poultry, fat'', ''Poultry, meat'', ''Poultry, meat byproducts'', ''Sheep, fat'', ''Sheep, meat'' and ''Sheep, meat byproducts''; and

■ xi. Adding entries for ''Squash/cucumber subgroup 9B'', ''Sugarcane, cane'', ''Sunflower subgroup 20B'', ''Tomato, dried'', ''Vegetable, fruiting, group 8–10'', ''Vegetable, leafy, group 4–16, except head lettuce'', ''Vegetable, leaves of root and tuber, group 2'' and ''Vegetable, root, except sugar beet, subgroup 1B'' in alphabetical order.

The additions read as follows:

§ 180.705 Mefentrifluconazole; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * * * *	
Animal feed, nongrass, group 18, forage	15
Animal feed, nongrass, group 18, hay	30
* * * * * * *	
Berry, low growing, subgroup 13–07G	2
Bushberry, subgroup 13–07B	5
Caneberry, subgroup 13–07A	3
Cattle, fat	1
Cattle, meat	0.15
Cattle, meat byproducts	1.5
* * * * * * *	
Cotton, gin byproducts	10
Cottonseed subgroup 20C	0.2

TABLE 1 TO PARAGRAPH (a)—Continued

Commodity	Parts per million
Egg	0.01
* * * * * * *	
Goat, fat	1
Goat, meat	0.15
Goat, meat byproducts	1.5
* * * * * * *	
Grass, forage, fodder and hay, group 17, forage	50
Grass, forage, fodder and hay, group 17, hay	100
Hog, fat	0.015
Hog, meat	0.01
Hog, meat byproducts	0.03
Horse, fat	1
Horse, meat	0.15
Horse, meat byproducts	1.5
* * * * * * *	
Lettuce, head	5
Melon subgroup 9A	0.5
Milk	0.15
Milk, fat	4
* * * * * * *	
Onion, bulb, subgroup 3–07A	0.2
Onion, green, subgroup 3–07B	4
* * * * * * *	
Poultry, fat	0.015
Poultry, meat	0.015
Poultry, meat byproducts	0.015
* * * * * * *	
Sheep, fat	1
Sheep, meat	0.15
Sheep, meat byproducts	1.5
* * * * * * *	
Squash/cucumber subgroup 9B	0.2
Sugarcane, cane	1.5
Sunflower subgroup 20B	0.15
Tomato, dried	4
* * * * * * *	
Vegetable, fruiting, group 8–10	0.9
Vegetable, leafy, group 4–16, except head lettuce	30
Vegetable, leaves of root and tuber, group 2	20
* * * * * * *	
Vegetable, root, except sugar beet, subgroup 1B	0.7
* * * * * * *	

* * * * *

[FR Doc. 2020–24467 Filed 11–5–20; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 85, No. 216
Friday, November 6, 2020

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 53

[NRC–2019–0062]

RIN 3150–AK31

Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of preliminary proposed rule language; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is developing new requirements for the licensing and regulation of advanced nuclear reactors and is seeking public input. The new rulemaking would adopt technology-inclusive approaches and include the appropriate use of risk-informed and performance-based techniques, to provide the necessary flexibility for licensing and regulating a variety of advanced nuclear reactor technologies and designs. The NRC is periodically making available for comment preliminary proposed rule language for a risk-informed, technology-inclusive framework that will be added to NRC's regulations in the *Code of Federal Regulations.*

DATES: Submit comments by November 5, 2021. Comments received after this date will be considered in the development of the proposed rule if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments on preliminary rule language by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0062. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

FOR FURTHER INFORMATION CONTACT: Robert Beall, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3874; email: *Robert.Beall@nrc.gov;* or William Reckley, Office of Nuclear Reactor Regulation, telephone: 301–415–7490; email: *William.Reckley@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information

A. Obtaining Information

Please refer to Docket ID NRC–2019–0062 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0062.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for the preliminary proposed rule text is ML20289A534.

B. Submitting Comments

Please include Docket ID NRC–2019–0062 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

On January 14, 2019, the President signed the Nuclear Energy Innovation and Modernization Act (NEIMA) into law (Pub. L. 115 439). NEIMA directs the NRC to develop the regulatory infrastructure to support the development and commercialization of advanced nuclear reactors. The current application and licensing requirements, developed for large light-water and non-power reactors as outlined in part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR part 52, ''Licenses, Certifications and Approvals for Nuclear Power Plants,'' do not fully consider the variety of designs for advanced nuclear reactors and may require extensive use of the exemption process for regulations that include prescriptive requirements specific to light-water reactors. Through this rulemaking, the NRC is proposing to amend the regulations by creating an alternative regulatory framework for licensing advanced nuclear reactors.

III. Discussion

The NRC is developing preliminary proposed rule language for the purpose of adding a new, alternative part to its regulations that will set out a risk-informed, technology-inclusive framework for the licensing and regulation of advanced nuclear reactors. This new approach would: (1) Continue to provide reasonable assurance of adequate protection of public health and safety and the common defense and security, (2) promote regulatory stability, predictability, and clarity, (3) reduce requests for exemptions from the current requirements in 10 CFR parts 50 and 52, (4) establish new requirements to address non-light-water reactor technologies, (5) recognize technological

advancements in reactor design, and (6) credit the response of advanced nuclear reactors to postulated accidents, including slower transient response times and relatively small and slow release of fission products. The proposed rule would add 10 CFR part 53, ''Licensing and Regulation of Advanced Nuclear Reactors.''

The NRC will periodically make available portions of preliminary proposed rule language on the federal rulemaking website at *http://www.regulations.gov under Docket ID NRC–2019–0062.* This preliminary proposed rule language is draft and may be incomplete in one or more respects; however, the NRC welcomes diverse stakeholder feedback to inform the proposed rulemaking activity.

Various sections of the 10 CFR part 53 preliminary proposed rule language will be released to stakeholders during the development of the proposed rule. The public will be provided with opportunities to comment on the preliminary proposed rule language before or during public meetings and on a rolling basis throughout the 12-month public comment period. The NRC plans to hold public meetings every 4 to 6 weeks over the next 12 months. The meetings will be noticed in the NRC's Public Meeting Notice System at least 10 days in advance of the scheduled meeting. Preliminary proposed rule language is being provided to increase transparency and to facilitate discussions with stakeholders on the licensing process for advanced nuclear reactors. The NRC will post new and revised updates to the preliminary proposed rule language periodically on the Federal rulemaking website at *www.regulations.gov* that may be of interest to stakeholders. The NRC will not issue a **Federal Register** notice each time preliminary proposed rule language is added to the docket. Please monitor the docket on *www.regulations.gov* and use the following information to sign up for docket alerts.

The NRC may post materials related to this rulemaking, including public comments received, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2019–0062. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2019–0062); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated: October 29, 2020.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–24387 Filed 11–5–20; 8:45 am]

BILLING CODE 7590–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2020–0034]

RIN 3170–AA78

Consumer Access to Financial Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides, among other things, that subject to rules prescribed by the Bureau of Consumer Financial Protection (Bureau), a consumer financial services provider must make available to a consumer information in the control or possession of the provider concerning the consumer financial product or service that the consumer obtained from the provider. The Bureau is issuing this Advance Notice of Proposed Rulemaking (ANPR) to solicit comments and information to assist the Bureau in developing regulations to implement section 1033.

DATES: Comments must be received on or before February 4, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0034 or RIN 3170–AA78, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-ANPR-1033@cfpb.gov.* Include Docket No. CFPB–2020–0034 or RIN 3170–AA78 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Section 1033 ANPR, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Gary Stein, Office of Consumer Credit, Payments, and Deposits Markets at 202–435–7700; or Will Wade-Gery, Office of Innovation, at *officeofinnovation@cfpb.gov* or 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is issuing this ANPR to solicit comments and information to assist the Bureau in developing regulations to implement section 1033 of the Dodd-Frank Act (section 1033), which provides for consumer access to financial records. The Bureau is issuing this ANPR to solicit stakeholder input on ways that the Bureau might effectively and efficiently implement the financial record access rights described in Section 1033, recognizing that various market participants have helped authorized data access become more secure, effective, and subject to consumer control. While the Bureau expects these trends to continue, there are indications that some emerging market practices may not reflect the access rights described in section 1033. The Bureau is also seeking information regarding the possible scope of data that might be made subject to protected access, as well as information that might bear on other terms of access, such as those relating to security, privacy, effective consumer control over access and accessed data, and accountability for data errors and unauthorized access. The Bureau is also interested in

comment on whether and how issues of potential regulatory uncertainty with respect to section 1033 and its interaction with other statutes within the Bureau's jurisdiction, such as the Fair Credit Reporting Act, may be impacting this market to the potential detriment of consumers, and seeks information that may help resolve such uncertainty. The Bureau invites comment on all aspects of this ANPR from all interested parties, including consumers, consumer advocacy groups, industry members and trade groups, and other members of the public.

This ANPR proceeds in five sections. Section I summarizes the Dodd-Frank Act's description of consumer rights to access financial records. Section II provides defined terms for the ANPR. Section III provides an overview of data access, with a particular focus on the authorized data access ecosystem, including the players involved, modes of access, competitive incentives and standard-setting, and consumer impacts. Section IV summarizes the Bureau's actions to date relating to consumer-authorized data access. Section V includes a series of questions about whether and how the Bureau might most effectively provide regulatory guidance in this area.

As discussed in greater detail in section IV, the Bureau has taken several steps with respect to section 1033, including extensive engagement with stakeholders from a range of perspectives. These include a request for information issued in 2016, a Bureau statement of principles in 2017, and most recently, a February 2020 symposium. The valuable information and comments the Bureau has received through its stakeholder engagement efforts informs section III's discussion of the complex issues raised with respect to effective implementation of section 1033 and the section V questions intended to assist Bureau decisions concerning potential rulemaking.

I. Section 1033

Section 1033 is comprised of five subsections. Section 1033(a) provides that, subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.[1] The information is to be made available in an electronic form usable by consumers. Section 1033(b) then outlines certain exceptions from these general access rights. For example, a covered person may not be required to make available to the consumer ''confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors'' and ''information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.'' [2]

Section 1033(c) establishes that section 1033 does not ''impose any duty on a covered person to maintain or keep any information about a consumer.'' [3] Section 1033(d) states that ''[t]he Bureau, by rule, shall prescribe standards to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.'' [4] Finally, section 1033(e) requires that the Bureau consult with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation, and the Federal Trade Commission to ensure, to the extent appropriate, that any rule pursuant to section 1033 imposes substantively similar requirements on covered persons, takes into account conditions under which covered persons do business both in the United States and in other countries, and does not require or promote the use of any particular technology in order to develop systems for compliance.[5]

II. Definitions

This ANPR relies upon several terms defined in the Dodd-Frank Act. For convenience, this ANPR also defines several additional terms. The non-statutorily defined terms in this ANPR are for purposes of this ANPR only and should not be understood to indicate any legal interpretation, legal guidance, or policy judgment by the Bureau. When specific questions in section V below depart from these definitions, that is specifically noted.

- ''Authorized data'' means data initially sourced from a data holder as a result of authorized data access.
- ''Authorized data access'' (or ''consumer-authorized data access'') means third-party access to consumer financial data pursuant to the relevant consumer's authorization.
- ''Authorized entities'' are entities or persons with authorized data access to particular consumer financial data.
- ''Consumer data access'' means authorized data access and direct access.
- ''Consumer financial data'' (or ''consumer data'') means ''information in the control or possession of [a] covered person concerning a consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account, including costs, charges and usage data.'' [6]
- ''Data aggregator'' (or ''aggregator'') means an entity that supports data users and/or data holders in enabling authorized data access.
- ''Data holder'' means a covered person with control or possession of consumer financial data.
- ''Data user'' means a third party that uses consumer-authorized data access to provide either (1) products or services to the authorizing consumer or (2) services used by entities that provide products or services to the authorizing consumer.
- ''Direct access'' means direct access by the individual consumer to consumer data rather than by an authorized entity.

III. Background

A. Access to Consumer Financial Data

Many providers of consumer financial products and services accumulate information concerning the consumers who use their products and services, the accounts that consumers maintain with them, and other information relating to consumers' use of such products and services. Providers of demand deposit accounts, for example, will accumulate information about the transactions made with a given account and about charges

[1] Section 1002 of the Dodd-Frank Act defines certain terms used in section 1033. Section 1002(4) defines a ''consumer'' as ''an individual or an agent, trustee, or representative acting on behalf of an individual.'' 12 U.S.C. 5481(4). Section 1002(5), by incorporation, provides a multi-part definition of ''consumer financial products or services.'' *See* 12 U.S.C. 5481(5). Finally, section 1002(6) defines ''covered persons,'' in part, as entities engaged in offering or providing consumer financial products or services. *See* 12 U.S.C. 5481(6).

[2] *See* 12 U.S.C. 5533(b)(1) and (4).

[3] 12 U.S.C. 5533(c).

[4] 12 U.S.C. 5533(d).

[5] *See* 12 U.S.C. 5533(e). The Bureau works with other regulators on innovation matters through various means. For example, the Bureau and the OCC recently convened virtual innovation office hours so that participants would have an opportunity to discuss issues that touch upon both consumer protection and prudential regulation. *See https://www.consumerfinance.gov/about-us/newsroom/cfpb-occ-host-virtual-innovation-office-hours/.*

[6] 12 U.S.C. 5533(a). For purposes of this ANPR, consumer data access involves data that relate to the accessing or authorizing of that consumer's use of a given product or service. As such, references to ''consumer data'' incorporate the idea of ''information in the control of a covered person concerning a consumer financial product or service that [the applicable] consumer has obtained from such covered person.''

assessed to the account. In many cases, there are well-established statutory and regulatory frameworks that impose requirements on providers of consumer financial products and services to disclose certain information to their customers about their accounts. Disclosure requirements may include, for example, periodic statements with account information on transactions and fees or disclosures about the collection, sharing, use, and protection of consumers' non-public personal information.[7]

In addition, consumers wishing to access consumer data[8] can often do so by interacting directly with their consumer financial service providers through providers' online servicing portals or mobile applications. Many providers of consumer financial products and services, from traditional providers like banks and credit unions to newer entrants such as online lenders, make available to consumers extensive electronic data about their use of the institution's products and services. Direct access of this kind is how many consumers now manage their main consumer financial accounts, like their checking accounts, credit card accounts, or mortgage loan accounts.[9]

For some time, a range of companies—including traditional financial institutions and non-bank financial technology, or ''fintech,'' firms—have been accessing consumer data with consumers' authorization and providing services to consumers using data from the consumers' various financial accounts. In recent years, the number and usage of products and services that utilize or rely upon consumers' ability to authorize third-party access to consumer data have grown substantially and rapidly.[10] This growth in authorized data access has been accompanied by expansion in the number of distinct applications or ''use cases'' for authorized data, including, but not limited to, personal financial management; financial advisory services; assistance in shopping for and selecting new consumer financial products and services; making and receiving payments; assisting consumers with improving savings outcomes; identity verification and account ownership validation; credit profile improvement; and underwriting.

This type of consumer-authorized data access and use holds the promise of improved and innovative consumer financial products and services, enhanced control for consumers over their financial lives, and increased competition in the provision of financial services to consumers.[11] Further, stakeholders assert that the increasing ability of consumers to authorize third-party access to consumer data can improve the quality and the consumer experience of consumer financial products and services, expand access and reduce costs related to using those products and services, and further consumer-friendly innovation and competition in consumer financial markets.[12] At the same time, stakeholders have also noted that consumers still face certain potential risks if they authorize access to consumer data, including some risks relating to the methods by which they authorize such access and by which the records are collected and used by authorized entities.[13]

B. Authorized Data Access Ecosystem Participants

In authorizing a third party to access consumer data, consumers engage in a broad and complex ecosystem that enables such access. In addition to consumers themselves, the main participants in that system are data holders, data users, and data aggregators. A given participant, however, may play more than one—or even all—of these roles.

Data holders include providers of consumer financial products and services that, in the ordinary course of their business, collect, generate, or otherwise possess and retain information about consumers' use of their products and services. In theory, this category could include almost every type of provider of consumer financial products and services. In practice, however, activity in the authorized data access ecosystem to date has focused on banks, credit unions, and other providers of core transaction accounts (especially demand deposit accounts) in their role as data holders.[14] This focus, however, has not been exclusive.

Data users are providers of products and services who use authorized data access to inform or enable the delivery of their products and services. Non-bank fintech companies who offer consumer financial products and services are prominent data users; however, other companies, including banks, also can and do act as data users. As discussed below, data users may use authorized data to enable or seek to improve a wide and growing array of consumer financial products and services, including both those competing in longstanding consumer financial markets as well as innovative products and services in new markets.

Although data users may access consumer data from data holders without the use of any intermediaries, the Bureau understands that currently most authorized data access is effected via data aggregators. These entities access and transmit consumer financial data to data users pursuant to consumer authorization. In some cases, they may also retain consumer data. Data aggregators are often ''fourth parties'' that support data users in procuring consumer authorization to access data, and in accessing such data, often support data holders in facilitating authorized third-party access to their

[7] *See, e.g.,* Regulation Z, 12 CFR 1026.5(b)(2) and 1026.7(b) (implementing the Truth in Lending Act with respect to periodic statements for credit cards); Regulation E, 12 CFR 1005.9(b) (implementing the Electronic Fund Transfer Act with respect to periodic statements for traditional bank accounts and other consumer asset accounts); Regulation DD, 12 CFR 1030.6(a) (implementing the Truth in Saving Act with respect to periodic statements for deposit accounts held at depository institutions); Regulation P, 12 CFR 1016.4 and 1016.5 (implementing the Gramm-Leach Bliley Act's privacy provisions). Further, on October 5, 2016, the Bureau issued a final rule amending Regulations E and Z for prepaid accounts. For prepaid accounts, the final rule provides an alternative to providing the periodic statement if a financial institution, among other things, makes an electronic history of a consumer's account transactions available to the consumer that covers at least 12 months preceding the date the consumer electronically accesses that account history. The requirement became effective on April 1, 2019.

[8] *See supra* note 6.

[9] *See, e.g.,* Lauren Perez, *Online Banking Spikes in Pandemic, With 91% of Americans Banking Virtually in July,* DepositAccounts (Aug. 27, 2020), *available at https://www.depositaccounts.com/blog/online-banking-spikes-amid-pandemic.html.*

[10] *See, e.g.,* The Financial Data and Technology Association of North America, *Competition Issues in Data-Driven Consumer and Small Business Financial Services* (Jun. 2020) at 5–6, *available at https://fdata.global/north-america/wp-content/uploads/sites/3/2020/06/FDATA-US-Anticompetition-White-Paper-FINAL.pdf.*

[11] *See* Bureau of Consumer Fin. Prot., *Consumer Protection Principles: Consumer-Authorized Financial Data Sharing and Aggregation* (Oct. 18 2017) (2017 Principles) at 1, *available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-protection-principles_data-aggregation.pdf.*

[12] *See, e.g.,* Bureau of Consumer Fin. Prot., *Consumer-authorized financial data sharing and aggregation: Stakeholder insights that inform the Consumer Protection Principles* (Oct. 18, 2017) (Stakeholder Insights Report) at 4, *available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-protection-principles_data-aggregation_stakeholder-insights.pdf.*

[13] *See, e.g.,* Bureau of Consumer Fin. Prot., *Bureau Symposium: Consumer Access to Financial Records: A summary of the proceedings* (Jul. 2020) (Symposium Summary Report) at 3–7, *available at https://files.consumerfinance.gov/f/documents/cfpb_bureau-symposium-consumer-access-financial-records_report.pdf.*

[14] Consumers may wish to authorize data users to access many more types of data held by many more types of entities. However, the Bureau is concerned in this ANPR only with consumer financial data held by providers of consumer financial products and services.

customers' data. To date, the market for data aggregation services has primarily focused on aggregators offering services to data user clients;[15] however, as discussed in more detail below, this dynamic has been shifting in recent years towards data aggregators performing services for providers in the providers' capacity as data holders, as well.

Aggregators may play a larger role in the U.S. data access system than in certain other countries because of the relatively large number of bank and credit union data holders in the U.S. and the lack of controlling data standards. Given this multitude of consumer data sources, data users have turned to specialized intermediaries to enable access. In this way, such data users do not have to negotiate access with a large number of data holders with a wide range of data accessibility practices (or in the case of screen scraping, develop and maintain a distinct technical solution for every potential data holder), but instead can contract with one or a handful of aggregators that have already developed and maintain access with respect to many data holders.[16]

These three categories—data holder, data user, and data aggregator—are not mutually exclusive in theory or in practice. First, to the extent they collect, generate, or otherwise possess and retain information about their customers in the ordinary course of their business, both data users and data aggregators also may be data holders. For example, a fintech that offers, often on behalf of a depository institution partner, demand deposit accounts to consumers—such fintechs are frequently referred to as ''neobanks''—may act as a data user if it obtains, pursuant to consumer authorization, consumer data about a consumer's accounts at other financial institutions to facilitate consumer-directed movement of funds between accounts. But that same neobank may also act as a data holder when one of its consumers authorizes a different financial institution to access consumer financial data at the neobank in connection with applying for a personal loan from that different financial institution. Second, data users may also function as data aggregators, whether they are providing aggregation services purely ''in-house'' in connection with their own consumer data-supported products and services or if they instead contract with other data users to provide aggregation services.

C. Competitive Dynamics and Evolving Modes of Authorized Data Access

Authorized data access holds the potential to intensify competition and innovation in many, perhaps even most, consumer financial markets. Such intensification can take one of three main forms.

First, authorized data access can enable improvements to existing products. For example, a mortgage lender can improve its products by using authorized data access to verify digitally an applicant's account assets. The consumer is spared the burden of assembling these data and may be able to proceed faster as a result. Additionally, the lender may have greater assurance of data accuracy and reliability.

Second, authorized data access can foster competition for existing products, thereby broadening access, lowering prices, or both. For example, lenders may be able to use consumer data—like deposit account transaction history—to underwrite consumers who might otherwise face more costly credit terms, assuming that they can obtain credit at all. Or a lender might use near real-time account data to provide a consumer with short-term credit options that compete with checking account overdraft functionality and pricing.

Finally, authorized data access can be used to offer new types of products and services. For example, a company may offer an automated personalized financial advice service that consolidates consumer data from across a consumer's various transaction accounts at multiple providers, a service which had only imperfect analogs prior to its development. Of course, many products and services that rely on authorized data access may encompass several or all of the three competitive dynamics.

One notable aspect of the competition fostered by consumer-authorized data access is that in many cases data users may compete for customers with the data holders from which they have obtained data. Sometimes this competition might be direct, as in the example above of a just-in-time lender competing with a bank offering overdraft coverage. Sometimes it might be less direct, as may occur if a bank's customers use a personal financial management application that recommends that some of those consumers shift their business to a competing provider.[17] These competitive dynamics mean that data holders may have an incentive to restrict access by certain data users or to seek greater clarity about the purposes to which particular accessing parties may put accessed data. By the same token, data users may have incentives not to be forthcoming about such purposes.

Of course, these competitive incentives may be outweighed by countervailing incentives. Data holders may have an incentive to provide consumers with the means to enable more secure and controlled authorized data access. Thus, data holders may face consumer demand to allow authorized data access. They also may find that working collaboratively with data users and data aggregators results in a form of authorized data access that is more secure or provides other benefits to data holders.[18] Similarly, data users and aggregators have incentives to develop secure and reliable means of authorized data access, which may necessitate collaboration with data holders. For example, they may find that screen scraping is technically unreliable or challenging to maintain, compared to modes of authentication and access that require collaboration with data holders.

These competitive dynamics appear to be reflected in evolving modes of authorized data access. To date, most consumer-authorized third parties have accessed consumer data through data holders' digital banking portal using

[15] As recently noted by the OCC, under such arrangements, ''[a] data aggregator typically acts at the request of and on behalf of a bank's customer without the bank's involvement in the arrangement.'' Office of the Comptroller of the Currency, *OCC Bulletin 2020–10: Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013–29* (Mar. 5, 2020) (OCC Bulletin), *available at https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-10.html.* This has been driven to a significant extent by the primary technical means by which consumer-authorized data access has and continues to be effected; *i.e.,* credential-based access and screen scraping. ''Credential-based access'' refers to authorized access that uses the consumer's user ID and password or like credentials to log into the data holder's online financial account management portal, generally on an automated basis. ''Screen scraping'' refers to authorized access that uses proprietary software to convert consumer data presented in the provider's online financial account management portal into standardized machine-readable data, again generally on an automated basis. Credential-based access and screen scraping often are described *collectively* as ''screen scraping.'' But while the two practices typically are linked, they are technically and conceptually distinct.

[16] *See* note 15 (defining ''screen scraping'').

[17] The intensity of competition may be further affected by the fact that data users may be data holders, as well.

[18] Regulatory requirements may also impact incentives. The OCC notes that even when ''a bank is not receiving a direct service from a data aggregator and if there is no business arrangement, banks still have risk from sharing customer-permissioned data with a data aggregator. Bank management should perform due diligence to evaluate the business experience and reputation of the data aggregator to gain assurance that the data aggregator maintains controls to safeguard sensitive customer data.'' OCC Bulletin.

digital banking credentials the consumer shared with third parties. Such access generally requires no formal agreement between data holder and data user or data aggregator.[19] More recently, however, the authorized data access ecosystem has seen the emergence of formal, bilateral access agreements between large aggregators and large data holders, which seek generally to move authorized access away from credential-based access and screen scraping towards tokenized access, commonly through application programming interfaces, or ''APIs.'' (When access is tokenized, a third party seeking access uses unique credentials that other parties cannot use; tokenized access is generally considered more secure than access that depends on using the consumer's own credentials.) In addition, a broad range of ecosystem participants have started to come together to develop standards for data sharing through APIs. Networks or consortia of data holders have begun to acquire or partner with data aggregators to offer access solutions to data holders as well as to their traditional data user clients. These moves may herald a broader move towards multilateral standards for data access, much as network standards function in two-sided payment card markets.

It is not clear, however, how these evolving access practices and standards will affect competition or innovation in markets in which participants use authorized data. It is also unclear how effectively they will address other consumer protection risks that may arise with authorized access, including risks relating to the methods by which consumer data is accessed and the purposes for which data users may use authorized data. Panelists at the Bureau's February 2020 ''Symposium on Consumer Access to Financial Records and Section 1033 of the Dodd-Frank Act'' (Symposium) identified significant progress on some of these issues and uncertainties by participants within the authorized data access ecosystem. However, they also made clear that participants have sometimes struggled to resolve issues in a manner satisfactory to all impacted parties, and according to some participants, in a manner commensurate with the access rights described in section 1033.[20] Participants expressed a range of perspectives on issues relating to, among others, data security, consumer privacy, data minimization,[21] consumer control and transparent use of consumer data, data accuracy, accountability and liability for errors and other problematic transactions, and the mechanisms by which consumer-permissioned parties access records.[22] For example, Symposium panelists discussed whether and how data holders might respect rights described in section 1033 and also refuse access to an authorized third party for security reasons, such as alleged fraud or deficient security practices.[23] Panelists similarly discussed consumer privacy risks arising from existing modes of authorized data access. Panelists proposed and discussed a variety of approaches and actions the Bureau might consider to address these kinds of issues.[24]

D. Other Laws

There are other Federal laws with potential implications for consumer access to financial records pursuant to section 1033, particularly the authorized data access ecosystem.[25] Although Symposium participants did not always agree on whether or how these laws apply in the area of authorized data access, there was general consensus that the Bureau might need to resolve potential stakeholder uncertainty with respect to application of the following laws and their implementing regulations.

The Gramm-Leach-Bliley Act

The Gramm-Leach-Bliley Act (GLBA) and the Bureau's implementing regulation, Regulation P, require financial institutions to provide their customers with notices concerning their privacy policies and practices, among other things. They also place certain limitations on the disclosure of nonpublic personal information to nonaffiliated third parties, and on the redisclosure and reuse of such information.

The Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, govern the collection, assembly, and use of consumer report information and provide the framework for the credit reporting system in the United States. They also promote the accuracy, fairness, and privacy of information in the files of consumer reporting agencies.

The Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, establish a basic framework of the rights, liabilities, and responsibilities of participants in the electronic fund and remittance transfer systems. Among other requirements, EFTA and Regulation E prescribe requirements applicable to electronic fund transfers, including disclosures, error resolution, and rules related to unauthorized electronic fund transfers.

IV. Bureau Actions to Date

The Bureau has not promulgated any regulations to implement section 1033. The Bureau has, however, taken several actions in the interest of consumer access to financial records. The Bureau's approach has focused on identifying and promoting consumer interests in, among other areas, access, control, security, and privacy, while allowing the market to develop without direct regulatory intervention.

A. The 2016 RFI

In 2016, the Bureau published in the **Federal Register** a Request for Information Regarding Consumer Access to Financial Information (2016 RFI) on topics including authorized data access.[26] The 2016 RFI described the authorized data access ecosystem as it existed then, as well as certain risks and issues related to that ecosystem.[27] The questions in the 2016 RFI focused on ''current market practices'' and on ''how [commenters] believe market practices may or should change over time.'' [28] In response, the Bureau received comments from a broad range of stakeholders, including large and small data holders, their trade associations, data aggregators, account data users, individual consumers, and consumer advocates. The Bureau collected further

[19] *See* note 15. Such access can involve some degree of collaboration between data holders and third parties which are seeking access. For example, the Bureau understands that many large banks and aggregators engage in ''whitelisting.'' In this practice, the aggregator identifies its traffic to the bank, which allows the bank to permit the aggregator to access consumer data via credential-based access and screen scraping. Also *see, e.g.,* John Pitts, *OCC did its part to secure customer data. Now it's CFPB's turn.* (Mar. 16, 2020), American Banker, *available at https://www.americanbanker.com/opinion/occ-did-its-part-to-secure-customer-data-now-its-cfpbs-turn.*

[20] The Symposium is described further below at Section IV.C. *See also* Symposium Summary Report.

[21] The principle of data minimization invokes the general notion that data users only request, and data holders only share, consumer data necessary to perform the service described to and authorized by the consumer. *See* Symposium Summary Report at 6.

[22] *See, e.g.,* Symposium Summary Report at 3–9.

[23] *See id.* at 8.

[24] *See id.* at 4 & 8.

[25] *See id.* at 6–9.

[26] *See* 81 FR 83806 (Nov. 22, 2016).

[27] *See* 81 FR 83808–83809 (Nov. 22, 2016).

[28] *See* 81 FR 83810 (Nov. 22, 2016).

insights, including from stakeholders, through meetings and oral discussions.

B. The Bureau's 2017 Stakeholder Insights Report and Consumer Protection Principles

In October 2017, the Bureau published two documents about consumer-authorized data access. The first document, entitled ''Consumer-authorized financial data sharing and aggregation: Stakeholder insights that inform the Consumer Protection Principles'' (Stakeholder Insights Report), summarized comments received in response to the 2016 RFI as well as insights gathered in meetings with market stakeholders.[29] The second document, ''Consumer Protection Principles: Consumer-Authorized Financial Data Sharing and Aggregation'' (2017 Principles), expressed ''the Bureau's vision for . . . a robust, safe, and workable data aggregation market that gives consumers protection, usefulness, and value.'' [30] The 2017 Principles covered nine topics related to consumer-authorized access: Access; data scope and usability; control and informed consent; authorizing payments; security; access transparency; accuracy; ability to dispute and resolve unauthorized access; and efficient and effective accountability mechanisms.[31]

C. The Bureau's 2020 Symposium

Following release of the 2017 Principles, the Bureau continued to monitor developments concerning consumer-authorized data access. To that end, the Bureau held the Symposium in February 2020.[32] Panelists at the Symposium represented large and small banks, data aggregators and their trade groups, fintechs, consumer advocates, and other market observers and researchers, and each made a written submission to the Bureau in advance of the Symposium.[33]

As a follow-up to the Symposium, the Bureau published three documents: first, a report summarizing Symposium proceedings; [34] second, a blog post that offered consumers ''key information about how data sharing works, what [consumers] should consider before sharing [their] data, and some tips on how [consumers] can best protect [their] data and accounts'' [35]; and third, an announcement of the Bureau's intention to publish this ANPR.[36]

D. Stakeholder Concerns Regarding the Consumer-Authorized Data Access Ecosystem

The Bureau believes that ensuring consumer access to financial records, consistent with other consumer protections, is important to achieving the Bureau's statutory purpose and objectives. Specifically, the Bureau is charged with ''ensuring that consumers have access to markets for consumer financial products and services, and that [such markets] are fair, transparent, and competitive.'' [37] Congress further instructed the Bureau to exercise its authorities so that ''markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.'' [38] The Bureau believes that the consumer access to financial records provided in section 1033 is an important component of the overall consumer protection framework established by the Dodd-Frank Act.

Through these information gathering opportunities, stakeholders have raised a number of concerns about the current state and direction of the consumer-authorized data access ecosystem. First, some stakeholders contend that not all consumers are able to authorize access to consumer data in a manner commensurate with the access rights described in section 1033. For example, stakeholders report that certain data fields—including, potentially, ''costs, charges and usage data'' [39]—are sometimes withheld.[40] Similarly, some stakeholders assert that data holders may be defining permitted ''use cases'' in ways that conflict with the access rights described in section 1033.[41] Although authorized data access ecosystem participants have moved towards data sharing standards that might help to resolve some of these issues, some stakeholders assert that those efforts will not, as a matter of course, fully effectuate the access rights described in section 1033.[42]

Second, stakeholder positions suggest that issues relating to access rights may not be fully resolvable without accompanying resolution of a series of interconnected issues, such as the security of authorized access to consumer data or how consumers should most appropriately exercise control over authorized access.[43] Here, too, informal efforts by ecosystem participants have effected some improvements over time, but some stakeholders have asserted that Bureau regulatory involvement may be required to resolve some of these questions.[44]

Third, stakeholders have raised questions about the application of other consumer financial laws and regulations to consumer-authorized data access.[45] For example, some Symposium panelists asserted that the law is unclear as to: (1) Which parties are liable for unauthorized access under the Electronic Fund Transfer Act and Regulation E, as well as under other provisions of law; (2) if and how the Fair Credit and Reporting Act applies to consumer data in the context of authorized data access; and (3) the manner in which the Gramm-Leach-Bliley Act and its implementing regulations regarding privacy and security apply to data aggregators.[46] Some market stakeholders have alleged

[29] *See* Stakeholder Insights Report.

[30] 2017 Principles at 1.

[31] *See* 2017 Principles at 3–5. In publishing the 2017 Principles, the Bureau noted that the 2017 Principles ''do not themselves establish binding requirements or obligations relevant to the Bureau's exercise of its rulemaking, supervisory, or enforcement authority.'' *Id.* at 2. The Bureau further observed ''that many consumer protections apply to this market under existing statutes and regulations. These Principles are not intended to alter, interpret, or otherwise provide guidance on—although they may accord with—the scope of those existing protections.'' *Id.*

[32] *See* Bureau of Consumer Fin. Prot., *CFPB to Host Symposium on February 26* (Feb. 20, 2020), *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-hosts-symposium-february-2020/.* This document also contains a list of Symposium panelists.

[33] For panelists' written submissions, see Bureau of Consumer Fin. Prot., *CFPB Symposium: Consumer Access to Financial Records, available at https://www.consumerfinance.gov/about-us/events/archive-past-events/cfpb-symposium-consumer-access-financial-records/.* For a recording of the Symposium, see Bureau of Consumer Fin. Prot., *CFPB Symposium: Consumer Access to Financial Records* (Feb. 26, 2020), *available at https://www.youtube.com/watch?v=_bQsdQ0462o.*

[34] *See* Symposium Summary Report.

[35] Max Bentovim, *What to consider when sharing your financial data* (Jul. 24, 2020), *available at https://www.consumerfinance.gov/about-us/blog/what-to-consider-when-sharing-your-financial-data/.*

[36] Bureau of Consumer Fin. Prot., *CFPB Announces Plan to Issue ANPR on Consumer-Authorized Access to Financial Data* (Jul. 24, 2020), *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-anpr-consumer-authorized-access-financial-data/.*

[37] 12 U.S.C. 5511(a).

[38] 12 U.S.C. 5511(b)(5).

[39] 12 U.S.C. 5533(a).

[40] *See, e.g.,* Symposium Summary Report at 3.

[41] *See id.* at 6.

[42] *See, e.g.,* Symposium Summary Report at 4, 9; John Pitts, Panelist Written Submission to the Bureau's 2020 Symposium at 3–4, *available at https://files.consumerfinance.gov/f/documents/cfpb_pitts-statement_symposium-consumer-access-financial-records.pdf;* Dan Murphy, Panelist Written Submission to the Bureau's 2020 Symposium at 4, *available at https://files.consumerfinance.gov/f/documents/cfpb_murphy-statement_symposium-consumer-access-financial-records.pdf.*

[43] *See id.* at 6–7.

[44] *See, e.g.,* Symposium Summary Report at 3, 5, 8–9.

[45] *See id.* at 7–8.

[46] *See id.* While the Bureau has certain authorities with regard to the Gramm-Leach-Bliley's privacy provisions, the Bureau has no supervisory, enforcement, or rulemaking authority with regard to the Act's data security provision, 15 U.S.C. 6801, or its implementing regulations.

that uncertainty, ambiguities, or irresolution relating to these kinds of questions may be impeding consumer data access.

V. Topics on Which the Bureau Seeks Comment

In light of the authorized data access ecosystem's evolution since section 1033 was enacted, the Bureau has determined to commence a process that ultimately could lead to regulations that clarify the Bureau's compliance expectations and help to establish market practices to ensure that consumers have access to consumer financial data. The Bureau is issuing this ANPR to solicit comments and information that will assist the Bureau in developing proposed regulations under section 1033.

The Bureau seeks comment from interested parties—including consumers, consumer advocacy groups, industry participants, and other members of the public—on any (or all) of a number of questions relating to potential rulemaking in connection with section 1033.[47] These comments, together with other outreach and analysis, will help the Bureau to determine how it might formulate potential regulatory interventions to better effectuate consumer access to financial records as described in section 1033. Consumers have an interest in being able to secure data access as provided in section 1033 effectively and in a manner that enables ongoing and efficient consumer-friendly market innovation. In considering potential interventions, the Bureau will be mindful of avoiding undue or unnecessary burden on industry, particularly in light of self-regulatory standard-setting work that a broad group of market participants has conducted and continues to conduct and other initiatives that may help to foster a safe consumer-authorized data sharing ecosystem.

The Bureau has grouped questions into nine categories: Costs and benefits of consumer data access; competitive incentives; standard-setting; access scope; consumer control and privacy; other legal requirements; data security; data accuracy; and other information. For convenience, the questions (and this introduction) continue to use the defined terms from section II above, except when specifically noted.[48] Questions should be understood as directed to practices and outcomes in the United States (except where specifically noted), but commenters may reference non-U.S. information if they believe that is helpful to illuminate or explain the relevance of their comment to potential regulatory action in the U.S. The Bureau requests that, wherever possible, commenters support their responses with information about market practices (both in the U.S. and elsewhere) and/or other empirical data and analysis. The Bureau further encourages commenters to include in their responses any relevant information regarding the potential costs and benefits of consumer data access to consumers and covered persons. Such information may be qualitative, quantitative, or both.

A. Benefits and Costs of Consumer Data Access

1. What are the benefits to consumers from authorized data access? What are the benefits to consumers from direct access? What specific regulatory steps by the Bureau would enhance those impacts and how would they do so?

2. How does authorized data access facilitate competition and innovation in the provision of consumer financial services? What are the impacts of direct access on such competition and innovation? What specific regulatory steps by the Bureau would enhance that impact and how would they do so?

3. What costs to consumers flow from authorized data access? What costs result from direct access? What specific regulatory steps by the Bureau would reduce any such impacts and how would they do so?

4. Are there ways in which authorized data access has limited (or may in the future limit) competition and innovation resulting in harms to consumers? Are there ways in which the development of the ecosystem for authorized data access has caused (or may in the future cause) consumer harm? Are there ways in which direct access has had or may have such impacts? What specific regulatory steps by the Bureau would reduce any such impacts and how would they do so?

5. What should the Bureau learn about the costs and benefits of authorized data access from regulatory experience in State jurisdictions or in jurisdictions outside the United States? What should it learn from such sources with respect to direct access? How should this inform the Bureau's consideration of specific regulatory steps that it might take to implement section 1033?

6. How do the costs and benefits to data holders of authorized data access vary across different covered persons, including community banks and credit unions, and how should these variances inform the Bureau's actions with respect to implementing section 1033? How do the costs and benefits to data holders of direct access vary across different covered persons and how should these variances inform the Bureau's actions with respect to implementing section 1033?

B. Competitive Incentives and Authorized Data Access

7. What reasons are there to believe that competitive incentives will facilitate or undermine authorized data access? What responsive actions should the Bureau take and why?

8. To what extent should the Bureau expect the overlap across data holders, data aggregators, and data users to impact competition and innovation favorably or unfavorably? How should the Bureau take account of such overlap in implementing section 1033?

9. Should the Bureau expect access-related agreements between data holders and other participants in the authorized data access ecosystem to impact competition and innovation favorably or unfavorably? How should the Bureau take account of such impacts in implementing section 1033?

10. Should the Bureau expect data access ecosystem participants to develop and adopt multilateral rules applicable to authorized data access? How should the Bureau expect any such rules to impact competition and innovation and how should the Bureau take account of any such impacts in implementing section 1033?

11. Do customers of smaller data holders receive the same benefits from competition and innovation enabled by authorized data access as do customers of larger data holders? If not, why is that the case? How should any variance inform the Bureau's actions with respect to the implementation of section 1033?

12. Do consumers' individual decisions to authorize data access entail significant negative or positive externalities on other consumers, data holders, data aggregators or data users?[49] If so, what are those externalities and what impact do they have on competition, innovation, and the benefits, costs, and risks faced by consumers? How should such externalities inform the Bureau's actions with respect to the implementation of section 1033?

[47] When responding to a question, please note the question number at the top of the response.

[48] As noted, section II's defined terms are for purposes of this ANPR and should not be understood to imply any legal interpretation, guidance, or policy judgment by the Bureau.

[49] An externality is a direct effect on the well-being of a consumer from the actions of other consumers.

C. Standard-Setting

13. To what extent should the Bureau expect broad-based standard-setting work by authorized data access ecosystem participants to enable and facilitate authorized data access? What favorable or unfavorable impacts to competition and innovation should the Bureau anticipate from such work? How should implementation of section 1033 access rights take account of such broad-based standard-setting by system participants?

14. Should the Bureau seek to encourage broad-based standard setting work by authorized data access ecosystem participants? If so, how should it do so?

15. What steps should the Bureau take to prescribe standards applicable to covered persons to promote the development and use of standardized formats for information that can be obtained by means of section 1033 data access rights? What form should such standards take? Should these standards differ depending on whether data is accessed directly by the consumer or through an authorized entity?

16. What steps, if any, should the Bureau take to promote particular mechanisms of authorized data access? If some mechanisms are more beneficial (or as beneficial but at lower cost to consumers), what are the obstacles to further adoption of such mechanisms, and what steps should the Bureau take to mitigate such obstacles?

D. Access Scope

17. The Dodd-Frank Act defines ''consumer'' as ''an individual or an agent, trustee, or representative acting on behalf of an individual.'' [50] Who should be considered ''an agent, trustee, or representative'' of an individual consumer for purposes of implementing section 1033 access rights? Should any exclusions apply? If so, what exclusions and why?

18. Are there types of data holders that should not be subject to the access rights in section 1033? If so, why? Are there any unique issues for any types of data holders that the Bureau should consider in implementing the access rights provided in section 1033, and if so, how should the Bureau account for such issues?

19. How might the Bureau protect against the exposure of confidential commercial information, information that must be kept confidential by law, or information collected for the purpose of preventing fraud or other illegal conduct while at the same time protecting the access rights provided in section 1033? Should the Bureau's approach differ depending on whether data is accessed by authorized third parties or directly?

20. Apart from any restrictions identified in response to the preceding question, are there data elements to which section 1033 access rights should not apply? If so, which elements and for what reasons? Should any restrictions on access to data elements differ depending on whether data is accessed by authorized third parties or directly?

21. What information should be considered information that cannot be retrieved in the ordinary course of business? How should a Bureau rule seeking to implement the access rights provided in section 1033 account for such information? Should any such accounting differ depending on whether data is accessed by authorized third parties or directly by consumers?

22. Aside from any restrictions identified in response to earlier questions in this section, should any other restrictions on data access be permitted? For example, should a data holder be permitted to restrict authorized access to consumer data created during, or relating to, certain time periods? Should a data holder be permitted to restrict the frequency with which data can be accessed? If such restrictions should be permitted, how and why should they be permitted? Should any of these restrictions differ depending on whether data is accessed by authorized third parties or directly? Should any of these restrictions differ based on the purpose for which data is accessed?

23. Should the Bureau propose to address the operational reliability of authorized data access, and if so, how and why? Should the Bureau consider any different ways to address the operational reliability of direct access, and if so, how and why?

24. How should the Bureau ensure that any implementation of section 1033 access rights does not promote or require the use of particular access (or other) technologies?

E. Consumer Control and Privacy

With respect to questions in this section, the Bureau encourages commenters to identify, where applicable, the extent to which their responses may differ between primary and secondary uses of authorized data, where primary use reflects the primary purpose for which a consumer, acting pursuant to reasonable expectations, would choose to authorize access to consumer data, and secondary use reflects all other purposes for which authorized data may be used. With respect to secondary uses of authorized data, the Bureau encourages commenters to consider and explain whether their responses differ depending on whether the consumer data remain identifiably associated with the authorizing individual as well as if and how such data may be disassociated. The Bureau also encouragers commenters responding to this section to identify, where applicable, the extent to which their responses may differ between uses of authorized data for the purposes of effecting payments on behalf of consumers and other uses.

25. To what extent does direct access to consumer data pursuant to section 1033 raise any privacy concerns that should be considered by the Bureau?

26. In what respects do consumers understand the actual movement, use, storage, and persistence of authorized data? To what extent do such movement, use, storage, and persistence of authorized data align with reasonable consumer expectations or preferences, including privacy expectations or preferences? What should the Bureau do, if anything, to improve consumer understanding or to effect closer alignment between practice and consumer expectations or preferences? Should the Bureau consider placing any restrictions on the movement, use, storage and persistence of authorized data, and if so, what restrictions and why?

27. To what extent are consumer understanding and expectations informed by the disclosed terms and conditions of authorized data access or other disclosures? What should the Bureau do, if anything, to improve consumer understanding of disclosed terms and conditions or to improve alignment between such terms and conditions and consumer expectations and/or preferences? Should the Bureau consider requiring any specific disclosures in connection with authorized access? If so, please describe the form, content, and other features of such disclosures.

28. What tools can market participants provide consumers to align consumer expectations and preferences with the actual movement, use, storage, and persistence of authorized data, and what steps, if any, should the Bureau take to improve the effectiveness of such tools?

29. What steps, if any, should the Bureau take to address authorized entities combining authorized data with data from other sources? What are the costs, benefits, and risks to consumers from such combining, and how are

[50] *See* 12 U.S.C. 5481(4).

those costs, benefits, and risks disclosed to consumers? Should the Bureau address such disclosure, and if so, how and why?

30. Should the Bureau propose to address any of the following, and if so, how and why: (i) Data aggregators providing authorized data to entities other than in connection with the primary purpose or purposes for which the consumer authorized data access; or (ii) data aggregators retaining consumer data other than in connection with the primary purpose or purposes for which the consumer authorized access?

31. Should the Bureau propose to address any of the following, and if so, how and why: (i) Data users providing authorized data to entities other than in connection with the primary purpose or purposes for which the consumer authorized data access; or (ii) data users retaining consumer data other than in connection with the primary purpose or purposes for which the consumer authorized data access?

32. How, if at all, should a Bureau rule implementing section 1033 seek to limit authorized access to the minimum amount of consumer data necessary to effect the purpose of authorizing access as reasonably understood by the authorizing consumer? What are the benefits and risks to consumers, to competition, and to innovation in consumer financial services of such steps? What are the benefits and risks to consumers, to competition, and to innovation if such steps are not taken?

F. Legal Requirements Other Than Section 1033

Some questions in this section refer to ''regulatory uncertainty.'' As used in this section, that term refers to potential stakeholder uncertainty about provisions of law *other than* section 1033, including potential uncertainty that may arise because of the potential interaction or overlap between these other provisions and section 1033.

33. How, if at all, are data holders subject to laws or regulations (whether Federal, State, or foreign) that may be in tension with any proposed obligation to make consumer data accessible per section 1033? How, if at all, should the Bureau address such potential tension?

34. To the extent not addressed in your response to the preceding question, is regulatory uncertainty impeding consumer data access, undermining competition or innovation in the provision of consumer financial services, or otherwise impacting benefits or contributing to risks that consumers might derive from authorized access? If so, in what ways? Which legal provisions are the source of any such uncertainty, and what steps, if any, should the Bureau take to resolve any such uncertainty to the benefit of consumers?

35. In what ways, if any, is regulatory uncertainty around consumer data access imposing costs on consumers, data holders, data users, or data aggregators? Which legal provisions are the source of any such costs, and what steps, if any, should the Bureau take to address any such uncertainty or to mitigate any such costs?

36. What foreign, Federal, or State laws or regulations impose requirements or grant rights that are substantively similar to section 1033? How should the Bureau take into consideration these substantively similar requirements in implementing section 1033? How should the Bureau take account of the conditions under which covered persons do business in the United States and in other countries?

37. To the extent not already addressed above, what actions, if any, should the Bureau take to modify or clarify existing rules that have (or could have) application to consumer data access? What goals would such modification or clarification serve? What costs would they impose or reduce?

G. Data Security

38. How effectively does existing law that bears on data security mitigate data security risks associated with data access and, in particular, authorized data access? What steps, if any, should the Bureau take to improve the effectiveness of existing laws that bear on data security in the context of data access?

39. Do data holders, data users, and data aggregators have adequate market incentives to ensure that consumer data is secure? To what extent have they acted on the basis of any such incentives to this point or should be expected to so act going forward?

40. If the Bureau proposes a rule to protect the access rights described in section 1033, how should that rule take appropriate account of data security concerns?

H. Data Accuracy

41. To what extent are consumers harmed, or the benefits to consumers of data access endangered or otherwise restricted, by the risk of inaccurate consumer data being provided to consumers or data users? If such harms or restrictions arise, does their extent vary by the type of use to which data is put? If so, why is that the case?

42. Are there risks that some data holders may not have adequate market incentives or legal requirements to ensure that the consumer data they provide to consumers or authorized third parties is accurate and that they correct inaccuracies when they occur?

43. What risks of data inaccuracy are introduced as a result of the data access ecosystem? Do data users and data aggregators have adequate market incentives or legal requirements to ensure that the consumer data they use is accurate or sufficiently accurate for the purposes to which it is put? If your answer varies by the type of use to which consumer data is put, please explain why that is the case. How can data users and data aggregators act on such incentives, to the extent that they exist? To what extent have they so acted to this point or should be expected to so act going forward?

44. What steps, if any, should the Bureau take to address the accuracy of consumer data that as a result of authorized data access is in the control or possession of data aggregators or data users?

45. How effectively does existing law mitigate the risks that inaccurate consumer data is associated with direct access and authorized data access?

I. Other Information

46. Is there any other information that would help inform the Bureau as it considers whether to initiate a rulemaking and how best to implement the consumer data access rights provided by section 1033?

VI. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: October 22, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 200930–0261]

RIN 0694–AI08

Commerce Control List: Proposed Controls on ''Software'' for the Operation of Certain Automated Nucleic Acid Assemblers and Synthesizers; Request for Comments

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS), Department of Commerce, maintains controls on the export, reexport and transfer (in-country) of dual-use items and less sensitive military items through the Export Administration Regulations, including the Commerce Control List (CCL). Certain items that could be of potential concern for export control purposes are not yet listed on the CCL or controlled multilaterally, because they represent emerging technologies. Among these items is ''software'' for the operation of nucleic acid assemblers and synthesizers controlled under Export Control Classification Number (ECCN) 2B352 that is capable of designing and building functional genetic elements from digital sequence data.

BIS has determined that this ''software'' is capable of being used to operate nucleic acid assemblers and synthesizers controlled under ECCN 2B352 for the purpose of generating pathogens and toxins without the need to acquire controlled genetic elements and organisms. Consequently, the absence of export controls on this ''software'' could be exploited for biological weapons purposes. In an effort to address this concern, this rule proposes to amend the CCL by adding a new ECCN 2D352 to control such ''software.'' This rule also requests public comments to ensure that the scope of these proposed controls will be effective and appropriate (with respect to their potential impact on legitimate commercial or scientific applications).

DATES: Comments must be received by BIS no later than December 21, 2020.

ADDRESSES: You may submit comments, identified by docket number BIS–2020–0024 or RIN 0694–AI08, through any of the following:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. You can find this proposed rule by searching for its regulations.gov docket number, which is BIS–2020–0024.

• *Email: PublicComments@bis.doc.gov.* Include RIN 0694–AI08 in the subject line of the message.

All filers using the portal or email should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments. Any submissions with file names that do not begin with a ''P'' or ''BC'' will be assumed to be public and will be made publicly available through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on the chemical and biological weapons (CB) controls that would apply to the ''software'' proposed for control under ECCN 2D352, contact Dr. Wesley Johnson, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–0091, Email: *Wesley.Johnson@bis.doc.gov.* For questions on the submission of comments in response to this proposed rule, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

As part of the National Defense Authorization Act (NDAA) for Fiscal Year 2019, Public Law 115–232, Congress enacted the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. Section 1758 of ECRA (as codified under 50 U.S.C. 4817) authorizes BIS to establish appropriate controls on the export, reexport or transfer (in-country) of emerging and foundational technologies. Pursuant to ECRA, on November 19, 2018, the Bureau of Industry and Security (BIS) published an advance notice of public rulemaking (November 19 ANPRM) (83 FR 58201). That ANPRM identified biotechnology as part of a representative list of technology categories concerning which BIS, through an interagency process, sought public comment to determine whether there are specific emerging technologies that are important to U.S. national security for which effective controls can be implemented. As indicated by the May 23, 2019 (84 FR 23886), final rule that imposed multilateral controls on a number of items, consistent with the 2018 Plenary changes to the Wassenaar Arrangement List of Dual-Use Goods and Technologies, emerging technologies can include ''software'' and commodities. (See, *e.g.,* Export Control Classification Number 3D005, 84 FR 23894.)

Comments to the November 19 ANPRM on Biotechnology

The biotechnology-related comments submitted to BIS in response to its November 19 ANPRM did not specifically address the question of export controls on ''software'' for the operation of nucleic acid assemblers and synthesizers controlled under Export Control Classification Number (ECCN) 2B352.

Process To Identify and Control Emerging Technology

Under ECRA, emerging and foundational technologies are those essential to the national security of the United States, but not described in Section 721(a)(6)(A)(i)–(v) of the Defense Production Act of 1950 (50 U.S.C. 4565(a)), as amended. Section 1758(a) of ECRA (50 U.S.C. 4817(a)) outlines an interagency process for identifying emerging and foundational technologies that considers both public and classified information, as well as information from the Emerging Technology Technical Advisory Committee and the Committee on Foreign Investment in the United States. In identifying specific emerging technologies, the process also takes into account:

• The development of the emerging technologies in foreign countries;

• The effect export controls might have on the development of the emerging technologies in the United States; and

• The effectiveness of export controls on limiting the proliferation of the emerging technologies in foreign countries.

In addition, Section 1758(a)(2)(C) of ECRA (50 U.S.C. 4817(a)(2)(C)) requires that the interagency process for identifying emerging technologies include a notice and comment period.

The Secretary of Commerce must establish appropriate controls on the export, reexport or transfer (in-country) of technology identified pursuant to the Section 1758 process, and in doing so, must consider the potential end-uses and end-users of emerging and foundational technologies, and the countries to which exports from the United States are restricted (*e.g.,* embargoed countries). While the Secretary has discretion to set the level of export controls, at a minimum he must require a license for the export of such technologies to countries subject to a U.S. embargo, including those countries subject to an arms embargo.

''Software'' for the operation of nucleic acid assemblers and synthesizers controlled under ECCN 2B352.j on the Commerce Control List (CCL), in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774), has been identified as a technology to be evaluated as an emerging technology, consistent with the process described in Section 1758 of ECRA. This identification is based on a finding that such ''software'' is capable of being utilized in the production of pathogens and toxins and, consequently, the absence of export controls on such ''software'' could be exploited for biological weapons purposes.

Consistent with BIS's authority to evaluate the level of controls that would be appropriate for the export, reexport or transfer (in-country) of emerging technologies, this rule proposes to amend the CCL by adding a new ECCN 2D352 to control such ''software.'' This ''software'' is not currently included on any of the Australia Group (AG) common control lists—consequently, the controls on this ''software,'' as proposed by this rule, would be unilateral in nature, absent the adoption of comparable controls by the Australia Group.

In addition, although this rule does not propose to amend ECCN 2E001 (which controls, *inter alia,* ''technology'' for the ''development'' of the nucleic acid assemblers and synthesizers described in ECCN 2B352.j), the heading of ECCN 2E001 indicates that, with limited exceptions, ECCN 2E001 controls ''technology for the ''development'' of ''software'' listed under Category 2D of the CCL. Consequently, if the changes proposed in this rule were to go into effect, ECCN 2E001 would control ''technology'' for the ''development'' of the ''software'' that would be controlled under new ECCN 2D352. This expansion in the scope of ECCN 2E001 would be unilateral in nature.

Public comments submitted to BIS in response to this proposed rule will help BIS and other U.S. Government agencies to apply the criteria set forth in Section 1758 of ECRA and identify and assess the appropriate level of controls that should apply to the ''software'' proposed for control under ECCN 2D352 and ''technology'' for the ''development'' of such ''software,'' as proposed to be controlled under ECCN 2E001.

Request for Comments

BIS is publishing this proposed rule to obtain public comments on the proposed application of CB controls to ''software'' for the operation of nucleic acid assemblers and synthesizers described in ECCN 2B352.j. and to ''technology'' related to such ''software'' that would satisfy the controls described in ECCN 2E001. Consistent with Section 1758(a)(2)(C) of ECRA (50 U.S.C. 4817(a)(2)(C)), this proposed rule provides the public with notice and the opportunity to comment on controlling this technology as described herein. Specifically, BIS welcomes any comments on this proposed rule relevant to the following:

(1) Whether the proposed controls are clear and adequately address ''emerging and foundational technologies'' within the context of biological weapons related capabilities and developments (to the extent that this is not the case, comments should identify specific control text that would be more appropriate to these ends);

(2) The current capability for the ''development'' of such ''software'' in the United States and other countries, including the extent to which the proposed controls would affect ''software'' that is currently being produced and/or sold, either within or outside the United States (*e.g.,* whether the proposed controls would inadvertently control any ''software'' that is suitable almost exclusively for legitimate commercial or scientific applications);

(3) The effect that implementation of the proposed controls would have on the future ''development'' of such ''software'' and related ''technology'' in the United States; and

(4) The effectiveness of the proposed controls in terms of limiting the availability of such ''software'' and related ''technology'' abroad.

BIS also welcomes comments concerning whether these controls should be implemented multilaterally (rather than unilaterally), in the interest of increasing their effectiveness and minimizing their impact on U.S. industry (multilateral export controls are preferable to unilateral controls, because the former typically place U.S. industry on a more level playing field versus producers/suppliers in other countries). In this regard, note that Section 1758(c) of ECRA (as codified under 50 U.S.C. 4817(c)) provides that ''the Secretary of State, in consultation with the Secretary [of Commerce] and the Secretary of Defense, and the heads of other Federal agencies, as appropriate, shall propose that any technology identified pursuant to subsection (a) [of ECRA] be added to the list of technologies controlled by the relevant multilateral export control regimes''. Subsection (a) of section 1758 (as codified under 50 U.S.C. 4817(a)) addresses the interagency process for identifying emerging technologies.

The public comments submitted in response to this proposed rule should address specific aspects of the proposed addition of ECCN 2D352 to the CCL in relation to the criteria described above (*e.g.,* identify the specific aspects in which the proposed controls would satisfy these criteria or fail to do so).

Rulemaking Requirements

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

The cost-benefit analysis required pursuant to Executive Orders 13563 and 12866 indicates that this rule is intended to improve national security as its primary direct benefit. Specifically, implementation, in a timely manner, of the proposed changes described herein would enhance the national security of the United States by reducing the risk

that global international trade involving dual-use chemical/biological items would contribute to the proliferation of chemical and biological weapons (CBW) of mass destruction. These controls are essential given that the international chemical and biotechnology industries are a target for proliferators as a source of materials for CBW programs. In calculating the costs that would be imposed by this rule, BIS estimates that no more than 15 additional license applications would have to be submitted to BIS, annually, as a result of the implementation of the amendments described in this rule (see Rulemaking Requirements #2, below). Application of the cost-benefit analysis required under Executive Orders 13563 and 12866 to this rule, as described above, indicates that this rule is intended to improve the national security of the United States as its primary direct benefit. Accordingly, consistent with the stated purpose of the proposed addition of ECCN 2D352 to the Commerce Control List (CCL), the changes proposed by this rule meet the requirements set forth in the April 5, 2017, OMB guidance implementing Executive Order 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued ''with respect to a national security function of the United States,'' and this rule is, therefore, exempt from the requirements of E.O. 13771.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains the following collections of information subject to the requirements of the PRA. These collections have been approved by OMB under control numbers 0694–0088 (Simplified Network Application Processing System) and 0694–0096 (Five Year Records Retention Period). The approved information collection under OMB control number 0694–0088 includes license applications, among other things, and carries a burden estimate of 29.6 minutes per manual or electronic submission for a total burden estimate of 31,833 hours. The approved information collection under OMB control number 0694–0096 includes recordkeeping requirements and carries a burden estimate of less than 1 minute per response for a total burden estimate of 248 hours.

Although this proposed rule would make important changes to the EAR for items controlled for chemical/biological (CB) reasons, BIS believes the overall increase in costs and burdens due to this rule would be minimal if implemented in a final rule. Specifically, BIS expects the burden hours associated with these collections would increase, slightly, by 7 hours and 39 minutes (*i.e.,* 15 applications × 30.6 minutes per response) for a total estimated cost increase of $230 (*i.e.,* 7 hours and 39 minutes × $30 per hour). The $30 per hour cost estimate for OMB control number 0694–0088 is consistent with the salary data for export compliance specialists currently available through *glassdoor.com* (*glassdoor.com* estimates that an export compliance specialist makes $55,280 annually, which computes to roughly $26.58 per hour). This increase is not expected to exceed the existing estimates currently associated with OMB control numbers 0694–0088 and 0694–0096. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget, by email to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW, Room 2705, Washington, DC 20230 or by email to *RPD2@bis.doc.gov.*

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

4. Pursuant to Section 1762 of the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date. Notwithstanding, BIS believes this rule would benefit from public comment prior to issuance. Consistent with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), BIS has prepared the following initial regulatory flexibility analysis (IRFA) of the impact that this proposed rule, if adopted, would have on small businesses.

Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this proposed rule are discussed in the background section of the preamble of this document and, consequently, are not repeated here.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

The objective of this proposed rule, and any other emerging technology proposed rules published by BIS, is to control emerging and foundational technologies identified by BIS and its interagency partners as being essential to U.S. national security. The legal basis for this proposed rule is as follows: 50 U.S.C. 4801–4852.

No other federal rules duplicate, overlap, or conflict with this proposed rule.

Number and Description of Small Entities Regulated by the Proposed Action

This proposed rule would apply to all persons engaged in the export, reexport or transfer (in-country) of the ''software'' proposed for control under ECCN 2D352 and related ''technology'' subject to the EAR. Presently, this ''software'' and related ''technology'' is used in research and development activities in many U.S. university and military laboratories. Therefore, BIS anticipates that the proposed controls would result in ''deemed'' export license applications (for exports to foreign nationals located within the United States) to allow access to this ''technology'' by foreign students and faculty at U.S. universities, as well as by non-U.S. employees of U.S. biochemical firms. There would most likely also be ''deemed'' reexport license applications for the release of this ''technology'' to third-country foreign nationals located in foreign countries who are engaged in research and development activities involving this ''technology.''

BIS does not collect or maintain the data necessary to determine how many of the affected persons are small entities as that term is used by the Small Business Administration. Prior to issuing this proposed rule, BIS received 36 comments on biotechnology in response to the November 19 ANPRM. None of these commenters specifically identified themselves as small businesses, but small businesses may have chosen to provide input through larger entities, such as trade associations.

However, BIS was able to estimate the number of license applications that the agency anticipates receiving as a result of this proposed rule and is using that estimate as a means of assessing the impact on small businesses. Using the North American Industry Classification System Codes (NAICS) 325414 (Biological Product (except Diagnostic) Manufacturing), BIS determined that the standard small business size in this industry is 1,250 employees. Using Table 1a of the Census Bureau's 2016 Exports by Company Type and Employment Size and extrapolating to 1,250 employees, BIS then estimated that 41% of all identified companies that export in this industry are small businesses. BIS also estimates that it will receive 15 license applications per year for the items described in this proposed rule (see the PRA estimates described in Rulemaking Requirements #2, above). Based on that information, BIS estimates that the agency will receive approximately 6 license applications per year from small businesses, or roughly 41% of the 15 estimated license applications.

In addition, based on the burden estimate for OMB under control numbers 0694–0088 (Simplified Network Application Processing System) and 0694–0096 (Five Year Records Retention Period), BIS expects that the total burden hours for small businesses associated with these EAR-related collections would increase only slightly, by just under 3 hours and 4 minutes (*i.e.,* 6 applications × 30.6 minutes per response), for a total estimated cost increase of just under $92 (*i.e.,* 3 hours and 4 minutes × $30 per hour).

The amendments proposed in this rule, if implemented, also would trigger a small information collection burden under the U.S. Census Bureau's Foreign Trade Regulations (FTR) (15 CFR part 30), which contain the Electronic Export Information (EEI) filing requirements under the Automated Export System (AES). This FTR-related information collection has been approved by OMB under control number 0607–0152 (Automated Export System (AES) Program) and carries a burden hour estimate of 3 minutes per electronic submission. This collection, together with the aforementioned EAR-related information collections, would result in a total estimated cost increase to small businesses of just under $94 (*i.e.,* 3 hours and 7 minutes × $30 per hour). Note that, for purposes of consistency, the $30 per hour cost estimate used for the EAR-related information collections described above is also applied to this FTR-related information collection (which also would involve work performed by export compliance specialists).

Based on the analysis provided above, the amendments proposed in this rule would not impose a significant economic impact on a substantial number of small businesses.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The changes proposed in this rule, if adopted, would mean that certain items currently eligible for export, reexport or transfer (in-country) to most destinations under the No License Required (NLR) designation would require an EAR authorization (*i.e.,* in accordance with the terms and conditions of an EAR license exception or a license issued by BIS). Adding these items to the CCL, to be controlled under a new ECCN 2D352, may also change the export clearance requirements under the FTR for certain exports of these items by triggering an EEI filing requirement in AES—this requirement generally does not apply to items below a certain value that are classified as EAR99.

To the extent that compliance with the changes proposed in this rule would impose a burden on persons, including small businesses, BIS believes the burden would be minimal. The reclassification process would need to be done only once per license applicant for exports, reexports or transfers (in-country) of these emerging technology items and, consequently, would constitute a one-time burden for each applicant. Similarly, assessing the availability of license exceptions and/or applying for and using BIS licenses would impose some minimal burden on persons, including small businesses.

However, it should be noted that these EAR requirements would likely have less impact than might otherwise be the case, because of the resources that BIS makes available to all exporters, including small businesses. Specifically, BIS's website has free on-line training explaining export basics, including instructions on how to register for and use BIS's online license application tool. BIS also provides free export counseling by telephone and email via both its Washington, DC and Western Regional offices. In addition, BIS accepts requests for commodity classifications and processes them without charge to assist those exporters who need assistance in classifying their items for the purpose of determining whether any CCL-based license requirements would apply.

Significant Alternatives and Underlying Analysis

As noted above, BIS does not believe that the amendments proposed in this rule, if published in a final rule, would have a significant economic impact on small businesses. Nevertheless, consistent with 5 U.S.C. 603(c), BIS considered significant alternatives to these proposed amendments to assess whether the alternatives would: (1) Accomplish the stated objectives of this rule (consistent with the emerging technology requirements in ECRA); and (2) minimize any significant economic impact of this rule on small entities. BIS could have proposed a much broader control on ''software'' capable of operating nucleic acid assemblers and synthesizers controlled under ECCN 2B352 that would have captured a greater amount of such ''software'' and related ''technology.'' That in turn would have had a greater impact not only on small businesses, but also on research and development laboratories (both academic and corporate), which are involved in advancing biological technology. BIS has determined that proposing focused controls on specific ''software'' and related ''technology'' (*i.e.,* the ''software'' proposed for control under new ECCN 2D352 and corresponding ''development'' ''technology'' in ECCN 2E001) is the least disruptive alternative for implementing export controls in a manner consistent with controlling technology that has been determined, through the emerging technology interagency process authorized under ECRA, to be essential to U.S. national security.

BIS is not proposing different compliance or reporting requirements for small businesses. If a small business is subject to a compliance requirement for the export, reexport or transfer (in-country) of this ''software'' and related ''technology,'' then it would submit a license application using the same process as any other company (*i.e.,* electronically via SNAP–R). The license application process is free of charge to all entities, including small businesses. In addition, as noted above, the resources and other compliance tools made available by BIS typically serve to lessen the impact of any EAR license requirements on small businesses.

Lastly, consistent with 5 U.S.C. 603(c), BIS assessed the use of performance standards rather than design standards and also considered whether an exemption for small businesses was practical under the circumstances (*i.e.,* within the context of the changes proposed in this rule).

The ''software'' proposed for control under new ECCN 2D352 and related ''technology'' that warrant control under this proposed rule are capable of being used to operate nucleic acid assemblers and synthesizers controlled under ECCN 2B352 for the purpose of generating pathogens and toxins without the need to acquire controlled genetic elements and organisms (*i.e.,* they are capable of being used in the production of biological agents). However, because this ''software'' and related ''technology'' are dual-use items, they also have legitimate commercial and scientific applications. Consequently, controlling this ''software'' and related ''technology'' based on design standards is the most appropriate way to control these items. In the absence of such controls, there may be an unacceptable risk of diversion of these items to biological weapons end-uses.

This proposed rule does not contain an exemption for small businesses from this license requirement, because BIS and its interagency partners are assessing whether these controls are essential to U.S. national security. Specifically, this ''software'' and related ''technology'' could be used for biological weapons purposes and, as such, controlling these items on the CCL is essential to U.S. national security. An exemption for small businesses would undermine the effectiveness of these proposed controls.

Conclusion

BIS has identified the ''software'' and related ''technology'' addressed in this proposed rule as an emerging technology that warrants public notice and comment. Consequently, consistent with the Regulatory Flexibility Act, BIS has prepared this IRFA addressing the impact that this proposed rule, if adopted, would have on small entities. BIS's assessment indicates that the amendments proposed in this rule would not have a significant economic impact on a substantial number of small entities.

Please submit any comments concerning this IRFA in accordance with the instructions provided in the **ADDRESSES** section of this proposed rule.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements, Terrorism.

For the reasons stated in the preamble, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is proposed to be amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 1 to Part 774—[Amended]

■ 2. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2 –Materials Processing,'' ECCN 2D352 is added, immediately following ECCN 2D351, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

2D352 ''Software'' for the operation of nucleic acid assemblers and synthesizers controlled by 2B352.j that is capable of designing and building functional genetic elements from digital sequence data.

License Requirements

Reason for Control: CB, AT

Control(s)	Country chart (see supp. No. 1 to part 738)
CB applies to entire entry.	CB Column 2.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

List of Items Controlled

Related Controls: See ECCN 1E001 for ''development'' or ''production ''technology'' for genetic elements controlled by ECCN 1C353.

Related Definitions: See Section 772.1 of the EAR for the definitions of ''software,'' ''program,'' and ''microprogram.''

Items: The list of items controlled is contained in the ECCN heading.

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–24322 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–122462–20]

RIN 1545–BP97

Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary regulations regarding coverage of preventive health services to implement section 3203 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which shortens the timeframe under which non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage must cover without cost sharing qualifying coronavirus preventive services, including recommended COVID–19 immunizations. The IRS is issuing the temporary regulations at the same time that the Employee Benefits Security Administration of the Department of Labor and the Office of Consumer Information and Insurance Oversight of the Department of Health and Human Services (HHS) are issuing substantially similar interim final rules with request for comments. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 4, 2021.

ADDRESSES: In commenting, please refer to file code CMS–9912–IFC.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9912–IFC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9912–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Dara Alderman, (202) 317–5500, Internal Revenue Service, Department of the Treasury, for issues related to Rapid Coverage of Preventive Services for Coronavirus.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that website to view public comments.

Background and Regulatory Impact Analysis

The temporary regulations published elsewhere in this issue of the **Federal Register** add § 54.9815–2713T to the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations are being published as part of a joint rulemaking with the Department of Labor and HHS. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and provides a regulatory impact analysis.

Drafting Information

The principal author of this notice of proposed rulemaking is Dara Alderman, Office of the Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the Department of Labor and HHS.

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Par. 1.** The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

Section 54.9815–2713 also issued under 26 U.S.C. 9833;

* * * * *

■ 2. Section 54.9815–2713 is revised to read as follows:

§ 54.9815–2713 Coverage of preventive health services.

[The text of proposed § 54.9815–2713 is the same as the text of § 54.9815–2713T published elsewhere in this issue of the **Federal Register**].

Sunita Lough,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

[FR Doc. 2020–24338 Filed 11–5–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–PIRO–29724; PPMWPIRON0 PPMRSNR1Z.Y00000 200P103601]

RIN 1024–AE53

Pictured Rocks National Lakeshore; Snowmobiles

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to amend its special regulations for Pictured Rocks National Lakeshore to clarify where snowmobiles may be used within the boundaries of the Lakeshore by naming several snowmobile routes that are not currently identified. The proposed rule would replace general language allowing snowmobiles on unplowed roads and the shoulders of plowed roads with a comprehensive list of designated snowmobile routes. The proposed changes would provide greater certainty to the public by removing ambiguity in the current regulations about where snowmobiles are allowed. The use of snowmobiles within areas of the National Park System is prohibited except on routes and water surfaces designated by special regulation.

DATES: Comments must be received by January 5, 2021.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE53, by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Deliver to:* N8391 Sand Point Road, P.O. Box 40, Munising, Michigan 49862–0040.

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words ''National Park Service'' or ''NPS'' and must include the docket number or RIN (1024–AE53) for this rulemaking. Comments received may be posted without change to *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David Horne, Superintendent, Pictured Rocks National Lakeshore, (906) 387–2607 ext 1202, *david_horne@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Significance of the Lakeshore

Colorful sandstone cliffs tower 50 to 200 feet above the vast and glistening fresh water of Lake Superior. Deep shoreline forests open onto sparking inland lakes, gurgling streams, and waterfalls. Sand dunes perch atop miles of high sand bluffs and unspoiled beaches. Beaver-chewed tree stumps, a raven's nest balanced high on a rocky ledge, and cloven deer tracks imprinted in the mud hint at the abundance of wildlife that inhabit the beautiful and diverse landscape. These features create the spectacular setting that is Pictured Rocks National Lakeshore. Congress established this location as the country's first national lakeshore in 1966 to preserve the shoreline, cliffs, beaches, and dunes, and to provide an extraordinary place for recreation and discovery. Little more than 6 miles across at its widest point, the Lakeshore hugs Lake Superior's shoreline for nearly 40 miles. The Lakeshore consists of two zones: The Lakeshore Zone, federal land managed by the National Park Service (NPS); and the Inland Buffer Zone, a mixture of federal, state, and private land. Together these zones encompass nearly 73,000 acres of protected land and water that stretch from Munising to Grand Marais, Michigan. Attractions at the Lakeshore include a lighthouse and former Coast Guard stations, along with old farmsteads and orchards. The Lakeshore is a year-round recreational destination where hiking, camping, hunting, nature study, and winter activities abound.

NPS Management Authority Over Snowmobile Use

The NPS manages the Lakeshore under the NPS Organic Act (54 U.S.C. 100101 *et seq.*), which gives the NPS broad authority to regulate the use of the lands and waters under its jurisdiction. The Organic Act authorizes the Secretary of the Interior, acting through the NPS, to ''make and publish such regulations the Secretary considers necessary or proper for the use and management of [National Park] System units.'' In the Lakeshore's enabling act, Congress directed the Secretary of the Interior, acting through the NPS, to preserve the Lakeshore for the benefit, inspiration, education, recreational use, and enjoyment of the public. 16 U.S.C. 460s.

Executive Order 11644, ''Use of Off-Road Vehicles on the Public Lands,'' issued in 1972 and amended by Executive Order 11989 in 1977, requires federal agencies to issue regulations for the designation of specific areas and routes on public lands where off-road vehicles, including snowmobiles, may be used. The NPS implemented the Executive Order as it relates to snowmobiles in 36 CFR 2.18. Under 36 CFR 2.18(c), the use of snowmobiles is prohibited, except on designated routes and water surfaces used by motor vehicles or motorboats during other seasons. These routes and water surfaces must be designated by special regulation and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; and park management objectives; and will not disturb wildlife or damage park resources.

Executive and Secretarial Priorities

On February 24, 2017, President Trump issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' This Executive Order established a regulatory reform initiative to alleviate unnecessary regulatory burdens placed on the American people. As part of the Department of the Interior's approach for implementing this initiative, the NPS is reviewing its regulations in order to identify those that should be repealed, replaced, or modified. These include regulations that are outdated or unnecessary. The NPS has identified the special regulations for the Lakshore relating to snowmobiles as appropriate for modification under Executive Order 13771 for the reasons explained below.

On April 18, 2018, the Secretary of the Interior signed Secretary Order 3366, ''Increasing Recreational Opportunities on Lands and Waters Managed by the U.S. Department of the Interior.'' This Order directed all Department bureaus, including the NPS, to review their regulations in order to increase existing recreational opportunites. The NPS expects the proposed rule to make the public aware of recreational opportunities at the Lakeshore by naming several snowmobile routes in the special regulation that are not currently identified.

Management of Snowmobiles at the Lakeshore

Snowmobiling is a popular activity in and around the Lakeshore. In the winter, a number of unplowed roads lead to major points of interest, particularly the rock formations at Miners Castle and the tall dunes at Log Slide. Existing special regulations for the Lakeshore at 36 CFR 7.32 allow snowmobiles on the frozen waters of Lake Superior and Grand Sable Lake. They also state that snowmobiles are allowed on the major visitor use roads that are unplowed, or on road shoulders of plowed roads. Snowmobiles are prohibited elsewhere in the Lakeshore, including cross-country travel and travel on non-motorized trails. After this general statement about where snowmobiles are allowed in the Lakeshore, the special regulations list nine ''designated snowmobile routes'' that are roads used by motor vehicles during other seasons.

In 2018, the NPS met with the Alger Road County Commission about rerouting a snowmobile route from an unplowed, paved county road (County Highway H–58) to an unplowed, scenic dirt road, part of which runs through the Lakeshore. During this meeting, the NPS recognized that although there is a general designation in the special regulations allowing snowmobiles on all unplowed roads within the Lakeshore, the rerouted trail was not on the list of designated snowmobile routes. This led to a discussion about whether the special regulations for the Lakeshore could be revised, consistent with the purposes of Executive Order 13771 and Secretary's Order 3366, to identify, for the benefit of the public, each route within the Lakeshore where snowmobiles are allowed. This would remove ambiguity in the existing regulations about whether snowmobiles are allowed on unplowed roads or the shoulders of plowed roads that are not identified in the list of ''designated snowmobile routes.'' This would also bring the special regulations for the Lakeshore into full compliance with 36 CFR 2.18, which requires that snowmobiles routes be promulgated as special regulations. Clarifying where snowmobiles are allowed would have the added benefit of making it easier for NPS law enforcement officers to enforce the prohibition of snowmobile use off designated routes. This will help the NPS meet its statutory mandates to preserve the resources of the Lakeshore.

Proposed Rule

This proposed rule would revise the special regulations for the Lakeshore at 36 CFR 7.32 to identify all routes and water surfaces within the Lakeshore where snowmobiles may be used. Some of these routes are already identified in the special regulations in paragraphs (a)(1)(i)–(ix) and would remain as designated routes. Other routes are not identified in the special regulations and would be added in paragraphs (a)(1)(x)–(xv). All designated routes would be roads used by motor vehicles during other seasons. If a route is plowed, the proposed rule would limit snowmobiles to road shoulders consistent with existing regulations. The proposed rule would continue to identify the frozen waters of Lake Superior and Grand Sable Lake as open to snowmobiles under redesignated paragraph (a)(1)(xvi). These waters are open to motorboats during other seasons.

The proposed rule would remove the general designation of all unplowed roads and shoulders of plowed roads to make it clear that if a location is not on the list of designated routes and water surfaces, snowmobiles are prohibited. The NPS does not expect these changes to affect visitor use patterns within the Lakeshore because the NPS already allows snowmobiles on the unplowed roads and shoulders of plowed roads consistent with the general designation in the special regulations. The public may become aware of legal snowmobile routes that are not listed in the existing special regulations which could lead to increased recreation and access. On the other hand, the public may become aware that snowmobiles are not allowed in locations where before it had been unclear. The NPS expects these circumstances to be exceptional and not notable consequences of the proposed rule. The goal of the proposed changes is to provide the public with simple and easy-to-understand rules about snowmobile use that minimize the potential for uncertainty.

The proposed rule also would state that the Superintendent may open or close designated routes and water surfaces, or portions thereof, to snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public

safety, and other factors. The proposed rule would require the Superintendent to notify the public of any such actions using one or more of the methods in 36 CFR 1.7(a).

Finally, the proposed rule would make minor changes to the descriptions of three routes that are already designated in the special regulations. In paragraph (a)(1)(v), the proposed rule would fix a typo by replacing the term ''Country Road'' with the term ''County Road.'' In paragraphs (a)(1)(viii) and (a)(1)(ix), the proposed rule would clarify that the designated roads no longer go directly to the Log Slide, and instead terminate at the Log Slide parking area.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has waived review of this proposed rule and, at the final rule stage, will make a separate decision as to whether the rule is a significant regulatory action as defined by Executive Order 12866.

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

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This proposed rule is not an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

The proposed rule would modify special regulations for the Lakeshore to designate snowmobile routes on roads and water surfaces that are used by motor vehicles or motorboats during other seasons. For the reasons explained above, the proposed rule is administrative in nature and not expected to change visitor use patterns at the Lakeshore because the NPS would not be allowing any new uses. The costs and benefits of a regulatory action are measured with respect to its existing baseline conditions. No changes are anticipated compared to baseline conditions because this regulatory action is administrative in nature with the intent to clarify existing regulations. In addition, this action will not impose restrictions on local businesses in the form of fees, training, record keeping, or other measures that would increase costs. Given those findings, this proposed regulatory action will not impose a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This proposed rule would not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This proposed rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

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

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the proposed rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This proposed rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969

(NEPA) is not required because the proposed rule is covered by a categorical exclusion. The NPS has determined the proposed rule is categorically excluded under NPS NEPA Handbook 2015 Section 3.3(A)(8) because this proposed rule revises existing regulations for the Lakeshore in a manner that would not (i) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it; (ii) introduce noncompatible uses that might compromise the nature and characteristics of the area or cause physical damage to it; (iii) conflict with adjacent ownerships or land uses; or (iv) cause a nuisance to adjacent owners or occupants. The NPS has also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10–137 and D.C. Code 50–2201.07.

■ 2. Amend § 7.32 by:
■ a. Revising the introductory text of paragraph (a)(1).
■ b. Revising paragraphs (a)(1)(v), (a)(1)(viii), and (a)(1)(ix).
■ c. Redesignating paragraph (a)(1)(x) as paragraph (a)(1)(xvi).
■ d. Adding paragraphs (a)(1)(x) through (a)(1)(xv).
■ e. Revising newly redesignated paragraph (a)(1)(xvi).
■ f. Revising paragraph (a)(3).
■ g. Adding paragraph (a)(4).

The revisions and additions to read as follows:

§ 7.32 Pictured Rocks National Lakeshore.

(a) * * *

(1) Snowmobiles are allowed on the following routes and water surfaces within Pictured Rocks National Lakeshore:

* * * * *

(v) The road from County Road H–58 at the park boundary to the Little Beaver Lake Campground.

* * * * *

(viii) The road from County Road H–58 to the Log Slide parking area.

(ix) The section of Michigan Dimension Road from the park boundary to the Log Slide parking area.

(x) The South Grand Sable Lake Road, starting at Towes Creek (T49N, R14W, Sections 14 and 23), heading south in and out of the fee zone area.

(xi) Portions of County Road H–58 that are within park boundaries between Twelvemile Beach and Log Slide scenic overlook (T49N, R15W, Sections 9, 10, 11, 13, 14, and 16 and T49, 14W, Section 18).

(xii) Portions of County Road H–58 that are within park boundaries between Log Slide Scenic Overlook and the Grand Sable Visitor Center (T49N, R14W, Sections 10, 11, 15, 16, and 17).

(xiii) County Road H–58 between Grand Sable Visitor Center to the eastern extent of the park boundary (T49N, R14W, Sections 1, 11, and 12).

(xiv) Portions of Lowder Road that are within park boundaries from M77 to Grand Sable Lake Boat Ramp (T48N, R16W, Sections 21 and 29).

(xv) Portions of Beaver Basin Overlook Road from County Road H–58 to the Beaver Basin Overlook (T49N, R14W, Sections 11, and 12).

(xvi) The frozen water surfaces of Lake Superior and Grand Sable Lake.

* * * * *

(3) Snowmobile use outside designated routes and frozen water surfaces is prohibited. Snowmobiles are restricted to the road shoulders of routes that are plowed. The prohibitions in this paragraph do not apply to emergency administrative travel by employees of the National Park Service or law enforcement agencies.

(4) The Superintendent may open or close these routes and water surfaces, or portions thereof, to snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–24545 Filed 11–5–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ31

Elimination of Copayment for Opioid Antagonists and Education on Use of Opioid Antagonists

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its

medical regulations that govern copayments to conform with recent statutory requirements. VA would be eliminating the copayment requirement for opioid antagonists furnished to veterans who are at high risk of overdose of a specific medication or substance in order to reverse the effect of such an overdose. VA would also clarify that no copayment would be required for the provision of education on the use of opioid antagonists. This proposed rule would be an essential part of VA's attempts to help veterans at high risk of overdose.

DATES: Comments must be received on or before January 5, 2021.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Director of Policy and Planning. 3773 Cherry Creek North Drive, Denver, CO 80209. (303) 370–1637. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In an effort to reduce the incidence of overdose among the veteran population, Congress, in two separate statutes, has required that VA must exempt from co-payment (1) opioid antagonists furnished under chapter 17 to a veteran who is at high risk for overdose of a specific medication or substance in order to reverse the effect of such an overdose, and (2) education on the use of opioid antagonists to reverse the effects of overdoses of specific medications or substances. See Public Law 114–198, sec. 915 (July 22, 2016) and Public Law 114–223, sec. 243 (Sept. 29, 2016). These provisions were effective upon enactment and have already been implemented. These provisions assist veterans by eliminating copayments for life-saving medication and education on the use of such medication, with the goal of reducing the incidence of overdose deaths among the veteran population. This proposed rule would amend two of VA's copayment regulations, 38 CFR 17.108 and 17.110, to accurately implement these changes in law. This proposed rule would also add an explanation of how VA would identify a veteran at high risk for overdose under the new provisions.

17.108 Copayments for Inpatient Hospital Care and Outpatient Medical Care

Section 17.108 establishes the copayment amounts for inpatient hospital care and outpatient medical care. Paragraph (e) lists the types of services that are exempt from the inpatient hospital care and outpatient medical care copayment. We are proposing to add a new paragraph (e)(18) to implement the laws described above. Under paragraph (e)(18), we clarify that VA will not charge a copayment for an outpatient medical care visit that is solely for education on the use of opioid antagonists to reverse the effects of overdoses of specific medications or substances. We note that while VA is not currently charging copayments for education on the use of opioid antagonists (in accordance with Pub. L. 114–198), codifying this in regulation will help ensure this policy continues to be followed. We also propose two minor conforming technical amendments to paragraphs (e)(16) and (e)(17) in section 17.108.

17.110 Copayments for Medication

Section 17.110 establishes the copayment amount for medications. Paragraph (c) lists the medications that are not subject to the copayment requirement. To implement section 915 of the Public Law 114–198, we propose adding a new paragraph (c)(12) to state that VA will not charge a copayment for opioid antagonists furnished to a veteran who is at high risk for overdose of a specific medication or substance in order to reverse the effect of such an overdose. In paragraph (c)(12), we would also incorporate a definition of a high risk veteran for overdose for the purposes of this proposed rule. The proposed definition specifies that VA considers a high risk veteran for overdose to be a veteran who is prescribed or using opioids or has an opioid use history, and who is at increased risk for opioid overdose as determined by VA or whose provider deems, based on their clinical judgment, that the veteran may benefit from ready availability of an opioid antagonist. We would also provide the following examples of a veteran who is at high risk for overdose of a specific medication or substance in order to reverse the effect of such an overdose: A veteran with an opioid or substance use disorder diagnosis; a veteran receiving treatment for an opioid or substance use disorder diagnosis, such as receiving opioid agonist therapy or inpatient, residential, or outpatient treatment for such diagnosis, or attending a support group for such diagnosis; a veteran with a history of prescription opioid misuse or injection opioid use; a veteran with a history of previous opioid overdose; a veteran who is taking an extended-release or long-acting prescription opioid; a veteran with household or community access to opioids who is at increased risk for overdose (*e.g.,* psychiatric disorder or high risk for suicide) as determined by VA; a veteran predicted to be at high risk for overdose based on standardized assessments or predictive models (*e.g.,* Risk Index for Overdose or Serious Opioid-induced Respiratory Depression [RIOSORD], Stratification Tool for Opioid Risk Mitigation [STORM]); and a veteran in any of the aforementioned groups with a period of abstinence from opioids (*e.g.,* due to treatment, detoxification, incarceration) as loss of tolerance can increase risk for overdose. This definition is necessary for VA to implement Public Laws 114–198 and 114–223. Public Laws 114–198 and 114–223 do not define a veteran who is at high risk for overdose of a specific medication or substance in order to reverse the effect of such an overdose; however, providing a definition will facilitate the identification of such veterans. Early identification of these veterans can facilitate provision of life-saving opioid antagonist medication.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies this proposed rule would 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. The adoption of the rule would not directly affect any small entities. There are no small entities involved with VA's process and/or adjustment of Veterans copayments for medications/services. The provisions of this rulemaking only apply to the internal operations of VA. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563, and 13771

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. The Office of Information and Regulatory Affairs has determined that this rule is not 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 website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

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 proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this proposed rule are as follows: 64.009, Veterans Medical Care Benefits; 64.012, Veterans Prescription Service; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.041, VHA Outpatient Specialty Care; 64.045, VHA Outpatient Ancillary Services; 64.047, VHA Primary Care; 64.048, VHA Mental Health Clinics.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, 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, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

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. Brooks D. Tucker, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on October 29, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as set forth below:

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.

* * * * *

■ 2. Amend § 17.108 by revising paragraphs (e)(16) and (17) and adding (e)(18) to read as follows:

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

* * * * *

(e) * * *

(16) In-home video telehealth care;

(17) Mental health peer support services; and

(18) An outpatient care visit solely for education on the use of opioid antagonists to reverse the effects of overdoses of specific medications or substances.

* * * * *

■ 4. Amend § 17.110 by adding a new paragraph (c)(12) to read as follows:

§ 17.110 Copayments for medication.

* * * * *

(c) * * *

(12) Opioid antagonists furnished to a veteran who is at high risk for overdose of a specific medication or substance in order to reverse the effect of such an overdose.

(i) For purposes of this paragraph (c)(12), a veteran who is at high risk for overdose of a specific medication or substance in order to reverse the effect of such an overdose is a veteran:

(A) Who is prescribed or using opioids, or has an opioid use history, and who is at increased risk for opioid overdose as determined by VA; or

(B) Whose provider deems, based on their clinical judgment, that the veteran may benefit from ready availability of an opioid antagonist.

(ii) Examples of a veteran who is at high risk for overdose of a specific medication or substance in order to reverse the effect of such an overdose include, but are not limited to, the following:

(A) A veteran with an opioid or substance use disorder diagnosis;

(B) A veteran receiving treatment for an opioid or substance use disorder diagnosis, such as receiving opioid agonist therapy or inpatient, residential, or outpatient treatment for such diagnosis, or attending a support group for such diagnosis;

(C) A veteran with a history of prescription opioid misuse or injection opioid use;

(D) A veteran with a history of previous opioid overdose;

(E) A veteran who is taking an extended-release or long-acting prescription opioid;

(F) A veteran with household or community access to opioids who is at increased risk for overdose (*e.g.,* psychiatric disorder or high risk for suicide) as determined by VA; or

(G) A veteran predicted to be at high risk for overdose based on standardized assessments or predictive models (*e.g.,* Risk Index for Overdose or Serious Opioid-induced Respiratory Depression [RIOSORD]; Stratification Tool for Opioid Risk Mitigation [STORM]).

Note 1 to paragraph (c)(12). The examples in § 17.110(c)(12)(ii)(A) through (G) apply even if the veteran has had a period of abstinence from opioids (*e.g.,* due to treatment, detoxification, incarceration) because loss of tolerance can increase the risk for an overdose.

* * * * *

[FR Doc. 2020–24370 Filed 11–5–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0321; FRL–10016–33–Region 5]

Air Plan Approval; Michigan; Partial Approval and Partial Disapproval of the Detroit SO_2 Nonattainment Area Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the comment period for a proposed revision to the Michigan State Implementation Plan (SIP) published September 18, 2020. Sierra Club requested additional time to provide comments; therefore, EPA is reopening the comment period for 28 days from the close of the previous comment period.

DATES: The comment period for the proposed rule published on September 18, 2020 (85 FR 58315), is reopened. Comments must be received on or before November 16, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0321 at *http://www.regulations.gov,* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *Arra.Sarah@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19.

SUPPLEMENTARY INFORMATION: On September 18, 2020 (85 FR 58315), EPA proposed to partially approve and partially disapprove a revision to the Michigan SIP for attaining the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standard (NAAQS) for the Detroit SO_2 nonattainment area. This SIP revision includes Michigan's attainment demonstration and other elements required under the Clean Air Act (CAA). EPA proposed to approve the base year emissions inventory, and to affirm that the nonattainment new source review requirements for the area have been met. EPA proposed to disapprove the attainment demonstration, as well as the requirements for meeting reasonable further progress toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology, and contingency measures. Finally, EPA proposed to disapprove the plan's control measures for two facilities as not demonstrating attainment, and proposed to approve the enforceable control measures for two facilities as SIP strengthening. The comment period closed on October 19, 2020. On October 9, 2020, EPA received a request from the Sierra Club to extend the comment period for four weeks from the end of the comment period.

Dated: November 2, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–24759 Filed 11–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R08–OAR–2020–0098; FRL–10016–53–Region 8]

Approval and Promulgation of Implementation Plans; State of Utah; Salt Lake City and Provo, Utah $PM_{2.5}$ Redesignations to Attainment and Utah State Implementation Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing the redesignation of the Salt Lake City, Utah and Provo, Utah nonattainment areas (NAAs) to attainment for the 2006 24-hour fine particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 microns ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS), and also acting on multiple related State Implementation Plan (SIP) submissions. We are proposing to approve SIP revisions submitted by the State of Utah on January 19, 2017; April 19, 2018; February 4 and 15, 2019; and January 13, May 21, and July 21, 2020. These SIP submissions include revisions to Utah Administrative Code (UAC) Sections R307–110, R307–200, and R307–300 Series; revisions to Utah SIP Sections X.B and E; revisions to Utah SIP Sections IX.H.11, 12, and 13; best available control measures/best available control technologies (BACM/BACT) $PM_{2.5}$ determinations for Salt Lake City and Provo; maintenance plans for the Salt Lake City and Provo areas for $PM_{2.5}$; and the request for redesignation under the 2006 24-hour $PM_{2.5}$ standard. Additionally, the EPA is proposing to approve, through parallel processing, a request to remove startup and shutdown emission limits for Kennecott's Power Plant in the Utah SIP and the accompanying R307–110–17 revisions (draft dated October 9, 2020). The EPA is taking this action pursuant to the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before December 7, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2020–0098, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available

electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

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

I. Background

A. Statutory and Regulatory Background for EPA's Regulation of $PM_{2.5}$

Under section 109 of the Act, the EPA has promulgated NAAQS for certain pollutants, including $PM_{2.5}$ (40 CFR 50.2(b)). Once the EPA promulgates a NAAQS, section 107 of the Act specifies a process for the designation of each area within a state, generally as either an attainment area (an area attaining the NAAQS) or as a NAA (an area not attaining the NAAQS, or that contributes to nonattainment of the NAAQS in a nearby area). For $PM_{2.5}$, certain areas have also been designated ''unclassifiable.'' These various designations, in turn, trigger certain state planning requirements.

For all areas, regardless of designation, section 110 of the Act requires that each state adopt and submit for EPA approval a plan to provide for implementation, maintenance, and enforcement of the NAAQS. This plan is commonly referred to as a SIP. Section 110 contains requirements that a SIP must meet to gain EPA approval.[1] For NAAs, SIPs must meet additional requirements in part D of Title I of the Act. Usually, SIPs include measures to control emissions of air pollutants from various sources, including stationary, mobile, and area sources. For example, a SIP may specify emission limits at power plants or other industrial sources.

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On October 17, 2006 (71 FR 61144), the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS, lowering the primary and secondary standards from the 1997 standard of 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. On November 13, 2009 (74 FR 58688), the EPA designated three NAAs in Utah for the 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$. These are the Salt Lake City; Provo; and Logan, Utah-Idaho NAAs.

The EPA originally issued a rule in 2007 [3] regarding implementation of the 2006 24-hour $PM_{2.5}$ NAAQS for the NAA requirements specified in CAA title I, part D, subpart 1. Under subpart 1, Utah was required to submit an attainment plan for each area no later than three years from the date of nonattainment designation. These plans needed to provide for the attainment of the $PM_{2.5}$ standards as expeditiously as practicable, but no later than five years from the date the areas were designated nonattainment.

In 2013, the U.S. Court of Appeals for the District of Columbia held that the EPA should have implemented the 2006 $PM_{2.5}$ 24-hour standards, as well as the other $PM_{2.5}$ NAAQS, based on both subpart 1 and subpart 4 of CAA title I, part D.[4] Under subpart 4, all NAAs are initially classified as Moderate, and Moderate area attainment plans must address the requirements of subpart 4 as well as subpart 1. Additionally, subpart 4 sets a different SIP submittal due date and attainment year. For a Moderate area, the attainment SIP is due 18 months after designation and the attainment year is as expeditiously as practicable, but no later than the end of the sixth calendar year after designation.

On June 2, 2014 (79 FR 31566), the EPA finalized the Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 24-hour $PM_{2.5}$ NAAQS. This rule classified as Moderate the areas that were designated in 2009 as nonattainment and set the attainment SIP submittal due date for those areas at December 31, 2014. Additionally, this rule established the Moderate area attainment date of December 31, 2015.

When an area is designated as a Moderate NAA under subpart 1 and subpart 4, the CAA requires the State to submit the following Moderate area SIP elements:

1. A comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area (CAA section 172(c)(3)).

2. Provisions to assure that reasonably available control measures (RACM), including reasonably available control technologies (RACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the area is designated (CAA sections 172(c)(1) and 189(a)(1)(C)).

3. A demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than the Moderate area attainment date (CAA section 188(c)(1).

4. Plan provisions that require reasonable further progress (RFP) (CAA section 172(c)(2)).

5. Quantitative milestones, which are to be achieved every three years until the area is redesignated to attainment,

[1] EPA's approval of a SIP has several consequences. For example, after the EPA approves a SIP, the EPA and citizens may enforce the SIP's requirements in federal court under section 113 and section 304 of the Act; in other words, the EPA's approval of a SIP makes the SIP ''federally enforceable.'' Also, once the EPA has approved a SIP, a state cannot unilaterally change the federally enforceable version of the SIP. Instead, the state must first submit a SIP revision to the EPA and gain EPA's approval of that revision.

[2] EPA's approval of a SIP has several consequences. For example, after the EPA approves a SIP, the EPA and citizens may enforce the SIP's requirements in federal court under section 113 and section 304 of the Act; in other words, the EPA's approval of a SIP makes the SIP ''federally enforceable.'' Also, once the EPA has approved a SIP, a state cannot unilaterally change the federally enforceable version of the SIP. Instead, the state must first submit a SIP revision to the EPA and gain EPA's approval of that revision.

[3] 72 FR 20586 (Apr. 25, 2007).

[4] *Nat. Res. Def. Council* v. *EPA,* 706 F.3d 428, 437 (D.C. Cir. 2013) (*NRDC*).

and which demonstrate RFP toward attainment by the applicable date. The State is required to submit, not later than 90 days after the date on which a milestone applicable to the area occurs, a demonstration that all measures in the approved SIP have been implemented and the milestone has been met. These submissions are referred to as ''quantitative milestone reports.'' (CAA section 189(c)).

6. Provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the State demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area (CAA section 189(e)).

7. Contingency measures to be implemented if the area fails to meet RFP or fails to attain by the applicable attainment date (CAA section 172(c)(9)).

8. A revision to the Nonattainment New Source Review (NNSR) program to set the applicable ''major stationary source'' thresholds to 100 tons per year (tpy) (CAA section 302(j)).

Moderate area 2006 24-hour $PM_{2.5}$ plans must also satisfy the general requirements applicable to all SIP submissions under section 110 of the CAA, including the requirement to provide necessary assurances that the implementing agencies have adequate personnel, funding, and authority under CAA section 110(a)(2)(E), and the requirements concerning enforcement in CAA section 110(a)(2)(C).

On August 24, 2016 (81 FR 58010), the EPA finalized the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (''$PM_{2.5}$ Requirements Rule''), which partially addressed the 2013 *NRDC* decision. The final $PM_{2.5}$ Requirements Rule details how air agencies can meet the SIP requirements under subparts 1 and 4 that apply to areas designated nonattainment for any $PM_{2.5}$ NAAQS, such as: General requirements for attainment plan due dates and attainment demonstrations; provisions for demonstrating RFP; quantitative milestones; contingency measures; NNSR permitting programs; and RACM (including RACT). The statutory attainment planning requirements of subparts 1 and 4 were established to ensure that the following goals of the CAA are met: (i) That states implement measures that provide for attainment of the $PM_{2.5}$ NAAQS as expeditiously as practicable; and (ii) that states adopt emissions reduction strategies that will be the most effective at reducing $PM_{2.5}$ levels in NAAs.

If an area is reclassified from Moderate to Serious, the area will then be subject to Serious $PM_{2.5}$ CAA requirements. Serious area $PM_{2.5}$ requirements are the same as those listed above for Moderate areas, except that BACM and BACT are required instead of RACM and RACT, the NNSR permit threshold drops to 70 tons, and the relevant attainment date is the Serious area attainment date (CAA section 188(c)(2). Serious area $PM_{2.5}$ plans must also satisfy the Moderate $PM_{2.5}$ requirements discussed above, and the general requirements applicable to all SIP submissions under section 110 of the CAA, including the requirement to provide necessary assurances that the implementing agencies have adequate personnel, funding and authority under CAA section 110(a)(2)(E) and the requirements concerning enforcement in CAA section 110(a)(2)(C).

B. Utah's $PM_{2.5}$ Attainment Status and SIP Development

After the November 13, 2009 designation of nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS, Utah developed draft $PM_{2.5}$ attainment plans intended to meet the requirements of subpart 1. The EPA submitted written comments dated November 1, 2012, to UDAQ on the draft $PM_{2.5}$ SIP, technical support document (TSD), area source rules, and point source rules in Section IX, Part H.[5] Utah submitted revised 2006 24-hour $PM_{2.5}$ attainment plans for the Salt Lake City and Provo NAAs on December 14, 2012.

After the court's 2013 decision, Utah amended its attainment plans to address the requirements of subpart 4. On December 2, 2013, and October 30, 2014, the EPA provided comments on Utah's revised draft 2006 24-hour $PM_{2.5}$ SIPs, including the TSD and emissions limits in Section IX, Part H. On December 16, 2014, UDAQ withdrew all prior Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ Moderate SIP attainment plan submissions and submitted a subpart 1 and subpart 4 Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ Moderate SIP. Additionally, the State of Utah submitted various revisions to the UAC Title R307 (Environmental Quality) area source rules in multiple submissions: February 2, 2012; May 9, 2013; June 8, 2013; February 18, 2014; April 17, 2014; May 20, 2014; July 10, 2014; and August 6, 2014. These area source rules were either new or revised to meet RACM/RACT for the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ SIPs. The EPA acted on these submittals, along with the area source rule revisions in the December 16, 2014 submission, on February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988), October 2, 2019 (84 FR 52368), and February 26, 2020 (85 FR 10989).

On January 19, 2017, the State of Utah submitted revisions to their Part H.11, 12, and 13 emission limits section of the Utah 2006 24-hour $PM_{2.5}$ SIP and revises R307–110–17. R307–110–17 incorporates by reference (IBR) Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits; which formally incorporates the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ Part H.11, 12, and 13 emission limits into Utah's state regulations. This was undertaken by UDAQ to correlate any overlapping limits between the 2006 24-hour $PM_{2.5}$ Part H.11, 12, and 13, to the coarse particulate matter (PM_{10}) Part H.1, 2, 3, and 4.

On May 10, 2017 (82 FR 21711), the EPA published a final rule reclassifying the Salt Lake City and Provo areas to ''Serious'' nonattainment status, based on the EPA's determination that the areas could not practicably attain the 2006 24-hour $PM_{2.5}$ standards by the December 31, 2015 attainment date. This reclassification became effective on June 9, 2017. The reclassification was based on the EPA's evaluation of ambient air quality data from the 2013–2015 period, indicating that it was not practicable for some of the monitoring sites in the Salt Lake City and Provo areas to show $PM_{2.5}$ design values at or below the level of the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2015.

On March 23, 2018, the State of Utah submitted quantitative milestone reports for the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ NAAs, meeting its due date of no later than 90 days after the December 31, 2017 milestone date. On October 24, 2018, the EPA determined that the 2017 quantitative milestone reports for the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ NAAs were adequate.[6]

After the Serious reclassification, UDAQ revised certain area source rules in UAC Section R307–200 and R307–300 Series and submitted these revisions on April 19, 2018, May 21, 2020, and July 21, 2020. On February 4,

[5] An ''area source'' is ''any small residential, governmental, institutional, commercial, or industrial fuel combustion operation; onsite solid waste disposal facility; motor vehicle], aircraft vessel or other transportation facilit[y] or other miscellaneous source identified'' through specified inventory techniques. 40 CFR 51.100(l). A ''point source'' is any stationary source emitting above certain thresholds. 40 CFR 51.100(k).

[6] The state's quantitative milestone reports and the adequacy determination letter from the EPA Administrator to the Governor of Utah are in the docket for this action.

2019, the State of Utah submitted the BACM/BACT analysis for the Provo Serious 2006 24-hour $PM_{2.5}$ NAA, which is based on the emission limits submitted on January 19, 2017 for only Part H.13. On February 15, 2019, Utah submitted the Serious 2006 24-hour $PM_{2.5}$ SIP for the Salt Lake City NAA, which included revisions to Utah SIP Part H.11 and 12, and the accompanying BACM/BACT analysis. The February 4, 2019 and February 15, 2019 submissions included BACM/BACT analyses for on-road, off-road, and area source rules; some of these area source rules were revised and others were deemed BACM/BACT without revising. Our detailed discussion on the intricacies of these submissions can be found in Section II.B below of this document.

Applying the Clean Data Policy,[7] on April 10, 2019 (84 FR 14267) and September 27, 2019 (84 FR 51055), the EPA finalized determinations that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the Provo and Salt Lake City areas, respectively, as Moderate NAAs and their subsequent reclassification as Serious NAAs for the 2006 24-hour $PM_{2.5}$ NAAQS does not apply for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.[8] The attainment-related SIP revisions that were suspended include the requirements for the State to submit: An attainment demonstration (Moderate and Serious), provisions demonstrating timely implementation of RACM/RACT (Moderate), an RFP plan (Moderate and Serious), quantitative milestones and quantitative milestone reports (Moderate and Serious), and contingency measures (Moderate and Serious). The only remaining SIP elements for EPA action include baseline emission inventories, NNSR, and BACM/BACT. Our review of these remaining elements is in Section II.B below of this document and in our TSD found in the docket.

On October 9, 2020, the State of Utah submitted draft revisions to Kennecott's Power Plant startup/shutdown emission limits in Subsection IX.H.12.i.i.C. in Utah's SIP and revisions to R307–110–17, for the EPA to act on as a parallel process. UDAQ's BACM/BACT analysis submitted on February 15, 2019 for this source did not support these limits; therefore, UDAQ proposed with the October 9, 2020 draft revision to remove these limits. The parallel process is generally described in more detail in Section I.E below.

C. Redesignation Requests and Related Requirements

For a NAA to be redesignated to attainment, the following conditions in section 107(d)(3)(E) of the CAA must be met:

1. We must determine that the area has attained the NAAQS;
2. The applicable implementation plan for the area must be fully approved under section 110(k) of the Act;
3. We must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;
4. We must fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and
5. The state containing the area must meet all requirements applicable to the area under section 110 and part D of the CAA.

Our September 4, 1992 guidance entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (referred to in this action as the Calcagni Memorandum) outlines how to assess the adequacy of redesignation requests against the conditions listed above.

On January 13, 2020, the Governor of Utah submitted revisions to the SIP for R307–110–10, maintenance plans for the Salt Lake City (Utah SIP Section IX.A.36) and Provo (Utah SIP Section IX.A.27) areas, and a request that the EPA redesignate the areas to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. R307–110–10 IBRs Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter; which formally incorporates the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ Maintenance Plans (located within the Utah SIP at Sections IX.A.36 and 27, respectively) into Utah's state regulations. In Section II.C below, we discuss our review of UDAQs maintenance plans and redesignation requests for the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ NAAs.

D. SIP Submissions Supporting the Redesignation Request

Vehicle I/M programs help improve air quality by identifying cars and trucks with high emissions and that may need repairs. Owners or operators of vehicles with high emissions are notified to make any repairs so that emissions are within legal limits. On July 17, 1997 (62 FR 38213), and September 14, 2005 (70 FR 54267), the EPA finalized approval of revisions to Utah's SIP Section X, Vehicle Inspection and Maintenance Program for Part B, Davis County, and Part E, Weber County, respectively. In these actions the EPA also approved into the SIP revisions to Utah's regulations at R307–110–32 and R307–110–35. These rules IBR the Utah SIP into state regulations: Rule R307–110–32 IBRs Utah SIP Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County; and Rule R307–110–35 IBRs Utah SIP Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.[9]

E. What is parallel processing?

Parallel processing refers to a process that utilizes concurrent state and Federal proposed rulemaking actions. Generally, the state submits a copy of the proposed regulation or other revisions to the EPA before conducting its public hearing and completing its public comment process under state law. The EPA reviews this proposed state action and prepares a notice of proposed rulemaking under Federal Law. In some cases, the EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the state is holding its public hearing and conducting its public comment process. The state and the EPA then provide for concurrent public comment periods on both the state action and Federal action. If, after completing its public comment process and after the EPA's public comment process has run, the state changes its final submittal from the proposed submittal, the EPA evaluates those changes and decides on whether to publish another notice of proposed rulemaking in light of those changes or to proceed to taking the final action on its proposed action and describe the state's changes in its final rulemaking action. Any final rulemaking action by the EPA will occur only after the final submittal has been adopted by the state and formally provided to the EPA.

In this case, however, the EPA's and Utah's processes have not been perfectly concurrent. The State submitted the draft SIP revisions on October 9, 2020, with a public comment period starting October 1 and going through November 3, 2020, with a public hearing held online at 10am on November 3, 2020.

[7] The EPA codified the Clean Data Policy in the $PM_{2.5}$ SIP Requirements Rule for the implementation of current and future $PM_{2.5}$ NAAQS. See 81 FR at 58161; 40 CFR 51.1015(a).

[8] 40 CFR 51.1015(a) and (b).

[9] Since promulgating R307–110–32, Utah has renumbered its SIP. On February 14, 2006 (71 FR 7679), the EPA renumbered the Weber County I/M Program to R307–110–32. R307–110–35 was last approved on September 14, 2005.70 FR 54267.

Utah requested that the EPA parallel process these proposed revisions while the State finishes the comment period and public hearing, so as not to delay the 2006 24-hour $PM_{2.5}$ redesignation of the Salt Lake City NAA. The State's intention is to submit its final SIP revisions in early January 2021. After Utah submits these formal SIP revisions, the EPA will evaluate the submittal. If the State changes the formal submittal from the proposed submittal, the EPA will evaluate those changes for significance. If the EPA finds any such changes to be significant, then the Agency intends to determine whether to re-propose the actions based on the revised submission or to proceed to take final action on the submittal as changed by the State. Although the EPA was unable to have a concurrent public comment process with the State, Utah's request for parallel processing allows the EPA to begin to take action on the State's proposed submittal in advance of a formal and final submission.

II. The EPA's Evaluation

A. Utah's SIP Revisions

When certain sections of the Utah SIP are amended by the Utah Air Quality Board (UAQB), those sections must be incorporated into the Utah Air Quality Rules. Utah incorporates SIP sections within the state's rule R307–110. These rules are amended as needed to change the effective dates to match the UAQB approval date of various amendments to the Utah SIP. For the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ proposed action, we are acting on R307–110–10, which IBRs Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, and thus incorporates the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ maintenance plans into state regulations (located within the Utah SIP at Sections IX.A.36 and 27, respectively). We are also proposing to approve into the SIP R307–110–17, which IBRs Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits, and thus incorporates all the emission limits in Utah SIP Section IX.H.11, 12, and 13, into state regulations. The state's R307–110–32 and R307–110–35 IBR Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, and Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, respectively. These two rules incorporate the I/M Programs of Davis and Weber Counties into the state regulations.

Utah Code 41–6a-1642 gives authority to each county in the State to design and manage a vehicle I/M program when necessary to attain or maintain any NAAQS. Section X of the Utah SIP incorporates these county programs. Section X, Part A summarizes I/M requirements that are common among all I/M programs, while Section X, Parts B through F contain the requirements for each county's unique I/M program. Below we discuss the revisions to Utah SIP Section X, Parts B and E, and to the related Rules R307–110–10, R307–110–32, and R307–110–35, along with our evaluation. We discuss the revisions done to Utah SIP Section X, Parts B and E, in greater detail within the TSD. Utah Rule R307–110–17 will be going through the parallel process based on the informal October 9, 2020 UDAQ submission revising Utah SIP Section IX.H.12.i.i.C, which requires a revision to R307–110–17 to incorporate the revisions into the Utah SIP. In Section I.E above, we discuss the process of this type of action.

1. R307–110–10

Section R307–110–10 incorporates amendments to Utah SIP Section IX.A into State regulations, thereby making them effective as a matter of State law. This is a ministerial provision, which only revises the effective date within the rule to December 4, 2019 and does not by itself include any SIP measures.

2. R307–110–17

Section R307–110–17 incorporates the amendments to Utah SIP Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits into State regulations, thereby making them effective as a matter of State law. This is a ministerial provision, which only revises the effective date within the rule to December 2, 2020, and does not by itself include any SIP control measures; however, this revision is being acted on as a parallel process due to revisions to Utah SIP Section IX.H.12.i.i.C. In Section I.E above, we discuss the process of this type of action.

3. R307–110–32

Section R307–110–32 incorporates the amendments to Utah SIP Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County into State rules, thereby making them effective as a matter of State law. This is a ministerial provision, which only revises the effective date within the rule to March 4, 2020 and does not by itself include any control measures.

4. R307–110–35

Section R307–110–35 incorporates the amendments to Utah SIP Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County into State regulations, thereby making them effective as a matter of State law. This is a ministerial provision, which only revises the effective date within the rule to March 4, 2020 and does not by itself include any control measures.

5. SIP Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County

The Davis County motor vehicle I/M program was last approved by the EPA on July 17, 1997 (62 FR 38213). The County has since made numerous improvements, updates and revisions to the I/M program ordinance, while removing unnecessary and obsolete provisions and sections. The version of the Davis County I/M program that we are now proposing to approve supersedes and replaces the July 17, 1997 version. The Davis County I/M Ordinance was enacted and adopted by the Davis County Commission on October 1, 2019 and became effective October 18, 2019, and the Ordinance was adopted into the SIP by the UAQB on March 4, 2020, at Section X, part B. This is the version that was submitted to the EPA and is discussed below.

Section X, Part B of the SIP contains two main components for the Davis County I/M program: (a) Language addressing applicability, a general description of the Davis County I/M program, and the time frame for implementation of the I/M program; and (b) the Davis County Emission Inspection/Maintenance Program, as enacted in Davis County Ordinance 10.12.

a. State Language Addressing the Davis County I/M Program:

Under the heading ''1. Applicability'' is a description of the 2019 revised Davis County I/M program, and a history of the Salt Lake and Davis county federal ozone NAAQS attainment status and the development of the Davis County I/M program. The section also notes that the Davis County I/M program was included as a control measure in the 2006 24-hour $PM_{2.5}$ NAAQS.

Under ''2. Summary of Davis County I/M Program,'' the state describes various aspects of the revised Davis County I/M program: Network Type, Test Convenience, Subject Fleet, Test Frequency, Station Inspector Audits, Waivers, Test Equipment, and Test Procedures.

Under the heading ''3. I/M SIP Implementation,'' the State notes that the Davis I/M program will continue to apply until a maintenance plan without an I/M program is approved by the EPA in accordance with Section 175 of the CAA.

b. Revisions to Davis County's ''Davis County Vehicle Emissions Inspection/Maintenance Program Ordinance'' amend the Ordinance's sections 10.12.020 Definitions, 10.12.030 Purpose, 10.12.040 Jurisdiction of the Division, 10.12.050 Powers and Duties, 10.12.060 Scope, 10.12.070 General Provisions, 10.12.080 Standards and Specifications for Emissions Inspection Analyzers and Span Gases for Equipment, 10.12.090 Requirements of the Vehicle Emissions Inspection/Maintenance Program Stations, 10.12.100 Requirements of the Certified Emissions Testers and/or Repair Technicians, 10.12.110 Official Inspection Procedures, 10.12.130 Emissions Standards for Motor Vehicles, 10.12.140 Certificates of Compliance and Waivers, 10.12.150 Engine Switching, 10.12.160 Right to Appeal, 10.12.170 Recall, 10.12.180 Penalty, 10.12.200 Quality Assurance, 10.12.210 Severability, 10.12.240 Fee Schedule, 10.12.250 Emissions Standards, 10.12.260 Waiver Cut Points, 10.12.270 Passing Versus Waiver Cut Point Comparison, 10.12.280 Penalty Schedule, and 10.12.290 Conflicts.

In addition, the State has submitted revisions to: Appendix A, involving the provisions and requirements for emission inspection analyzer specifications; Appendix B, involving the Two Speed Idle (TSI) emissions inspection procedures; Appendix C, involving the OBDII (On-Board Diagnostics Generation II) inspection procedures; Appendix D, involving the Davis County Diesel I/M Program, which the EPA notes that we are not proposing to act on: and Appendix E, involving compressed natural gas vehicle emissions inspection procedures.

We have evaluated the Governor's May 21, 2020 submittal of the above revisions to the Utah SIP Section X Part B and the revised Davis County Ordinance, with respect to the applicable provisions and requirements in 40 CFR part 51, subpart S ''Inspection/Maintenance Program Requirements,'' and are proposing approval. Additional information and the EPA's more detailed evaluation of the above materials are found in the accompanying TSD. The entire Davis County Ordinance is in the Docket for this action.

6. SIP Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County

The Weber County motor vehicle I/M program was last approved by the EPA on September 14, 2005 (70 FR 54267). The County has since made numerous improvements, updates and revisions to the I/M program ordinance, while removing unnecessary and obsolete provisions and sections. The version of the Weber County I/M program that we are now proposing to approve supersedes and replaces the prior September 14, 2005 EPA-approved version. The Weber County I/M Regulation was enacted and adopted by the Weber-Morgan Board of Health on September 23, 2019, and the Weber-Morgan Health Department (WMHD) implements the I/M program on behalf of Weber County. The Regulation was adopted into the SIP by the UAQB on March 4, 2020. This is the version that was submitted to the EPA and is discussed below.

Section X, Part E of the Utah SIP addresses the provisions and requirements for the implementation of the motor vehicle I/M program in Weber County, Utah. Section X, Part E of the SIP contains two main components for the Weber County I/M program: (a) Language for Section X Part E that addresses applicability, a general description of the Weber County I/M program, and the time frame for implementation of the I/M program; and (b) the WMHD Motor Vehicle I/M Program Regulation.

a. State Language Addressing the Weber County I/M Program:

Under the heading ''1. Applicability'' is a description of the 2019 revised Weber County I/M program, a history of the Weber county federal ozone NAAQS attainment status and the development of the Weber County I/M program. The section also notes that the Weber County I/M program was included as a control measure in the 2006 24-hour $PM_{2.5}$ NAAQS.

Under the heading ''2. Summary of Weber County I/M Program,'' the State describes certain aspects of the revised Weber County I/M program involving: Network Type, Test Convenience, Subject Fleet, Test Frequency, Station Inspector Audits, Waivers, Test Equipment, and Test Procedures.

Under the heading ''3. I/M SIP Implementation'' the State notes that the Weber I/M program will continue to apply until a maintenance plan without an I/M program is approved by the EPA in accordance with Section 175 of the CAA.

b. Revisions to Weber County's ''Weber-Morgan Health Department Regulation for Motor Vehicle Inspection and Maintenance Program'' amend the regulation's: Section 1 Title and Definitions, Section 2 Purpose, Section 4 Powers and Duties, Section 6 General Provisions, Section 7 Standards and Specifications for Analyzers and Calibration Gases, Section 8 Permit Requirements of the Vehicle Emissions Station, Section 9 Inspection Procedure, Section 10 Certificate of Waiver, Section 12 Certified Emissions Inspection and Repair Technician/Certified Emissions Inspection Only Technician Permit, Section 14 Certificate of Compliance, Certificate of Compliance Numbers, and Certificate of Waiver, Section 15 Adjudicative Proceedings, and Section 18 Effective Date.

In addition, the State has submitted revisions to Appendix A-Analyzer Specifications, Appendix B- Fee Schedule, Appendix C-Motor Vehicle Emissions Inspection and Maintenance Program, Appendix D-Penalty Schedule, Appendix E–OBD IM Test Procedures, Appendix F entitled ''Diesel Fueled Vehicle Test Procedure,'' which the EPA notes that we are not taking any action on this Appendix, and a new Appendix G entitled ''Adjustment Procedures.''

We have evaluated the Governor's May 21, 2020 submittal of the above revisions to the Utah SIP Section X Part E and the revised Weber County Regulation, with respect to the applicable provisions and requirements in 40 CFR part 51, subpart S ''Inspection/Maintenance Program Requirements,'' and are proposing approval. Additional information and the EPA's more detailed evaluation of the above materials are found in the accompanying TSD. The entire Weber County Regulation is in the Docket for this action.

B. $PM_{2.5}$ SIP Plan

On August 24, 2016 the EPA finalized the $PM_{2.5}$ SIP Requirements Rule,[10] which established regulatory requirements related to the statutory SIP requirements for areas designated nonattainment for the $PM_{2.5}$ standards.

As discussed in the $PM_{2.5}$ SIP Requirements Rule, sections 189(a), (c), and (e) of the CAA require that Moderate area attainment plans contain the following: (i) An approved permit program for construction of new and modified major stationary sources (CAA section 189(a)(1)(A)); (ii) a demonstration that the plan provides for attainment by no later than the applicable Moderate area attainment date or a demonstration that attainment by that date is impracticable (CAA section 189(a)(1)(B)); (iii) provisions for the implementation of RACM/RACT no later than 4 years after designation (CAA section 189(a)(1)(C)); (iv) quantitative milestones that will be used to evaluate compliance with the requirements to demonstrate RFP (CAA section 189(c));

[10] 81 FR 58010.

and (v) evaluation and regulation of $PM_{2.5}$ precursors (in general to meet RACM/RACT and other attainment planning requirements, and also as specifically provided for major stationary sources under CAA section 189(e)).

Sections 189(b) and (c) of the CAA include the following requirements for Serious area attainment plan submissions: (i) An attainment demonstration (CAA section 189(b)(1)(A)); (ii) provisions for the implementation of BACM/BACT no later than 4 years after reclassification of the area to Serious (CAA section 189(b)(1)(B)); (iii) quantitative milestones that will be used to evaluate compliance with the requirement to demonstrate RFP (CAA section 189(c)); and (iv) regulation of $PM_{2.5}$ precursors (in general to meet attainment and control strategy requirements, and as specifically required for major stationary sources by CAA section 189(e)).

Other subpart 1 requirements for attainment plans not otherwise superseded under subpart 4 also apply to Moderate and Serious areas for the 2006 24-hour $PM_{2.5}$ NAAQS, including (i) a description of the expected annual incremental reductions in emission that will demonstrate RFP (CAA section 172(c)(2)); (ii) emissions inventories (CAA section 172(c)(3)); (iii) other control measures (besides RACM/RACT for Moderate areas and BACM/BACT for Serious areas) needed for attainment (CAA section 172(c)(6)); and (iv) contingency measures (CAA section 172(c)(9)).

In connection with the Moderate area SIP for the 2006 24-hour $PM_{2.5}$ NAAQS, the EPA has previously acted on a number of Utah SIP revisions related to area sources. In particular, on February 2, 2012; May 9, 2013; June 8, 2013; February 18, 2014; April 17, 2014; May 20, 2014; July 10, 2014; and August 6, 2014, UDAQ submitted either new area source rules or revisions to rules found in UAC Title R307 (Environmental Quality). We acted on these rule revisions on February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988), October 2, 2019 (84 FR 52368) and February 26, 2020 (85 FR 10989).

On December 16, 2014, UDAQ submitted additional Moderate 2006 24-hour $PM_{2.5}$ SIP revisions for the Provo and Salt Lake City NAAs. CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are in 40 CFR part 51, appendix V. The 2014 2006 24-hour $PM_{2.5}$ plan became complete by operation of law on June 22, 2014. Additionally, UDAQ submitted revisions to the Utah SIP Part H.11, 12 and 13 of the Moderate 2006 24-hour $PM_{2.5}$ SIPs for the Provo and Salt Lake City NAAs on January 19, 2017, which became complete by operation of law on July 20, 2017.

On May 10, 2017 (82 FR 21711), the EPA determined that the Provo and Salt Lake City NAAs failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the Moderate attainment date of December 31, 2015. With this determination, the Provo and Salt Lake City NAAs were reclassified as a ''Serious'' area for the 2006 24-hour $PM_{2.5}$ NAAQS, with a new attainment date of December 31, 2019. This reclassification triggered an obligation for Utah to submit a new, Serious area attainment plan including the CAA elements listed above. Additionally, CAA section 189(b)(1) requires that ''in addition'' to the attainment plan requirements specific to Serious areas, states must also meet all Moderate area attainment plan requirements. The EPA interprets the statutory language of CAA section 189(b)(1) to require states with areas that are reclassified to Serious to meet Moderate area attainment plan requirements, including all areas that the EPA reclassifies through rulemaking under its discretionary authority, even if that occurs before the area has met all of its Moderate area attainment plan requirements. The following section describes the EPA's final actions in this rule regarding Serious area attainment plan requirements in greater detail.

On April 10, 2019 (84 FR 14267) and September 27, 2019 (84 FR 51055), the EPA finalized clean data determinations (CDD) for the Provo and Salt Lake City NAAs, respectively. As provided at 40 CFR 51.1015(a) in the $PM_{2.5}$ SIP Requirements Rule, this determination by the EPA that the Provo and Salt Lake City Moderate 2006 24-hour $PM_{2.5}$ NAAs suspended the requirements for the State to submit an attainment demonstration, provisions demonstrating timely implementation of RACM/RACT, a RFP plan, quantitative milestones and quantitative milestone reports, and contingency measures. However, based on the EPA's longstanding policy, the BACM/BACT requirement of CAA section 189(b)(1)(B) is independent of attainment. Thus, the CDD did not suspend the obligation for UDAQ to submit any applicable outstanding BACM/BACT requirements or other requirements that are independent of attainment (NNSR and base-year emissions inventories).

On February 15, 2019, UDAQ submitted the Serious 2006 24-hour $PM_{2.5}$ SIP for the Salt Lake City NAA. Under CAA section 110(k)(1)(B), the Salt Lake City Serious 2006 24-hour $PM_{2.5}$ SIP became complete by operation of law on August 15, 2019. Additionally, UDAQ submitted BACM/BACT analyses on February 4, 2019 for the Provo NAA. The revisions to area source rules for the NAAs were submitted on April 19, 2018, May 21, 2020 and July 21, 2020, and revisions to the Utah SIP Section IX.H.11, 12 and 13 for the NAAs were submitted on December 16, 2014, January 19, 2017 and February 15, 2019. The revisions submitted on January 19, 2017 and February 15, 2019, for Utah SIP Section IX.H.11, 12 and 13, supersede the December 16, 2014 submission; therefore, we are not acting on the December 16, 2014 revisions, but are fully acting on Utah SIP Section IX.H.13 from the January 19, 2017 submission and Utah SIP Section IX.H.11 and 12 from the February 15, 2019 submission. Any reference to the December 16, 2014 submission for Utah SIP Sections IX.H.11, 12 and 13, and any reference to the January 19, 2017 submittal for Utah SIP Section IX.H.11 and 12, are for informational purposes only. Additionally, on October 9, 2020, UDAQ submitted draft revisions to Kennecott's Power Plant in Utah SIP Section IX.H.12.i.i.C and the accompanying R307–110–17 revisions for the EPA to parallel process.

We are acting on these remaining Serious 2006 24-hour $PM_{2.5}$ SIP elements for the Salt Lake City and Provo NAAs, that were not suspended with the CDDs, to allow for our action on the 2006 24-hour $PM_{2.5}$ redesignation requests discussed in Section II.C below of this document.

1. Base-Year Emissions Inventories

CAA section 172(c)(3) requires that each SIP include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the NAAs. This base-year emissions inventory should provide a state's best estimate of actual emissions from all sources of the relevant pollutants in the area, including all emissions that contribute to the formation of a particular NAAQS pollutant. For the 2006 24-hour $PM_{2.5}$ NAAQS, the base-year inventory must include direct $PM_{2.5}$ emissions, separately reported filterable and condensable $PM_{2.5}$ emissions, and emissions of all chemical precursors to the formation of

secondary $PM_{2.5}$: Nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia (NH_3).[11]

The most current base year for emissions inventories for the Provo and Salt Lake City NAAs was for 2017, which was made available to the public for comment (and a public hearing if requested) in the January 13, 2020 $PM_{2.5}$ maintenance plans/redesignation requests submittal. The base-year inventories are based on the most current and accurate information available to UDAQ at the time of the submittal. The 2017 base-year inventories comprehensively address all source categories in the Provo and Salt Lake City NAAs and were developed consistent with the EPA's inventory guidance.

In Section II.C.4.a below, the EPA provides a detailed analysis of the 2017 base-year emissions inventories for the Provo and Salt Lake City NAAs, which were submitted for the 2006 24-hour $PM_{2.5}$ maintenance plans. Direct $PM_{2.5}$ and all $PM_{2.5}$ precursors are included in the 2017 base-year emissions inventories, and filterable and condensible direct $PM_{2.5}$ emissions are identified separately. For these reasons, and with the EPA's detailed analysis in Section II.C.4.a below, the EPA is proposing to approve the 2017 base-year emissions inventories for the Provo and Salt Lake City NAAs as meeting the requirements of CAA section 172(c)(3), 40 CFR 51.1008(a)(1) and 40 CFR 51.1008(b)(1).

2. NNSR

CAA section 172(c)(5) requires preconstruction and operating permits for new major stationary sources and major modifications locating in NAAs. Section 173 of the CAA outlines the minimum statutory requirements for a state's NNSR permit program and serves as the basis for the EPA's NNSR regulations for $PM_{2.5}$ as promulgated in the 2008 $PM_{2.5}$ NSR Rule published at 73 FR 28321, May 16, 2008.[12] The 2016 $PM_{2.5}$ Regulatory Rule amended the definitions of (1) regulated NSR pollutant with regard to $PM_{2.5}$ precursors, (2) major stationary source with regard to major sources locating in $PM_{2.5}$ NAAs classified as Moderate and Serious, and (3) significant with regard to emissions of $PM_{2.5}$ precursors. For Moderate 2006 24-hour $PM_{2.5}$ SIPs, CAA section 189(a)(1)(A) of subpart 4 applies, which requires states to include in their implementation plan a permit program addressing major stationary sources of the 2006 24-hour $PM_{2.5}$ NAAQS that meets the requirements under CAA section 173 of subpart 1. For a Serious 2006 24-hour $PM_{2.5}$ SIP, CAA section 189(b)(3) of subpart 4 applies, which requires that for any Serious Area the terms ''major source'' and ''major stationary source'' include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tpy of $PM_{2.5}$.

An approvable NNSR program in a state's implementation plan must, at a minimum, meet the applicable program requirements set forth in the federal NNSR provisions at 40 CFR 51.165, which for $PM_{2.5}$ have been based on changes to the section made by the 2008 $PM_{2.5}$ NSR Rule.[13] States with designated NAAs for a particular pollutant are required to adopt regulations consistent with those applicable plan requirements, including any subsequent rule changes that the EPA may make, and submit them to the EPA for approval as part of their SIP.

The Provo and Salt Lake City NAAs were classified as a Moderate NAA for the 2006 24-hour $PM_{2.5}$ NAAQS on November 13, 2009 (74 FR 58688). On May 10, 2017 (82 FR 21711), the Provo and Salt Lake City areas were reclassified from Moderate to Serious 2006 24-hour $PM_{2.5}$ NAAs. The major source permitting threshold for a Moderate 2006 24-hour $PM_{2.5}$ NAA is 100 tpy of direct $PM_{2.5}$ or any $PM_{2.5}$ precursor, and 70 tpy for a Serious 2006 24-hour $PM_{2.5}$ NAA.

On July 25, 2019 (84 FR 35831), the EPA approved revisions to UAC R307–403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas), which satisfies the outstanding NNSR requirement for the Provo and Salt Lake City Moderate and Serious 2006 24-hour $PM_{2.5}$ NAAs.

3. BACM/BACT

a. Requirements for BACM/BACT

For any Serious 2006 24-hour $PM_{2.5}$ NAA, section 189(b)(1)(B) of the Act requires that a state submit provisions to assure that BACM/BACT for the control of $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the date the area is reclassified as a Serious area. The EPA defines BACM (including BACT) as, among other things, the maximum degree of emissions reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, economic and environmental impacts, and other costs.[14] We generally consider BACM a control level that goes beyond existing RACM-level controls, for example by expanding the use of RACM controls or by requiring preventative measures instead of remediation.[15] Indeed, as implementation of BACM and BACT is required when a Moderate NAA is reclassified as Serious due to its inability to attain the NAAQS through implementation of ''reasonable'' measures, it is logical that ''best'' control measures should represent a more stringent and potentially more costly level of control.[16] The level of stringency generally refers to the overall level of emissions reductions of a control measure or technology, or of such measures and technologies combined.

The $PM_{2.5}$ SIP Requirements Rule explains that BACM/BACT are generally independent requirements, to be determined without regard to the specific attainment analysis (*i.e.,* attainment demonstration) for the area.[17] The EPA found it reasonable to interpret the statute as requiring a different analysis for determining BACM/BACT, *i.e.,* that while RACM emphasizes the attainment needs of the area, BACM has a greater emphasis on identifying measures that are feasible to implement. The Addendum noted that the test for BACM puts a ''greater emphasis on the merits of the measure or technology alone,'' rather than on ''flexibility in considering other factors,'' in contrast to the approach for RACM/RACT.[18]

Section 189(b)(1)(B) of the Act allows states, in appropriate circumstances, to delay implementation of BACM until four years after reclassification. Because the EPA reclassified the Provo and Salt Lake City areas as Serious NAAs for the 2006 24-hour $PM_{2.5}$ NAAQS effective June 9, 2017 (82 FR 21711; May 10, 2017), the date four years after reclassification is June 9, 2021. In this case, however, all BACM for direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the Provo and Salt Lake City areas must be implemented no later than December

[11] 40 CFR 51.1008.

[12] 81 FR at 58107.

[13] *Id.*

[14] State Implementation Plans for Serious PM_{10} Nonattainment Areas, and Attainment Date Waivers for PM_{10} Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (''Addendum''), August 16, 1994; 59 FR 41998, 42010, 42013 (Aug. 16, 1994). The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (''General Preamble'') was published at 57 FR 13498 (Apr. 16, 1992).

[15] *Id.* at 42011, 42013.

[16] *Id.* at 42009–42010.

[17] 81 FR at 58081.

[18] 59 FR at 42011.

31, 2019, which is the outermost statutory attainment date for the Provo and Salt Lake City areas under section 188(c)(2).[19]

Under the $PM_{2.5}$ SIP Requirements Rule, control measures that can be implemented in whole or in part by the end of the fourth year after an area's reclassification to Serious are considered BACM, and control measures that can only be implemented after this period but before the attainment date are considered ''additional feasible measures.'' [20] The EPA has defined ''additional feasible measures'' as ''those measures and technologies that otherwise meet the criteria for BACM/BACT but that can only be implemented in whole or in part beginning 4 years after reclassification of an area, but no later than the statutory attainment date of the area.'' [21] Given that the statutory attainment date is less than three years from the effective date of the reclassification of the Provo and Salt Lake City areas, additional feasible measures are not required in this case.

The Addendum and the $PM_{2.5}$ SIP Requirements Rule explain that the BACM/BACT selection process for implementation of the 2006 24-hour $PM_{2.5}$ NAAQS is designed to take into account the local facts and circumstances and the nature of the air pollution problem in a given NAA. The following steps are used in determining BACM/BACT: (1) Develop a comprehensive emission inventory of the sources of directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors; (2) Identify existing and potential control measures for the sources in the inventory; (3) Evaluate the technological feasibility of potential control measures; (4) Evaluate the economic feasibility of potential control measures; and (5) Determine the earliest date by which a control measure or technology can be implemented in whole or in part.[22]

Additionally, the EPA believes that BACT or lowest achievable emission rate (LAER) provisions for new sources (as distinct from BACT for existing sources), or best available retrofit technology (BART) for existing sources, could potentially quality as BACM or BACT for purposes of meeting the Serious area attainment plan requirements.[23] However, as discussed further in the $PM_{2.5}$ SIP Requirements Rule, the EPA does not believe it is appropriate for a state to assume that just because a certain control technology was determined to meet BACT, LAER or BART criteria for a new source sometime in the past, that such a control will also automatically meet the criteria for BACM or BACT or additional feasible measures for attainment planning purposes, because the regulated pollutant or source applicability may differ and the analyses may be conducted years apart. Thus, a state may not simply rely on prior BACT, LAER or BART analyses for the purposes of showing that a source has also met BACT for the relevant 2006 24-hour $PM_{2.5}$ NAAQS. Rather, the EPA expects that in Step 2 (discussed above) of the BACM/BACT determination process, the state would identify such measures as ''existing measures'' that should be further evaluated as potential BACM or BACT, or additional feasible measures. At the same time, the EPA notes that the presence of previously installed control technology, and the technical and economic considerations that would be associated with upgrading to a measure that achieves greater reductions, is something that should be considered in the assessments of technological and economic feasibility of the newer measure.[24]

Once these analyses are complete, a state must use this information to develop enforceable control measures and submit them to the EPA for evaluation under CAA section 110. We use these steps as guidelines in our evaluation of the BACM measures and related analyses in the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ Serious SIP.

b. Requirements for the Control of $PM_{2.5}$ Precursors

The composition of $PM_{2.5}$ is complex and highly variable due in part to the large contribution of secondary $PM_{2.5}$ to total fine particle mass in most locations, and to the complexity of secondary particle formation processes. A large number of possible chemical reactions, often non-linear in nature, can convert gaseous SO_2, NO_X, VOC, and NH_3 to $PM_{2.5}$, making them precursors to $PM_{2.5}$.[25] Formation of secondary $PM_{2.5}$ may also depend on atmospheric conditions, including solar radiation, temperature, and relative humidity, and the interactions of precursors with preexisting particles and with cloud or fog droplets.[26]

As explained in the $PM_{2.5}$ SIP Requirements Rule, the Act requires that the state evaluate all $PM_{2.5}$ precursors for regulation unless, for any given $PM_{2.5}$ precursor, it demonstrates to the Administrator's satisfaction that the precursor does not contribute significantly to 2006 24-hour $PM_{2.5}$ levels that exceed the NAAQS in the NAA.[27] The CAA does not define the term ''precursor'' for purposes of PM. The statutory definition of ''air pollutant,'' however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' [28] The EPA has identified SO_2, NO_X, VOC, and NH_3 as precursors to the formation of $PM_{2.5}$. Accordingly, the BACM/BACT requirements of subpart 4 apply to emissions of all four precursor pollutants and direct $PM_{2.5}$ from all types of stationary, area, and mobile sources, except as otherwise provided in the Act (*e.g.,* CAA section 189(e)).

Section 189(e) [29] of the Act requires that the control requirements for major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area. Although section 189(e) explicitly addresses only major stationary sources, the EPA interprets the Act as authorizing it also to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other

[19] CAA section 189(b)(1)(B) establishes an outermost deadline (''no later than four years after the date the area is reclassified'') and does not preclude an earlier implementation deadline for BACM where necessary to satisfy the attainment requirements of the Act.

[20] 40 CFR 51.1010(a)(4)(ii). ''Additional feasible measures'' may be necessary in certain circumstances to implement the requirements of CAA section 172(c)(6), which states that NAA plans shall include enforceable emission limitations and such other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of the NAAQS by the applicable attainment date.

[21] 40 CFR 51.1000.

[22] Addendum at 42012–42014; 81 FR at 58084–58085.

[23] See 81 FR at 58086.

[24] *Id.*

[25] Air Quality Criteria for Particulate Matter (EPA/600/P–99/002aF, Oct. 2004), Chapter 3.

[26] Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter (EPA/452/R–12–005, December 2012), at 2–1.

[27] *See* 81 FR at 51018–58019.

[28] *See* CAA section 302(g).

[29] On Jan. 4, 2013, in *NRDC* v. *EPA,* the D.C. Circuit held that the EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant only to the general implementation requirements of subpart 1, rather than also to the implementation requirements specific to particulate matter (PM_{10}) in subpart 4, part D of title I of the CAA. The court reasoned that the plain meaning of the CAA requires implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 because $PM_{2.5}$ particles fall within the statutory definition of PM_{10} and thus implementation of the $PM_{2.5}$ NAAQS is subject to the same statutory requirements as the PM_{10} NAAQS. *See* 81 FR at 58013.

source categories in a given NAA is not necessary.[30]

The $PM_{2.5}$ SIP Requirements Rule recognizes that the treatment of $PM_{2.5}$ precursors is important in developing a $PM_{2.5}$ plan.[31] The rule provides flexibility for areas where a particular $PM_{2.5}$ precursor or precursors may not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS. The rule provides for optional precursor demonstrations that a state may submit to the EPA to establish that sources of particular precursors need not be regulated for purposes of attainment planning or in an NNSR permitting program for a specific NAA.

The February 4, 2019 and February 15, 2019, submissions for the Provo and Salt Lake City discusses the five primary pollutants that contribute to the emissions in the NAAs (*i.e.,* NO_X, SO_2, VOC, NH_3, and directly emitted $PM_{2.5}$). The majority of ambient $PM_{2.5}$ collected during a typical cold-pool episode of elevated concentration is secondary particulate matter, generated from gaseous precursor emissions. The results of speciation studies led UDAQ to the conclusion that the exceedances of the 2006 24-hour $PM_{2.5}$ NAAQS were a result of the increased portion of the secondary $PM_{2.5}$, mainly ammonium nitrate, that was chemically formed in the air and not primary $PM_{2.5}$ emitted directly into the troposphere.[32] Because of the major role that precursors play within the Provo and Salt Lake City NAAs, UDAQ did not include any precursor demonstration. Thus, the requirement to ensure the implementation of BACM/BACT applies to direct $PM_{2.5}$ and each of the four $PM_{2.5}$ precursors listed above.

Based on the information provided in the Provo and Salt Lake City submissions and other information available to the EPA, we agree with UDAQ's conclusion that all four chemical precursors, including direct $PM_{2.5}$, must be regulated for purposes of attaining and maintaining the 2006 24-hour $PM_{2.5}$ NAAQS in the Provo and Salt Lake City NAAs.

c. BACM/BACT Analysis in the Serious $PM_{2.5}$ SIP

(1) Identifying the Sources of $PM_{2.5}$ and $PM_{2.5}$ Precursors

The first step in determining BACM is to develop a detailed emissions inventory of the sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors that can be used with modeling to determine the effects of these sources on ambient $PM_{2.5}$ levels. As discussed above in Section II.B.1 of this proposed rule, Chapter 4 (Emission Inventory Data) of the Salt Lake City February 15, 2019 submission and the General Inventory section of the Provo, February 4, 2019 submission, contain the planning inventories for directly emitted $PM_{2.5}$ and for all $PM_{2.5}$ precursors (NO_X, SO_2, VOC, and NH_3) for the Salt Lake City and Provo NAAs, along with supporting documentation to support these inventories. Based on these inventories, four general categories were established: Industrial point sources, on-road mobile sources, off-road mobile sources, and area sources. Area sources represent smaller, more numerous point sources, residential activities such as home heating, and some biogenic emissions.

Based on this identification of stationary, area, and mobile sources of direct $PM_{2.5}$, NO_X, VOC, SO_2, and NH_3 in the Provo and Salt Lake City areas, we conclude that the February 4, 2019 and February 15, 2019 submissions, respectively, appropriately identify all emission sources and source categories that must be subject to evaluation for potential control measures consistent with the requirements of subpart 4.

(2) Identification and Implementation of BACM/BACT

As part of its process for identifying candidate BACM/BACT and considering the technical and economic feasibility of additional control measures, UDAQ reviewed the EPA's guidance documents on BACM, guidance documents on control measures for direct $PM_{2.5}$, NO_X, VOC, NH_3, and SO_2 emissions sources,[33] and control measures implemented in other $PM_{2.5}$ NAAs in other states. UDAQ's evaluations of potential BACM/BACT for each source category identified above are found in ''Section 8. Control Strategies'' in the February 4, 2019 Provo submission and in the TSD supporting the February 15, 2019 Salt Lake City submission. In the following sections, we review key components of UDAQ's demonstrations concerning BACM/BACT for the identified sources of direct $PM_{2.5}$, NO_X, VOC, SO_2, and NH_3 emissions in the Provo and Salt Lake City NAAs. We provide a more detailed evaluation of our review of UDAQ's regulations in our TSD, which is in the docket.

The UDAQ's BACM/BACT process and control measure evaluations are described in detail in the February 4, 2019 submission, ''Section 8. Control Strategies'' for the Provo NAA and in the State's February 15, 2019 TSD for the Salt Lake City NAA. For each identified source category, UDAQ identified its adopted control measures and potential additional control measures based on measures implemented in other areas, measures identified in EPA regulations or guidance (*e.g.,* in control technique guidelines (CTGs), alternative control technique documents (ACTs), new sources performance standards (NSPSs), or in the EPA's ''Cost Analysis Models/Tools for Air Pollution Regulations''), or measures identified in prior EPA rulemaking documents (*e.g.,* recommendations in SIP actions).[34] UDAQ evaluated these potential additional control measures to determine whether implementation of the measures would be technologically and economically feasible in the Provo and Salt Lake City areas.

On April 19, 2018, May 21, 2020 and July 21, 2020, UDAQ submitted revisions and new rules to its area source rules R307–208, Outdoor Wood Boilers; R307–230, NO_X Emission Limits for Natural Gas-Fired Water Heaters; R307–304, Solvent Cleaning; R307–335, Degreasing; R307–343, Emissions Standards for Wood Furniture Manufacturing Operations; R307–344, Paper, Film, & Foil Coating; R307–345, Fabric & Vinyl Coating; R307–346, Metal Furniture Surface Coating; R307–347, Large Appliance Surface Coating; R307–348, Magnet Wire Coating; R307–349, Flat Wood Panel Coating; R307–350, Miscellaneous Metal Parts & Products Coating; R307–351, Graphic Arts; R307–352, Metal Containers, Closure & Coating; R307–353, Plastic Parts Coating; R307–354, Auto Body Refinishing; and R307–355, Control of Emissions from Aerospace Manufacture & Rework Facilities. Additionally, UDAQ provided BACM analysis for area source rules that were not revised, which include: R307–302, Solid Fuel Burning Devices; R307–303, Commercial Cooking; R307–307, Road Salting & Sanding; R307–309, Nonattainment and Maintenance Areas

[30] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}. *See, e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

[31] *See, e.g.,* 81 FR at 58017.

[32] The study results can be found in the TSD for the state's February 15, 2019 action (available in the docket for this action).

[33] This is not an exhaustive list. Please refer to UDAQ's submittal for detailed references: Control Techniques Guidelines (CTG); Alternative Control Techniques (ACT); New Source Performance Standards (NSPS); Ozone Transport Commission's (OTC) model rules; $PM_{2.5}$ Requirements Rule, 81 FR 58010; US EPA Fugitive Dust Background Document and Technical Information Document for BACM (September 1992); General Preamble, 57 FR 13498; and Addendum, 59 FR 41998.

[34] The Cost Analysis Models/Tools for Air Pollution Regulations can be found at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modelstools-air-pollution.*

for PM_{10} and $PM_{2.5}$: Fugitive Emissions and Fugitive Dust; R307–312, Aggregate Processing Operations; R307–328, Gasoline Transfer and Storage; R307–341, Cutback Asphalt; R307–342, Adhesive and Sealants; R307–356, Appliance Pilot Light; R307–357, Consumer Products; and R307–361, Architectural Coatings. Our detailed analysis of these area source rule revisions submitted on April 19, 2018, May 21, 2020, and July 21, 2020, and the BACM analyses for these area sources submitted on February 4, 2019 and February 15, 2019 for the Provo and Salt Lake City Serious 2006 24-hour $PM_{2.5}$ NAAs can be found in our TSD in the docket.

On February 15, 2019, Utah submitted revisions to SIP Section IX.H.11 (General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, $PM_{2.5}$). This section of Utah's SIP applies to all sources addressed in Utah SIP sections IX.H.12 and 13, except as otherwise outlined in individual conditions in Sections IX.H.12 and 13. Our detailed analysis of the revisions submitted on February 15, 2019, for the Utah SIP Section IX.H.11, along with our analysis of UDAQs BACM/BACT analyses specific to Utah SIP Section IX.H.11, submitted on February 4, 2019 and February 15, 2019 can be found in our TSD in the docket.

On February 15, 2019, Utah submitted revisions to SIP Section IX.H.12 (Source-Specific Emission Limitations in Salt Lake City—UT $PM_{2.5}$ Nonattainment Area), which sets emission limits and control measures for major stationary sources in the Salt Lake City 2006 24-hour $PM_{2.5}$ Serious NAA. These sources, which fall above the 70 tpy threshold for Serious 2006 24-hour $PM_{2.5}$ major sources [35] defined in Utah R307–403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas), include: (1) ATK Launch Systems Inc. Promontory; (2) Big West Oil Refinery; (3) Chemical Lime Company (Lhoist North America); (4) Chevron Products Company—Salt Lake Refinery; (5) Compass Minerals Ogden Inc.; (6) Hexel Corporation: Salt Lake Operations; (7) Holly Corporation: Holly Refining & Marketing Company (Holly Refinery); (8) Kennecott Utah Copper (KUC): Mine; (9) Kennecott Utah Copper (KUC): Power Plant; (10) Kennecott Utah Copper (KUC): Smelter and Refinery; (11) Nucor Steel Mills; (12) PacifiCorp Energy: Gadsby Power Plant; (13) Tesoro Refining and Marketing Company: Salt Lake City Refinery; (14) The Proctor & Gamble Paper Products Company; (15) Utah Municipal Power Association: West Valley Power Plant; (16) University of Utah: University of Utah Facilities; and (17) Hill Air Force Base. On February 15, 2019, UDAQ submitted the BACM/BACT analyses for each of these 17 sources. All other sources fall below the 70 tpy threshold and are covered in the multiple area source rules discussed above. Our detailed analysis of the revisions submitted on February 15, 2019, for the Utah SIP Section IX.H.12, along with our analysis of UDAQs BACM/BACT analyses submitted on February 15, 2019, specific to Utah SIP Section IX.H.12, can be found in our TSD in the docket.

Additionally, UDAQ submitted draft revisions on October 9, 2020, specific to Utah SIP Section IX.H.12.i.i.C (Kennecott Power Plant), which the state has asked the EPA to act on through parallel processing. This draft revision removes the startup/shutdown limits for the Kennecott Power Plant that was not supported within the BACM/BACT analysis submitted on February 15, 2019. The detailed analysis of our parallel process on the October 9, 2020, submission of draft revisions to Utah SIP Section IX.H.12.i.i.C (Kennecott Power Plant), can be found in our TSD in the docket, and our detailed discussion of how parallel processing works can be found in Section I.E above.

On January 19, 2017, Utah submitted revisions to SIP Section IX.H.13 (Source-Specific Emission Limitations in Provo—UT $PM_{2.5}$ Nonattainment Area), which sets emission limits and control measures for major stationary sources in the Provo 2006 24-hour $PM_{2.5}$ Serious NAA. The sources in Section IX.H.13 include: (1) Brigham Young University: Main Campus; (2) Geneva Nitrogen Inc.: Geneva Nitrogen Plant; (3) McWane Ductile—Utah; (4) PacifiCorp Energy: Lake Side Power Plant; (5) Payson City Corporation: Payson City Power; (6) Provo City Power: Power Plant; and (7) Springville City Corporation: Whitehead Power Plant. UDAQ submitted BACM/BACT analyses for only two of these sources, McWane Ductile—Utah and PacifiCorp Energy: Lake Side Power Plant. The other five sources listed above fall below the 70 tpy threshold for Serious 2006 24-hour $PM_{2.5}$ major stationary sources,[36] which is defined in Utah R307–403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas) rule. These remaining five sources (Brigham Young University, Geneva Nitrogen Plant, Payson City Power, Provo City Power, and Whitehead Power Plant) were either shut down (Geneva Nitrogen Plant) or have reduced their emissions to be minor sources (Brigham Young University, Payson City Power, Provo City Power, and Whitehead Power Plant). UDAQ uses Utah SIP Section IX.H. only for major stationary source emission limits or control measures; therefore, UDAQ has requested that EPA not act on the Utah SIP Section IX.H.13 portions for these facilities because the limits/measures are out of date and will be removed in future rulemakings. Since we have never approved these limits or sources into Utah SIP Section IX.H.13, and this section was only created in the December 16, 2014 submittal, UDAQ does not need to complete a 110(l) demonstration. We will only be acting on the McWane Ductile—Utah and PacifiCorp Energy: Lake Side Power Plant sections of Utah SIP Section IX.H.13, and on these sources' BACM/BACT determinations submitted by UDAQ on February 4, 2019. Our detailed analysis of the revisions submitted on January 19, 2017, along with our analysis of UDAQ's BACM/BACT analyses submitted on February 4, 2019, can be found in our TSD in the docket.

As to the other facilities originally submitted within Utah SIP Section IX.H.13, no additional discussion or action is necessary for the Geneva Nitrogen Plant due to its shutdown. The BACM/BACT analyses for the other facilities (Brigham Young University, Payson City Power, Provo City Power, and the Whitehead Power Plant) are now included in the individual BACM/BACT analyses for each area source rule. No additional discussion is needed as to these limits in Utah SIP Section IX.H.13, which as noted above are outdated, or on these facilities as individual sources. Our detailed analysis of the area source rules, along with our analysis of UDAQ's BACM/BACT analyses submitted on February 4, 2019 and February 15, 2019, can be found in our TSD in the docket.

Additionally, on February 4, 2019 and February 15, 2019, UDAQ submitted BACM/BACT analyses for on-road and non-road mobile sources for the Provo and Salt Lake City Serious 2006 24-hour $PM_{2.5}$ NAAs, respectively. Our detailed analysis of these analyses can be found in our TSD in the docket.

(3) The EPA's Evaluation and Conclusion

We have reviewed UDAQ's determination in the February 4, 2019 and February 15, 2019 submissions that the major stationary and area source

[35] 81 FR at 58152.

[36] *Id.*

control measures represent BACM/BACT for direct $PM_{2.5}$ and $PM_{2.5}$ precursors within the Provo and Salt Lake City NAAs, respectively. In our review, we also considered our previous evaluations of UDAQ's rules in connection with our approval of revisions for Utah's R307 area source rules and RACM demonstration for the Provo and Salt Lake City Moderate 2006 24-hour $PM_{2.5}$ SIPs that were acted on.[37] Based on this review, we believe that UDAQ's area source rules and the Utah SIP Part H emission limits provide for the implementation of BACM/BACT for major stationary sources and area sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors.

With respect to mobile sources, we believe that the programs developed and administered by UDAQ, along with the identified Federal requirements, provide for the implementation of BACM/BACT for direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the Provo and Salt Lake City NAAs.

For these reasons we propose to approve the revisions submitted on January 19, 2017, April 19, 2018, February 4, 2019, February 15, 2019, May 21, 2020 and July 21, 2020. We also propose to find that these submissions provide for the implementation of BACM/BACT for all sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors as expeditiously as practicable, for purposes of the 2006 24-hour $PM_{2.5}$ NAAQS in the Provo and Salt Lake City areas, in accordance with the requirements of CAA section 189(b)(1)(B) and 40 CFR 51.1010. We are also proposing to approve, through parallel processing, the October 9, 2020 draft submission of revisions to Utah SIP Section IX.H.12.i.i.C to remove the startup/shutdown limits that were not supported in the BACM/BACT determination of the Kennecott Power Plant. Additionally, we are proposing to approve the area source rule revisions submitted on April 19, 2018, May 21, 2020 and July 21, 2020, and to approve the BACM/BACT analyses submitted on February 4, 2019 and February 15, 2019. We are also proposing to approve the revisions to Utah SIP Sections IX.H.11 and 12, submitted on February 15, 2019; revisions to Utah SIP Section IX.H.13, submitted on January 19, 2017; and draft revisions submitted on October 9, 2020, for the Provo and Salt Lake City Serious 2006 24-hour $PM_{2.5}$ NAAs. Our detailed analyses can be found in the EPA TSD in the docket.

C. Do the redesignation requests and maintenance plans meet CAA requirements?

For a NAA to be redesignated to attainment, the following conditions in section 107(d)(3)(E) of the CAA must be met: (1) We must determine that the area has attained the NAAQS; (2) The applicable implementation plan for the area must be fully approved under section 110(k) of the Act; (3) We must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) We must fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) The state containing such area must meet all requirements applicable to the area under section 110 and part D of the CAA.

The September 4, 1992 Calcagni Memorandum outlines how to assess the adequacy of redesignation requests against the conditions listed above. On January 13, 2020, the Governor of Utah submitted revisions to the SIP for R307–110–10, submitted maintenance plans for the Salt Lake City and Provo areas (located within Utah SIP Sections IX.A.36 and 27, respectively), and requested that the EPA redesignate the area to attainment for 2006 24-hour $PM_{2.5}$.

The sections below discuss how Utah's redesignation requests and maintenance plans meet the requirements of the Act for redesignation of the Provo and Salt Lake City areas to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

1. Attainment of the 2006 24-Hour $PM_{2.5}$ NAAQS

To redesignate an area from nonattainment to attainment, the EPA must determine that the area has attained the applicable NAAQS. See CAA section 107(d)(3)(E)(i). A state must demonstrate that an area has attained the 2006 24-hour $PM_{2.5}$ NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing maximum $PM_{2.5}$ concentrations. The data, which must be quality assured, quality-controlled, and certified in the EPA's Air Quality System (AQS), must show that the most recent three years (2017–2019) of valid $PM_{2.5}$ 98th percentile mass concentrations are below the 2006 $PM_{2.5}$ 24-hour NAAQS (35 $\mu g/m^3$), pursuant to 40 CFR 50.13. In making this showing, three consecutive years of complete air quality data must be used.

Between 2017 and 2019, Utah operated two and five $PM_{2.5}$ monitors in the Provo and Salt Lake City NAAs, respectively. The EPA reviewed the $PM_{2.5}$ ambient air monitoring data from the Provo monitors, Lindon (AQS site 49–049–4001) and Spanish Fork (AQS site 49–049–5010),[38] and from the Salt Lake City monitors, Bountiful (AQS site 49–011–0004), Rose Park (AQS site 49–035–3010), Hawthorn (AQS site 49–035–3006), Herriman #3 (AQS site 49–035–3013), and Erda (AQS site 49–045–0004).[39]

As part of the redesignation requests for the Provo and Salt Lake City NAAs, UDAQ submitted ambient air quality data from the monitoring sites, which had been quality-assured and placed in AQS on a quarterly basis. The 98th percentile 2017–2019 design values for the monitors in the Provo and Salt Lake City NAAs are found in Table 1 below, and support the conclusion that the areas have attained the 2006 24-hour $PM_{2.5}$ NAAQS.

[37] *See* 81 FR 9343 (Feb. 25, 2016); 81 FR 71988 (Oct. 19, 2016); 84 FR 52368 (Oct. 2, 2019); and 85 FR 10989 (Feb. 26, 2020).

[38] The Provo NAA had one monitor (North Provo, 49–049–0002) shut down near the end of 2018 due to safety issues at the site, and UDAQ is working to reestablish the monitor at a new site.

[39] The Salt Lake City NAA had two monitors shut down due to the loss of each site, and UDAQ is working to reestablish the monitors at new sites. These monitors are Brigham City (49–003–0003), which shutdown in June 2019, and Ogden 2 (49–057–0002), which shut down in May 2019. A new site for Ogden 2 was established in Weber County (Harrisville, 49–057–1003) in September 2019. UDAQ is still working with Box Elder County on new potential sites.

[40] The Salt Lake City near-road $PM_{2.5}$ monitoring site (AQS ID 49–035–4002) was established and began recording data on January 1, 2019. The 98th percentile daily average concentration for 2019 at this $PM_{2.5}$ near-road monitor was 31.0 $\mu g/m^3$; however, the one year of available data is not sufficient for calculating a design value. Additional discussion of the EPA's position as to Salt Lake City's $PM_{2.5}$ near-road monitor can be found in the final rule signed by the Region 8 Regional Administrator on October 29, 2020, determining that the Salt Lake City Serious 2006 24-hour $PM_{2.5}$ NAA attained by the Serious attainment date.

TABLE 1—PROVO AND SALT LAKE CITY 2006 24-HOUR $PM_{2.5}$ NAAS 2017–2019 98TH PERCENTILES AND DESIGN VALUES ($\mu g/m^3$) [40]

NAA	Monitoring site	AQS ID	98th percentiles ($\mu g/m^3$)			2017–2019 Design value ($\mu g/m^3$)
			2017	2018	2019	
Provo	Lindon	49–049–4001	28.9	28.4	21.2	26
	Spanish Fork	49–049–5010	27.6	49.6	17.5	32
Salt Lake City	Bountiful	49–011–0004	35.2	25.7	19.3	27
	Rose Park	49–035–3010	32.4	29.2	27.9	30
	Hawthorn	49–035–3006	35.7	26.2	27.3	30
	Herriman #3	49–035–3013	28.2	29.0	18.8	25
	Erda	49–045–0004	20.9	30.6	22.9	25

As explained above, quality-assured, quality-controlled, and certified air quality monitoring data were collected for each year from 2017 through 2019 in accordance with an approved annual monitoring network plan (AMNP) for each year. The EPA has reviewed this data and concluded that it shows that the areas attained by the Serious attainment date of December 31, 2019.[41]

Further information on $PM_{2.5}$ monitoring is in Subsections IX.A.27.b(1) and IX.A.36.b(1) of the Provo and Salt Lake City maintenance plans, respectively. Additionally, on October 29, 2020, the Region 8 Regional Administrator signed the final rule, which finalized a determination that the Provo and Salt Lake City NAAs attained by the Serious attainment date of December 31, 2019. We have evaluated the ambient air quality data and believe that Utah has adequately demonstrated that the 2006 24-hour $PM_{2.5}$ NAAQS has been attained in the Provo and Salt Lake City areas and that the two areas attained by their Serious 2006 24-hour $PM_{2.5}$ attainment date.

2. State Implementation Plan Approval

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Those states containing Moderate 2006 24-hour $PM_{2.5}$ NAAs were required to submit a SIP by December 31, 2014, demonstrating attainment of the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2015. UDAQ submitted the Moderate 2006 24-hour $PM_{2.5}$ SIPs for the Provo and Salt Lake City NAAs on December 16, 2014, with additional revisions submitted on January 19, 2017. On May 10, 2017 (82 FR 21711), the EPA published a final rule reclassifying the Salt Lake City and Provo areas as ''Serious'' nonattainment under subpart 4, based on the EPA's determination that the area could not practicably attain the 2006 24-hour $PM_{2.5}$ standards by the December 31, 2015 attainment date. This reclassification became effective on June 9, 2017. The reclassification was based on the EPA's evaluation of ambient air quality data from the 2013–2015 period, indicating that it was not practicable for certain monitoring sites within the Salt Lake City and Provo areas to show $PM_{2.5}$ design values at or below the level of the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2015.

Section 107(d)(3)(E)(ii) of the CAA states that for NAAs to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the areas under section 110(k). On February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988), October 2, 2019 (84 FR 52368) and February 26, 2020 (85 FR 10989) the EPA approved revisions to several area source rules, and approved new rules for the 2006 24-hour $PM_{2.5}$ NAAs into the Utah SIP. Additionally, we completed a CDD for the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs on April 10, 2019 (84 FR 14267) and on September 27, 2019 (84 FR 51055), respectively. With these final rules, the EPA suspended the obligation for Utah to make submissions to meet certain CAA requirements related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for Moderate and Serious NAAs. These suspended CAA requirements are: (1) Attainment demonstration (Moderate and Serious); (2) projected emissions inventory (Moderate and Serious); (3) RACM/RACT (Moderate); (4) RFP (Moderate and Serious); (5) motor vehicle emission budgets (MVEB) (Moderate and Serious); (6) contingency measures (Moderate and Serious); and (7) quantitative milestones (Moderate and Serious).

The CDD did not suspend Utah's obligation to submit CAA requirements not related to demonstrating attainment, which includes the base-year emission inventory, NNSR revisions, and BACM/BACT for the Provo and Salt Lake City NAAs. The base-year emission inventory requirement for the Moderate and Serious Provo and Salt Lake City NAAs, will be based on our approval of the base-year inventory submitted in the January 13, 2020 submittal of the maintenance plans. Our analysis of the base-year inventory is discussed in Section II.C.4.a below and in Section II.B.1 above.

On July 25, 2019 (84 FR 35831), the EPA approved revisions to UAC R307–403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas), which satisfies the outstanding NNSR requirement for the Provo and Salt Lake City Moderate and Serious 2006 24-hour $PM_{2.5}$ NAAs and is discussed above in Section II.B.2. above.

The remaining CAA requirement that was not suspended with the April 10, 2019 (84 FR 14267) and the September 27, 2019 (84 FR 51055), CDD for the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs, respectively, is BACM/BACT for the Serious 2006 24-hour $PM_{2.5}$ SIPs. Our analysis that completes this remaining requirement is discussed in our TSD, with a brief discussion in Section II.B.3. above.

We have evaluated the actions above and have determined that through these actions, the State of Utah has a fully approved Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ SIP under section 110(k).

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant

[41] The final determination of attainment by the Serious 2006 24-hour $PM_{2.5}$ attainment date was signed by the Region 8 Regional Administrator on October 29, 2020.

control regulations, and other permanent and enforceable reductions.

As briefly discussed above in Section II.B.3 and in further detail in our TSD, Utah has implemented multiple area source rules, I/M Programs, and emission limits for stationary sources in the Provo and Salt Lake City NAAs.

Additionally, within Section IX.A.27.b.1.c. and IX.A.36.b.3.a. of the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plan, respectively, UDAQ provides an assessment of the ambient air quality data collected at the monitors in these two NAAs from the year monitoring began (2000) to 2018 (the last year of valid data before the maintenance plan was submitted), which shows an observable decrease in the monitored $PM_{2.5}$. UDAQ observed the 98th percentile average of the 24-hour data in the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs, as well as the annual arithmetic mean, which assisted in understanding the trends. The Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs were only designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS, however, the annual arithmetic mean is useful information in showing the decrease in emissions. The cold-pool temperature inversions during winter, which drive and trap secondary $PM_{2.5}$, vary in strength and duration from year to year, and the $PM_{2.5}$ concentrations measured during these periods reflect this variability more than they reflect the gradual changes in emissions of direct $PM_{2.5}$ and the $PM_{2.5}$ precursors. This variability is evident in UDAQ's assessment, but the 24-hour data trend is downward, indicating improvement of a little less than 1 $\mu g/m^3$ per year for both the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs. Episodic variability is reduced when reviewing the annual mean values of $PM_{2.5}$ concentrations from 2000–2018. Graphing the annual mean $PM_{2.5}$ concentration data reveals a decreasing trend, which indicates an improvement of 3 $\mu g/m^3$ and 4.3 $\mu g/m^3$ over this 18-year span for the Provo and Salt Lake City NAAs, respectively.

We have evaluated the various state and federal control measures, historical emissions inventories, and the emission trends of the $PM_{2.5}$ 98th percentiles and annual $PM_{2.5}$ mean concentrations presented by UDAQ from 2000 to 2018, and believe that the improvement in air quality in the Provo and Salt Lake City NAAs has resulted from emission reductions that are permanent and enforceable.

4. Fully Approved Maintenance Plan Under Section 175A of the Act

Section 107(d)(3)(E) of the Act requires that, for a NAA to be redesignated to attainment, we must fully approve a maintenance plan which meets the requirements of section 175A of the Act. The plan must demonstrate continued attainment of the relevant NAAQS in the area for at least 10 years after our approval of the redesignation. Eight years after our approval of a redesignation, a state must submit a revised maintenance plan demonstrating attainment for the 10 years following the initial 10-year period. The maintenance plan must also contain a contingency plan to ensure prompt correction of any violation of the NAAQS.[42] The EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble[43] and the Calcagni Memorandum referenced above. The Calcagni Memorandum outlines five core elements necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment. Those elements, as well as guidelines for subsequent maintenance plan revisions, are explained in detail below.

a. Attainment Inventory

$PM_{2.5}$ maintenance plans should include an attainment emission inventory to identify the level of emissions in the area that is sufficient to maintain the NAAQS. An emissions inventory was developed and submitted with the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plans for the two NAAs on January 13, 2020. This submittal contains a base year inventory for 2017, interim-year projection inventory for 2026, and a projected maintenance inventory of 2035. The emissions in the inventories include sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions located within a regional area called a modeling domain. UDAQ modeled two different domain sizes and grid resolutions: A 4 kilometer (km) coarse grid and a 1.33 km fine grid.[44] The 4 km coarse domain covered the entire State of Utah, a significant portion of Eastern Nevada (including Las Vegas), and smaller portions of Idaho, Wyoming, Colorado and Arizona, and was used to show movement of pollutants at the boundaries of the nested fine grid domain.

Since the coarse domain was so large, the 1.33 km fine domain or a ''core area'' within this domain was identified, within which a greater degree of accuracy was applied. Within this core area (which includes Weber, Davis, Salt Lake, Utah, Box Elder, Tooele, Cache and Franklin, ID counties), SIP-specific inventories were prepared to include seasonal adjustments and forecasting to represent each of the projection years. In the bordering region, outside the core area, the 2014 National Emissions Inventory (NEI) was used in the analysis. There were four general categories of sources included in these inventories: Point sources, area sources, on-road mobile sources and non-road mobile sources.

For each of these source categories, the pollutants that were inventoried were $PM_{2.5}$, SO_2, NO_X, VOC and NH_3. More detailed descriptions of the 2017 base-year inventory and the 2026 and 2035 projection inventories can be found in Sections IX.A.27.c and IX.A.36.c. Maintenance Plan, Subsection (2) Attainment Inventory, for the Provo and Salt Lake City NAAs, respectively, and in the State of Utah's TSD. Utah's submittal contains detailed emission inventory information that was prepared in accordance with the EPA's emission inventory guidance.[45] Summary of emission figures from the 2017 base year and emission projections for 2026 and 2035 are provided in Table 2 and Table 3, below, for the Provo and Salt Lake City, respectively.

[42] Sections 175A(b) and (d).

[43] 57 FR 13498, at 13563.

[44] *See* January 13, 2020 State of Utah submittal for Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ Maintenance Plans; Figures IX.A.27.4. and IX.A.36.4, respectively, titled ''CAMx Photochemical Modeling Domain in Two-Way Nested Configuration.''

[45] Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations (EPA–454/B–17–002, May 2017) (available at *https://www.epa.gov/sites/production/files/2017-07/documents/ei_guidance_may_2017_final_rev.pdf*).

TABLE 2—PROVO NAA; ACTUAL EMISSIONS FROM 2017 AND EMISSION PROJECTIONS FOR 2026 AND 2035

[tons per day (tpd)]

Year	Source category	$PM_{2.5}$ filterable	$PM_{2.5}$ condensible	$PM_{2.5}$ total	NO_X	VOC	NH_3	SO_2
2017 Baseline	Area Sources	1.75	0.29	2.04	5.01	13.32	6.54	0.06
	Mobile Sources			0.83	15.4	9.07	0.43	0.09
	Non-Road			0.21	3.07	1.66	0	0.01
	Point Sources	0.18	0.12	0.3	1.12	0.18	0.42	0.05
	2017 Total			3.38	24.6	24.23	7.39	0.22
2026	Area Sources	1.89	0.32	2.21	3.56	14.2	6.38	0.05
	Mobile Sources			0.42	5.79	4.58	0.36	0.05
	Non-Road			0.14	2.14	1.65	0.01	0.01
	Point Sources	0.19	0.12	0.31	0.97	0.17	0.44	0.06
	2026 Total			3.08	12.46	20.6	7.19	0.17
2035	Area Sources	2.06	0.35	2.41	3.67	16.32	6.24	0.05
	Mobile Sources			1.41	5.74	6.49	0.44	0.05
	Non-Road			0.13	1.84	1.8	0.01	0.01
	Point Sources	0.19	0.12	0.31	0.97	0.17	0.44	0.06
	2035 Total			4.26	12.22	24.78	7.13	0.17

TABLE 3—SALT LAKE CITY NAA; ACTUAL EMISSIONS FROM 2017 AND EMISSION PROJECTIONS FOR 2026 AND 2035

[tons per day (tpd)]

Year	Source category	$PM_{2.5}$ filterable	$PM_{2.5}$ condensible	$PM_{2.5}$ total	NO_X	VOC	NH_3	SO_2
2017 Baseline	Area Sources	5.02	1.11	6.13	13.55	45.98	14.21	0.21
	Mobile Sources			2.28	44.21	30.12	1.28	0.31
	Non-Road			0.96	18.12	8.89	0.02	0.35
	Point Sources	2.97	0.97	3.94	17.01	6.52	0.34	3.78
	2017 Total			13.31	92.89	91.51	15.85	4.65
2026	Area Sources	5.19	1.15	6.34	8.54	43.99	14.19	0.2
	Mobile Sources			1.34	19.63	15.96	1.09	0.16
	Non-Road			0.72	14.64	8.85	0.02	0.44
	Point Sources	4.19	1.38	5.57	22.61	7.26	0.48	3.5
	2026 Total			13.97	65.42	76.06	15.78	4.3
2035	Area Sources	5.37	1.19	6.56	8.69	47.17	14.21	0.2
	Mobile Sources			1.39	18.91	18.93	1.19	0.15
	Non-Road			0.67	13.32	9.7	0.03	0.51
	Point Sources	4.19	1.38	5.57	22.62	7.26	0.48	3.5
	2035 Total			14.19	63.54	83.06	15.91	4.36

Based on our review, we have determined that Utah prepared an adequate attainment inventory for the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs. Additionally, the 2017 base-year inventory satisfies the outstanding requirement for the Serious Provo and Serious Salt Lake City NAAs that were not suspended with the CDDs finalized on April 10, 2019 (84 FR 14267) and September 27, 2019 (84 FR 51055), respectively.

b. Maintenance Demonstration

The Calcagni Memorandum explains that where modeling was relied on to demonstrate maintenance, the plan must contain a summary of the air quality concentrations expected to result from the application of the control strategies. Also, the plan should identify and describe the dispersion model or other air quality model used to project ambient concentrations. The maintenance demonstration for the Provo and Salt Lake City areas used a regional photochemical model.

Before the development of the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plans, UDAQ conducted a technical analysis to support the development of the Serious SIP for the Salt Lake City 2006 24-hour $PM_{2.5}$ NAA. The analysis included preparation of emissions inventories and meteorological data, and the evaluation and application of a regional photochemical model. Part of this process included episode selection to determine the episode that most accurately replicates the photochemical formation of ambient $PM_{2.5}$ during a persistent cold air pool episode in the airshed. For the Provo and Salt Lake City maintenance plans, UDAQ used the same episode that was used for the Serious SIP modeling.

The Comprehensive Air Quality Model with Extensions (CAMx) version 6.30 for air quality modeling was used for the Provo and Salt Lake City

maintenance plans, with enhancements that included snow chemistry and topographical and surface albedo refinements. The emissions processing model that UDAQ used in conjunction with CAMx was the Sparse Matrix Operator Kernel Emissions Modeling System (SMOKE) version 3.6.5,[46] which prepares the annual emissions inventory for use in the air quality model.

Activity profiles and their associated cross reference files from the EPA's 2011v6[47] modeling platform were used by UDAQ. For stationary non-point and mobile sources, UDAQ used spatial surrogates from the EPA Clearinghouse for Inventories and Emissions Factors (CHIEF),[48] which were used to distribute emissions in space across the modeling domain. Emissions from point sources were placed at the specific location of the sources. Additionally, if reliable local information was available, UDAQ modified or developed the profiles and surrogates to reflect this information.

Meteorological inputs were derived using the Weather Research and Forecasting[49] (WRF) Advanced Research WRF (WRF–ARW) model to prepare meteorological datasets for UDAQ to use with the photochemical model. WRF–ARW had reasonable ability to replicate the vertical temperature structure of the boundary layer (*i.e.,* the temperature inversion); however, UDAQ found that WRF–ARW had difficulty reproducing the inversion when the inversion was shallow and strong (*i.e.,* an 8-degree temperature increase over 100 vertical meters). UDAQ provides additional information on these models in their TSD.

Part of the modeling exercise that UDAQ completed for the Provo and Salt Lake City maintenance plans was to test whether the model could successfully replicate the $PM_{2.5}$ mass and composition observed during prior episodes of elevated $PM_{2.5}$ concentrations. The selection of an appropriate episode(s) should determine the meteorological episode that helps produce the best air quality modeling performance.

Based on EPA guidance,[50] UDAQ selected three episodes: (1) January 1–10, 2011; (2) December 7–19, 2013; and (3) February 1–16, 2016. UDAQ examined the $PM_{2.5}$ model performance for these three episodes and concluded that CAMx performed the best when using the January 2011 WRF–ARW output. UDAQ further confirmed this determination by using a linear regression analysis showing that modeled and measured $PM_{2.5}$ at the Provo monitoring station (Lindon) was strongly correlated during the January 2011 episode ($R^2 = 0.89$) compared to the other episodes ($R^2 = 0.81$ for the December 2013 episode; and $R^2 = 0.05$ for the February 2016 episode). The Salt Lake City monitoring station (Hawthorne) linear regression analysis showed similar results to the Provo monitoring site, in that the performance of the January 2011 episode was strongly correlated ($R^2 = 0.80$) compared to the other episodes ($R^2 = 0.54$ for the December 2013 episode and $R^2 = 0.69$ for the February 2016 episode). Therefore, UDAQ selected the January 2011 episode to conduct the modeled maintenance demonstration work for the Provo and Salt Lake City areas. A comprehensive discussion of the meteorological model performance for all three of these episodes can be found in the TSD submitted by UDAQ.

UDAQ completed a comparison of the 24-hour average modeled and observed $PM_{2.5}$ during the January 1–10, 2011 episode at the Provo monitoring station (Lindon) and at the Salt Lake City monitoring station (Hawthorne), and the results showed that the model overall captured the daily 24 hour average temporal variation in $PM_{2.5}$ well. A more detailed analysis of this episode for both the Provo and Salt Lake City monitoring sites (Lindon and Hawthorne, respectively) can be found in the TSD submitted by UDAQ.

Overall, UDAQ concluded that the model performed well in replicating the buildup and dispersal of $PM_{2.5}$ in the Provo and Salt Lake City NAAs, and thus the model could be used for air quality planning purposes. UDAQ then developed a 2017 baseline model simulation using 2017 emissions data, but using the WRF–ARW meteorological data for the 2011 episode. The 2017 baseline modeling and the 2017 baseline monitoring data design values are used to simulate possible future $PM_{2.5}$ levels by projecting from the 2017 emissions to future year emissions. The results of the future year modeling are described below.

With acceptable model performance, the model can be used to make future-year attainment projections. For each future year, an attainment projection is made by calculating a concentration termed the Future Design Value (FDV). This calculation is made for each monitor included in the analysis, and then compared to the NAAQS (35 μg/m^3). When the FDV is smaller than the NAAQS at every monitor in the NAA, this would demonstrate attainment for the area in that specific future year. A maintenance plan must demonstrate continued attainment of the NAAQS for a span of ten years. Since this ten-year span is measured from the time that the EPA finalizes action of the plan, the ten-year end date is uncertain. To be conservative, UDAQ projected an attainment date of 2035, which is fifteen years after Utah submitted the Provo and Salt Lake City maintenance plans. Additionally, UDAQ modeled a ''spot-check'' assessment of 2026.

For any monitor, the FDV is greatly influenced by the existing air quality at the specific location. This can be quantified and expressed as a Baseline Design Value (BDV). The BDV is consistent with the form of the 2006 24-hour $PM_{2.5}$ NAAQS, which is the 98th percentile value averaged over a three-year period. The quantification of the BDV for each monitor in Provo and Salt Lake City, is included in the TSD submitted by UDAQ.

Several values were excluded when UDAQ calculated the BDVs in the Provo NAA. UDAQ utilized the EPA's ''Exceptional Events Rule,'' [51] which allows states to exclude certain air quality data due to exceptional events (*e.g.,* wildfires, dust storms, etc.). Two large local wildfires were observed during the summer of 2018 that affected the $PM_{2.5}$ values at the Spanish Fork monitor in the Provo NAA, but even when the atypical wildfire data is included in the baseline design value the level is still below the 2006 24-hour $PM_{2.5}$ NAAQS, at 35.4 μg/m^3. Since the design value complies with the NAAQS, the wildfire events are not considered regulatorily significant exceptional events under the Exceptional Events Rule because they did not cause an exceedance or a violation of the NAAQS.[52]

Although the wildfires did not cause exceptional events, which would have needed the EPA's concurrence under the Exceptional Events Rule, Utah excluded the values from those days from its modeling, so as to produce more representative projections of future air quality. This exclusion was consistent with EPA guidance on addressing instances where air quality data is influenced by atypical, extreme, or unrepresentative.[53] This Additional

[46] *https://www.cmascenter.org/smoke/.*

[47] *https://www.epa.gov/air-emissions-modeling/2011-version-6-air-emissions-modeling-platforms.*

[48] *https://www.epa.gov/chief.*

[49] *https://www.mmm.ucar.edu/weather-research-and-forecasting-model.*

[50] Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze (EPA, Apr. 2007).

[51] 81 FR 68216 (Oct 3, 2016).

[52] 40 CFR 50.14.

[53] *See* Additional Methods, Determinations, and Analyses to Modify Air Quality Data Beyond

Methods Guidance identifies the most common determinations and analyses not covered by the Exceptional Events Rule, and clarifies for each of them whether there is a separate, existing mechanism under which the exclusion, selection, or adjustment of air quality monitoring data may be appropriate. One example is certain modeling analyses under EPA's Guideline on Air Quality Models [54] including modeling analyses used for estimating base and future year design values for ozone and $PM_{2.5}$ attainment demonstrations.

Table 4 below details the atypical, potentially wildfire-influenced values recorded at the Spanish Fork monitor, with the specific date the monitor was impacted and what the potential source could be.

TABLE 4—2018 ATYPICAL EVENT VALUES EXCLUDED FROM THE BASELINE DESIGN VALUE AT THE SPANISH FORK MONITOR

Date	Value, μg/m³	Potential wildfire sources
8/7/2018	37.8	Coal Hollow.
8/9/2020	50.8	Coal Hollow and other western state(s) fire(s).
8/10/2018	68.8	Coal Hollow and other western state(s) fire(s).
8/11/2018	49.6	Coal Hollow and other western state(s) fire(s).
8/13/2018	58.1	Coal Hollow and other western state(s) fire(s).
9/14/2018	71.5	Pole Creek and Bald Mountain.
9/15/2018	42.6	Pole Creek and Bald Mountain.
9/17/2018	74.5	Pole Creek and Bald Mountain.
9/18/2018	57.7	Pole Creek and Bald Mountain.
9/19/2020	76.3	Pole Creek and Bald Mountain.
9/21/2018	39.3	Pole Creek and Bald Mountain.

UDAQ worked with the EPA to determine whether these atypical values could be excluded under the approach described in the Additional Methods Guidance, and based on the specific modeling analysis conducted in accordance with EPA's Air Quality Models Guideline. We have reviewed historical data for the area and the HYSPLIT ''back trajectory analysis'' [55] in which the State presented an analysis of the direction and sources of air pollution at the receptor site.[56] Based on our review, and considering the provisions of Utah SIP Section IX.A.27.c.1.d., the EPA agrees with UDAQ's assessment that the atypical baseline design value of 35.4 μg/m³ was exacerbated by local wildfire emissions, and the atypical monitoring data listing in Table 4 above should be removed, which would set the BDV for modeling projected design values at 28.4 μg/m³. This determination is only for the Spanish Fork monitor in the Provo 2006 24-hour $PM_{2.5}$ NAA; no other monitor in the Provo $PM_{2.5}$ NAA or the Salt Lake City $PM_{2.5}$ NAA was affected by the local wildfires. Additionally, this determination is not an official EPA concurrence based on the Exceptional Events Rule. The atypical data discussed in Table 4 were fully considered in evaluating whether the area had attained the NAAQS, and were *only* excluded to provide a more accurate modeled projected design value—that is, the FDV—for the Spanish Fork monitor.

The modeled FDV is used as a part of the maintenance plan demonstration to show that the NAAs will maintain the NAAQS at a future date. In making future-year projections of $PM_{2.5}$ concentrations and attainment status for this purpose, the output from the CAMx model for the future years is not considered the final answer. That is, the model future year results are not used in an absolute sense, but in a relative sense to correct for model errors and bias. UDAQ performed model simulations for the 2017 baseline emissions and for the projected future year emissions, and the fractional change was calculated in the future year model relative to the baseline year model for the concentrations of each $PM_{2.5}$ species.[57] These fractional changes are called the model Relative Response Factor (RRF). The RRF approach is based on the assumption that, while the model may have errors in predicting absolute concentrations, the model is reliable for predicting the relative changes in $PM_{2.5}$ concentration as emissions change in the future. An RRF greater than one indicates that the model predicted $PM_{2.5}$ is greater in the future year than in the 2017 base year, and typically is a result of increased emissions in the future year associated with projected population growth. (Additional discussion of the RRF can be found in EPA guidance [58] and in the maintenance plans and TSD submitted by UDAQ.) The model RRF for each $PM_{2.5}$ species is multiplied by the 2017 BDV species concentrations to estimate the FDV for each species. The FDVs are compared to the NAAQs to determine whether attainment is predicted at each monitoring location. Table 5 below provides FDV results for the Provo and Salt Lake City monitoring sites, projection years and shows that no FDV exceeds the NAAQS. Therefore, continued attainment is demonstrated in the Provo and Salt Lake City NAAs.

Exceptional Events (EPA, Apr. 4, 2019) (the ''Additional Methods Guidance,'' available at *https://www.epa.gov/sites/production/files/2019-04/documents/clarification_memo_on_data_modification_methods.pdf*).

[54] 40 CFR part 51, appendix W.

[55] The HYSPLIT model is a complete system for computing simple air parcel trajectories, as well as complex transport, dispersion, chemical transformation, and deposition simulations. A common application of this model is a back trajectory analysis to determine the origin of air masses and establish source-receptor relationships. Detailed information on the HYSPLIT model can be found at: *https://www.arl.noaa.gov/hysplit/hysplit/*.

[56] *See* ''2018 Wildfire Atypical Event Report'' within the Utah TSD (presenting HYSPLIT back trajectory analysis); the AQS report containing the historical data can be found in our docket.

[57] $PM_{2.5}$ species includes nitrate (NO3), sulfate (SO4), ammonium (NH4), organic carbon (OC), elemental carbon (EC), chloride (Cl), sodium (Na), crustal material (CM), and other species (other mass). Additional detail can be found at figures IX.A.27.13 and IX.A.36.13 for the Provo and Salt Lake City NAAs, respectively.

[58] Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze (EPA, Nov. 2018).

TABLE 5—BASELINE DESIGN VALUE, RELATIVE RESPONSE FACTORS, AND FUTURE DESIGN VALUES FOR ALL MONITORS AND FUTURE PROJECTION YEARS

[Units of design values are μg/m^3, while RRFs are dimensionless]

NAA	Monitor	AQS site	2016–2018 BDV	2026 RRF	2026 FDV	2035 RRF	2035 FDV
Provo	Lindon	49–049–4001	31.1	0.94	29.3	0.95	*29.5
	Spanish Fork	49–049–5010	**28.4	1	28.4	1	*28.4
Salt Lake City	Brigham City	49–003–0003	32.4	0.85	27.5	1	***27.5
	Bountiful	49–011–0004	28.5	0.99	28.1	1	***28.2
	Hawthorne	49–035–3006	33.4	0.95	31.8	1	***32.1
	Rose Park	49–035–3010	34.9	0.96	33.6	1	***33.6
	Ogden 2	49–057–0002	30.2	0.95	28.8	1	***28.9
	Erda****	49–045–0004	25.5	0.90	23.0	1	***23.1

*This value includes additional emissions added to the MAG MVEB from the safety margin. The safety margin is discussed further in Section II.D.2 below.

**This value excludes data from atypical events discussed above.

***These values include additional emissions added to the WFRC MVEB from the safety margin. The safety margin is discussed further in Section II.D.2 below.

****Erda site uses 2016 speciation data instead of 2011 like the other Salt Lake City NAA monitors because Erda was a new site starting in 2016.

As explained in the Calcagni memorandum, any assumptions concerning emission rates must reflect permanent, enforceable measures. A state cannot take credit in the maintenance demonstration for reductions, unless there are regulations in place requiring those reductions or the reductions are otherwise shown to be permanent. States are expected to maintain implemented control strategies despite redesignation to attainment, unless equivalent reduction measures are adopted. Emission reductions from source shutdowns can be considered permanent and enforceable, to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly.

For a maintenance demonstration, permanent and enforceable measures must be implemented and acted on before the EPA may act on the maintenance plan or redesignation request.[59] Therefore, the EPA is taking concurrent action on these remaining attainment-related portions of the Moderate and Serious 2006 24-hour $PM_{2.5}$ SIPs for the Provo and Salt Lake City NAAs. Our proposed approval of these remaining attainment-related portions of the Moderate and Serious 2006 24-hour $PM_{2.5}$ Salt Lake City and Provo SIPs for area sources rules, mobile source controls, and stationary source emission limits in Utah's Part H section in their SIP to control direct $PM_{2.5}$ and $PM_{2.5}$ precursors is discussed in Section II.B.3 above. Additionally, the BACM/BACT analysis for area source rules, on-road mobile sources, off-road mobile sources, and stationary sources is discussed in Section II.B.3 above and in our TSD.

Based on the information described above and in our TSD, the EPA proposes to find that Utah has adequately demonstrated that the Provo and Salt Lake City areas will maintain the 2006 24-hour $PM_{2.5}$ NAAQS for the next fifteen years.

c. Monitoring Network

Once a NAA has been redesignated to attainment, a state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. For verification, the maintenance plans should contain provisions for continued operation of air quality monitors. We approve these sites annually, and any future change would require discussion and approval from the EPA. In its January 13, 2020 submittal, Utah commits to continuing to maintain an ambient monitoring network for $PM_{2.5}$ in the Provo and Salt Lake City areas, in accordance with 40 CFR part 58 and the Utah SIP.

d. Verification of Continued Attainment

Utah's maintenance plan submittal for the Provo and Salt Lake City areas must indicate how the State will track the progress of the maintenance plans. This is necessary because the emissions projections made for the maintenance demonstrations depend on assumptions of point and area source growth. In Section IX.A.27.c.(7) and Section IX.A.36.c.(7) of the Provo and Salt Lake City maintenance plans, respectively, Utah commits to track and document measured mobile source parameters (*e.g.,* vehicle miles traveled, congestion, fleet mix) and changes in new and modified stationary source permits. If these and the resulting emissions change significantly over time, the State will perform appropriate studies to determine whether additional and/or re-sited monitors are necessary, and whether mobile and stationary source emission projections are on target.

e. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For the maintenance plans to be approved under section 175A, a state is not required to have fully adopted contingency measures that will take effect without further action by the state. However, the contingency plan is an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered. The plan should discuss the measures to be adopted and a schedule and procedure for adoption and implementation. The contingency plan must require that the state will implement all measures in the Part D nonattainment plan for the area prior to redesignation. The state should also identify the specific indicators, or triggers, that will be used to determine when the contingency plan will be implemented.

As stated in Section IX.A.27.c.(8) and Section IX.A.36.c.(8), of the Provo and Salt Lake City maintenance plans, respectively, triggering the contingency plan does not automatically require a revision to the SIP, nor does it necessarily mean the area will be redesignated once again to nonattainment. Instead, a state will normally have an appropriate timeframe to correct the potential violation with

[59] *See* Calcagni Memorandum at 4.

implementing one or more adopted contingency measures. If violations continue to occur, additional contingency measures will be adopted until the violations are corrected.

Upon monitoring a potential violation of the 2006 24-hour $PM_{2.5}$ NAAQS, including exceedances flagged as exceptional events but not concurred with by the EPA, a state will identify a means of corrective action within six months after a potential violation. The state will require implementation of the corrective action no later than one year after the violation is confirmed, and any contingency measures adopted and implemented will become part of the next revised maintenance plan submitted for EPA approval.

The Provo maintenance plan list of contingency measures consists of:

(1) Measures to address emissions from residential wood combustion (*i.e.,* emissions from fireplaces under the existing R307–302 rule), including re-evaluating the thresholds at which red or yellow burn days are triggered. Residential wood combustion represents a large emissions inventory source category at 43.6% of direct $PM_{2.5}$ emissions in the 2017 county-wide inventory;

(2) Measures to address fugitive dust from area sources. Fugitive dust represents 28.1% of direct $PM_{2.5}$ emissions in the 2017 county-wide inventory; and

(3) Additional measures to address other $PM_{2.5}$ sources identified in the emissions inventory, such as on-road vehicles, non-road vehicles and engines, and industrial sources.

The Salt Lake City maintenance plan list of contingency measures consists of:

(1) Measures to address emissions from residential wood combustion (*i.e.,* emissions from fireplaces under the existing R307–302 rule), including re-evaluating the thresholds at which red or yellow burn days are triggered. Residential wood combustion represents a large emissions inventory source category at 35.4% of direct $PM_{2.5}$ emissions in the 2017 county-wide inventory;

(2) Measures to address fugitive dust from area sources. Fugitive dust represents 31.2% of direct $PM_{2.5}$ emissions in the 2017 county-wide inventory; and

(3) Additional measures to address other $PM_{2.5}$ sources identified in the emissions inventory, such as on-road vehicles, non-road vehicles and engines, and industrial sources.

Based on the above, we propose to find that the contingency measures provided in the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plans are sufficient and meet the requirements of section 175A(d) of the CAA.

f. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, Utah is required to submit a revision to the maintenance plans eight years after the redesignation of the Provo and Salt Lake City areas to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. This revision is to provide for maintenance of the NAAQS for an additional ten years following the first ten-year period. In the Provo and Salt Lake City maintenance plans, Utah committed to submit a revised maintenance plan eight years after the approval of the redesignation request and maintenance plan.

5. Meeting Applicable Requirements of Section 110 and Part D of the Act

In order for an area to be redesignated to attainment, section 107(d)(3)(E) requires that it must have met all applicable requirements of section 110 and part D of the Act. We interpret this to mean that, for a redesignation request to be approved, the state must have met all requirements that applied to the subject area prior to, or at the time of, submitting a complete redesignation request. In our evaluation of a redesignation request, we do not need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

a. Section 110 Requirements

Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Utah SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. On September 21, 2010, Utah submitted an Infrastructure SIP to the EPA demonstrating compliance with the requirements of section 110 applicable to the 2006 24-hour $PM_{2.5}$ NAAQS. We approved this submittal on November 25, 2013 (78 FR 63883), for all section 110 requirements applicable to redesignation.

b. Part D Requirements

Before a $PM_{2.5}$ NAA may be redesignated to attainment, Utah must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements applicable to all NAAs, while subpart 4 of part D establishes specific requirements applicable to PM_{10}/$PM_{2.5}$ NAAs. The $PM_{2.5}$ SIP Requirements Rule provides that the applicable requirements of CAA section 172 are subsections 172(c)(3) (emissions inventory), 172(c)(5) (NSR permitting program), 172(c)(7) (the section 110(a)(2) air quality monitoring requirements), and 172(c)(9) (contingency measures). We have interpreted the requirements of section 172(c)(2) (RFP) and 172(c)(6) (other measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. Finally, Utah has not sought to exercise the options that would trigger sections 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

The requirements of section 172(c), 189(a), and 189(b) regarding attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, have been satisfied through our February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988), October 2, 2019 (84 FR 52368), and February 26, 2020 (85 FR 10989) actions approving portions of the Moderate 2006 24-hour $PM_{2.5}$ Provo and Salt Lake City SIPs. On April 10, 2019 (84 FR 14267) and September 27, 2019 (84 FR 51055), the EPA approved CDDs for the Provo and Salt Lake City NAAs, respectively. As specified at 40 CFR 51.1015(a) in the $PM_{2.5}$ SIP Requirements Rule, upon this determination by the EPA that the Moderate $PM_{2.5}$ NAAs have attained the 2006 24-hour $PM_{2.5}$ NAAQS, the requirements for Utah to submit an attainment demonstration, provisions demonstrating timely implementation of RACM/RACT, a RFP plan, quantitative milestones and quantitative milestone reports, and contingency measures were suspended. Additionally, under 40 CFR 51.1015(b), upon this determination from the EPA that the Serious $PM_{2.5}$ NAAs have attained the 2006 24-hour $PM_{2.5}$ NAAQS, the requirements for the State to submit an attainment demonstration, RFP plan, quantitative milestones and quantitative milestone reports, and contingency measures for the areas were suspended. However, the CDDs for the Provo and Salt Lake City NAAs did not suspend requirements that were independent of attainment: BACM/BACT, NNSR, and base-year emissions inventories. The BACM/BACT analysis, including any accompanying rule or limit revision, is discussed in Section II.B.3 above and completes this element.

We approved the requirements of the part D NSR permit program for Utah on July 25, 2019 (84 FR 35831), which is briefly discussed above in Section II.B.2. Once the Provo and Salt Lake City areas are redesignated to attainment, the prevention of significant deterioration

(PSD) requirements of part C of the Act will apply. We must ensure that the State has made any needed modifications to its PSD regulations so that they will apply in the Provo and Salt Lake City areas after redesignation. Utah's PSD regulations, R307–405 (Permits: Major Sources in Attainment or Unclassified Areas (PSD)), which we approved as meeting all applicable Federal requirements on July 15, 2011 (76 FR 41712) and January 29, 2016 (81 FR 4957), apply to any area designated unclassifiable or attainment, and thus will become fully effective in the Provo and Salt Lake City areas upon redesignation of the areas to attainment.

Additionally, the remaining element that is independent of attainment is the base-year emissions inventories for the Provo and Salt Lake City, which is being acted on in Section II.C.4.a above and is briefly discussed in Section II.B.1 above.

D. Have transportation conformity requirements been met?

1. Requirements for Transportation Conformity and Motor Vehicle Emissions Budgets (MVEBs)

Transportation conformity is required by section 176(c) of the CAA. The EPA's conformity rule at 40 CFR part 93, subpart A requires that transportation plans, programs, and projects conform to SIPs, and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. To effectuate its purpose, the EPA's conformity rule requires a demonstration that emissions from a Metropolitan Planning Organization's (MPO) Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP), involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval, are consistent with the MVEB(s) contained in a control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). An MVEB is defined as the level of mobile source emissions of a pollutant relied on in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area. Further information concerning the EPA's interpretations regarding MVEBs can be found in the preamble to the EPA's November 24, 1993, transportation conformity rule.[60]

A 2006 24-hour $PM_{2.5}$ maintenance plan should identify MVEBs for direct $PM_{2.5}$, NO_X, and all other $PM_{2.5}$ precursors whose on-road mobile source emissions are determined to significantly contribute to $PM_{2.5}$ levels in the area. For both the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plan SIP revisions, the UDAQ also identified VOCs as a precursor to the formation of $PM_{2.5}$ in both areas. For direct $PM_{2.5}$ SIP MVEBs, the MVEB should include direct $PM_{2.5}$ motor vehicle emissions from tailpipes, brake wear, and tire wear. In addition, a state must also consider whether re-entrained road dust is a significant contributor and should be included in the direct $PM_{2.5}$ MVEB.[61] With respect to this requirement, the EPA reviewed information, data, and an analysis from the UDAQ that sufficiently documented that re-entrained road dust emissions were negligible and meet the criteria of 40 CFR 93.102(b)(3) for not needing to be included in the direct $PM_{2.5}$ MVEB. The EPA has concurred with the State's analysis as to re-entrained road dust.[62]

For maintenance plans that do not identify MVEBs for any other year than the last year of the maintenance plan, the demonstration of consistency with the MVEBs by the applicable MPO must be accompanied by a qualitative finding that there are no factors that would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan.[63]

2. MVEBs Identified in the Provo Maintenance Plan SIP

Utah's Provo 2006 24-hour $PM_{2.5}$ maintenance plan SIP revision specified the maximum mobile source emissions of $PM_{2.5}$, NO_X and VOC allowed in 2035, the final maintenance year. These mobile source emissions were then initially identified by the State as the maintenance plan's MVEBs. However, through sensitivity dispersion modeling, the state was able to demonstrate that for 2035, additional mobile source emissions could be included such that the Provo area could continue to demonstrate maintenance. These additional direct $PM_{2.5}$, NO_X, and VOC mobile source emissions were then identified as a ''safety margin'' [64] and were added to the initial MVEBs to arrive at the final MVEBs. This process of identifying an additional ''safety margin'' was correctly followed by the UDAQ and is allowed by 40 CFR 93.124(a). The derivation of the MVEBs, with ''safety margin,'' is described in Section 4 (Mobile Source Budget for Purposes of Conformity) of the maintenance plan, and Section 3.e. (On-road Mobile Baseline and Projection Inventories), ii. (On-Road MVEB Derivation) of the TSD submitted by UDAQ. As presented in Table IX.A.27.11 of the maintenance plan, the final 2035 MVEBs were 1.5 tpd direct $PM_{2.5}$, 6.5 tpd NO_X, and 7.0 tpd VOCs.

3. MVEB Trading for Demonstrating Transportation Conformity in the Provo 2006 24-Hour $PM_{2.5}$ Maintenance Area

The EPA's transportation conformity regulations allow trading between the direct $PM_{2.5}$ and NO_X and VOC precursor MVEBs where the SIP establishes an appropriate mechanism.[65] The State of Utah has established an MVEB trading mechanism to allow future increases in on-road mobile sources direct $PM_{2.5}$ emissions to be offset by future decreases in NO_X precursor emissions or future decreases in VOC precursor emissions from on-road mobile sources. The basis for the trading mechanism is each maintenance plan's dispersion modeling demonstration for the year 2035, which established the relative contribution of the NO_X and VOC precursor pollutants. These ratios were developed using data from the air quality maintenance plan's dispersion modeling. Section 4(a)(ii) of the maintenance plan and Section 6.a. (Trading Ratio) of the maintenance plan's TSD provide the following modeling-derived trading ratios: Future increases in on-road mobile sources' direct $PM_{2.5}$ emissions may be offset with future decreases in NO_X emissions from on-road mobile sources at a NO_X to $PM_{2.5}$ ratio of 5.8 to 1, and future increases in on-road mobile sources' direct $PM_{2.5}$ emissions may be offset with future decreases in VOC emissions from on-road mobile sources at a VOC to $PM_{2.5}$ ratio of 27.9 to 1.

The maintenance plan also notes that this trading mechanism will only be used by the Mountainland Association of Governments (MAG), the MPO for Utah County, for transportation conformity determination analyses for years after 2035. The maintenance plan further notes that to ensure that the trading mechanism does not impact the ability to meet the NO_X budget and VOC

[60] *See* 58 FR 62193–62196.

[61] 40 CFR 93.102(b) and 93.122(f); *see also* conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004).

[62] Email from Tim Russ, EPA, to Bill Reiss, UDAQ, subject ''$PM_{2.5}$ Re-entrained Road Dust—Utah Request for Deletion from $PM_{2.5}$ Motor Vehicle Emissions Budget (MVEB): EPA Concurrence'' (July 20, 2011).

[63] 40 CFR 93.118(b)(2)(i).

[64] 40 CFR 93.101.

[65] 40 CFR 93.124(b).

budgets, the NO_X and VOC emission reductions available to supplement the direct $PM_{2.5}$ MVEB will only be those remaining after the 2035 NO_X and VOC MVEBs have been met. The maintenance plan further articulates that clear documentation of the calculations used in the MVEB trading is to be included in the conformity determination analysis as prepared by the MAG MPO.

4. MVEBs Identified in the Salt Lake City Maintenance Plan SIP

Utah's Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plan SIP revision specified the maximum mobile source emissions of $PM_{2.5}$, NO_X and VOC allowed in the final maintenance year which is 2035. These mobile source emissions were then initially identified by the State as the maintenance plan's MVEBs. However, as with the Provo NAA, through sensitivity dispersion modeling the State was able to demonstrate that for 2035, additional mobile sources emissions could be included such that the Salt Lake City area could continue to demonstrate maintenance. These additional direct $PM_{2.5}$, NO_X, and VOC mobile source emissions were then identified as a ''safety margin'' [66] and were then added to the initial MVEBs to arrive at the final MVEBs. This process of identifying an additional ''safety margin'' was correctly followed by the UDAQ and is as allowed by 40 CFR 93.124(a). The derivation of the MVEBs, with ''safety margin,'' is described in Section 4 (Mobile Source Budget for Purposes of Conformity) of the maintenance plan, and Section 3.e. (On-road Mobile Baseline and Projection Inventories), ii. (On-Road MVEB Derivation) of the TSD submitted by UDAQ. As presented in Table IX.A.36.11 of the maintenance plan, the final 2035 MVEBs were 1.38 tpd direct $PM_{2.5}$, 21.63 tpd NO_X, and 20.57 tpd VOCs.

5. MVEB Trading for of Demonstrating Transportation Conformity, in the Salt Lake City 2006 24-Hour $PM_{2.5}$ Maintenance Area

As discussed above, the EPA transportation conformity regulations allow trading between direct $PM_{2.5}$ and NO_X and VOC precursor MVEBs, if the SIP establishes an appropriate mechanism.[67]

The State has established an MVEB trading mechanism to allow for future increases in on-road mobile sources direct $PM_{2.5}$ emissions to be offset by future decreases in NO_X precursor emissions or future decreases in VOC precursor emissions from on-road mobile sources. The basis for the trading mechanism is the maintenance plan's dispersion modeling demonstration for the year 2035, which established the relative contribution of the NO_X and VOC precursor pollutants. These ratios were developed from data from the air quality maintenance plan's dispersion modeling. Section 4(a)(ii) of the maintenance plan and Section 6.a. (Trading Ratio) of the maintenance plan's TSD provide the following modeling-derived trading ratios: Future increases in on-road mobile sources' direct $PM_{2.5}$ emissions may be offset with future decreases in NO_X emissions from on-road mobile sources at a NO_X to $PM_{2.5}$ ratio of 6.3 to 1, and future increases in on-road mobile sources' direct $PM_{2.5}$ emissions may be offset with future decreases in VOC emissions from on-road mobile sources at a VOC to $PM_{2.5}$ ratio of 20.9 to 1.

The maintenance plan also notes that this trading mechanism will only be used by the Wasatch Front Regional Council (WFRC), the MPO for Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance area counties, for transportation conformity determination analyses for years after 2035. The maintenance plan further notes that to ensure that the trading mechanism does not impact the ability to meet the NO_X budget and VOC budgets, the NO_X and VOC emission reductions available to supplement the direct $PM_{2.5}$ MVEB shall only be those remaining after the 2035 NO_X and VOC MVEBs have been met. The maintenance plan further articulates that clear documentation of the calculations used in the MVEB trading are to be included in the conformity determination analysis as prepared by the WFRC MPO.

6. EPA's Evaluation of Mobile Source Emissions and MVEBs

The EPA has evaluated the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plan's emission inventories and maintenance demonstration modeling as described above, and have determined that the direct $PM_{2.5}$, NO_X, and VOC MVEBs have been appropriately derived for each maintenance plan and are acceptable. We have also evaluated the description and derivation of the MVEB NO_X and VOC trading mechanisms, the supporting modeling data maintenance demonstration, and the TSDs submitted by UDAQ. We find the trading mechanisms acceptable. Therefore, we are proposing to approve the Provo 2006 24-hour $PM_{2.5}$ maintenance plan's 2035 MVEBs of direct $PM_{2.5}$ of 1.5 tpd, NO_X of 6.5 tpd, and VOC of 7.0 tpd. We are also proposing to approve the Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plan's 2035 MVEBs of direct $PM_{2.5}$ of 1.38 tpd, NO_X of 21.63 tpd, and VOC of 20.57 tpd. In addition, we are also proposing to approve the NO_X/VOC-to-direct $PM_{2.5}$ MVEB trading mechanisms as described above and documented in Section 4(a)(ii) of each respective maintenance plan.

E. Did Utah follow the proper procedures for adopting this Action?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The Act also requires states to observe procedural requirements in developing implementation plans and plan revisions for submission. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by the state after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action.[68] Our completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. We attempt to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) of the Act if a completeness determination is not made within six months after receipt of the submission.

On July 11, 2012, the UAQB approved for public comment a new Rule R307–208 (Outdoor Wood Boiler Prohibition), with a comment period from August 1 to August 31, 2012, and a public hearing on August 15, 2012. UDAQ received comments from industry, environmental groups, and citizens, and based on these comments, UDAQ made significant changes to the rule, and on November 7, 2012, requested the UAQB proposed the revised rule for a second comment period. This comment period was held from December 1 through 31, 2012, and no public hearing was requested. Comments were submitted by industry during this second comment period and UDAQ made significant changes to the rule where another comment period was required. On February 6, 2013, the UAQB approved these revisions for a third comment period from March 1 through April 1, 2013. The UAQB approved, and the rule became effective

[66] 40 CFR 93.101.

[67] 40 CFR 93.124(b).

[68] CAA section 110(k)(1); 57 FR 13565.

on April 10, 2013 and UDAQ submitted this new rule to the EPA on July 21, 2020.

On September 3, 2014, the UAQB approved the Salt Lake City and Provo Moderate 2006 24-hour $PM_{2.5}$ SIP revisions for public comment, which took place from October 1 through October 31, 2014, with a public hearing on October 20, 2014. Comments were submitted by industry, environmental groups, and the EPA. UDAQ responded to all comments and made insignificant changes that did not warrant a second comment period. The UAQB approved the 2006 24-hour $PM_{2.5}$ Moderate SIP for submission to the EPA on December 3, 2014, and the SIP became effective on December 4, 2014. UDAQ submitted the Moderate 2006 24-hour $PM_{2.5}$ SIPs on December 16, 2014.

On May 3, 2017, the UAQB approved the new rule R307–230 (NO_X Emission Limits for Natural Gas-Fired Water Heaters) for public comment from June 1, 2017 to July 3, 2017; no public hearing was requested. No comments were received, and the rule was approved by the UAQB on August 2, 2017, and it became effective on August 3, 2017. UDAQ submitted the rule to the EPA on July 21, 2020.

On September 7, 2016, the UAQB approved Utah SIP Section IX.H.13 (Source-Specific Emission Limitations in Provo—UT $PM_{2.5}$ Nonattainment Area) for the $PM_{2.5}$ SIPs for public comment, which was accepted from October 1 through October 31, 2016, with a public hearing on October 26, 2016. Comments were submitted by industry and environmental groups. UDAQ responded to all comments and made insignificant changes that did not warrant a second comment period. The UAQB approved Utah SIP Section IX.H.13 for submission to the EPA on December 7, 2016, and the rule became effective on December 8, 2016. UDAQ submitted the revisions on January 19, 2017.

On June 7, 2017, the UAQB approved a new rule, R307–304 (Solvent Cleaning) for the $PM_{2.5}$ SIPs for public comment, which extended from July 1 through August 15, 2017, with a public hearing on July 27, 2017. Comments were submitted by industry and environmental groups. UDAQ responded to all comments and made insignificant changes that did not warrant a second comment period. The UAQB approved the new rule, R307–304 (Solvent Cleaning)] for submission to the EPA on December 6, 2017, and the rule became effective on December 6, 2017. UDAQ submitted the new rule on May 21, 2020.

On June 7, 2017, the UAQB approved revisions to the following area source rules: R307–335 (Degreasing); R307–343 (Wood Furniture Manufacturing Operations); R307–344 (Paper, Film, and Foil Coatings); R307–345 (Fabric and Vinyl Coatings); R307–346 (Metal Furniture Surface Coatings); R307–347 (Large Appliance Surface Coatings); R307–348 (Magnet Wire Coatings); R307–349 (Flat Wood Panel Coatings); R307–350 (Miscellaneous Metal Parts and Products Coatings); R307–351 (Graphic Arts); R307–352 (Metal Container, Closure, and Coil Coatings); R307–353 (Plastic Parts Coatings); and R307–354 (Automotive Refinishing Coatings). Public comment was accepted from July 1 through August 15, 2017, with a public hearing on July 27, 2017. Comments were submitted by industry and environmental groups. UDAQ responded to all comments and made insignificant changes that did not warrant a second comment period. The UAQB approved these rules, except R307–350, R307–353, and R307–355, to be submitted to the EPA on October 4, 2017. Additionally, on October 4, 2017, the UAQB requested revisions to R307–350, R307–353, and R307–355. UDAQ presented these revisions to the UAQB on December 6, 2017, which required a second comment period, from January 1 through January 31, 2018. Industry submitted comments and UDAQ provided responses within the submittal and made insignificant changes to these rules during the second comment period. R307–335 became effective on October 29, 2017, and R307–343, R307–344, R307–345, R307–346, R307–347, R307–348, R307–349, R307–350, R307–351, R307–352, R307–353, R307–354, and R307–355 became effective on December 6, 2017. UDAQ submitted these rules to the EPA on April 19, 2018.

On June 6, 2018, the UAQB approved the revisions to Utah SIP Sections IX.H.11 and 12, with the accompanying BACM/BACT analysis. Additionally, the BACM/BACT analyses for on-road mobile, off-road mobile, and area source rules were approved for public comment. The comment period was held from July 1 to August 15, 2018, and no public hearing was requested. Comments were received by industry, environmental groups and the EPA. UDAQ responded to these comments and held two follow-up comment periods. The first was held from October 1 through October 31, 2018. This comment period was for the Salt Lake City Serious 2006 24-hour $PM_{2.5}$ SIP, including the potential for UDAQ to complete a major stationary source precursor demonstration for the SIP. The second follow-up comment period was held from November 1 through November 30, 2018. This comment period was for significant revisions to Utah SIP Sections IX.H.11, 12, and BACM/BACT demonstration. Comments were submitted by industry, environmental groups, and the EPA in these second-round comment periods. UDAQ responded to all the comments and took the final SIP package to the January 2, 2019 UAQB meeting which approved the SIP elements to be submitted to the EPA. The SIP became effective on January 3, 2019 and was submitted to the EPA on February 15, 2019.

On May 15, 2018, UDAQ published a Notice of Public Comment Period for the Provo Serious 2006 24-hour $PM_{2.5}$ SIP elements that were not suspended with the April 10, 2019 CDD (84 FR 14267). These elements included: Base-year emissions inventory and provisions to ensure BACM/BACT for area sources, major stationary sources, on-road mobile sources, and off-road mobile sources. These documents did not need to go through the UAQB, because no portion of the Utah SIP was revised; UDAQ completed a detailed analysis and supporting inventory for what is currently within the Utah SIP for the Provo 2006 24-hour $PM_{2.5}$ NAA. The comment period was held from May 16, 2018 to June 16, 2018, and a public hearing was not requested. UDAQ received comments from industry, environmental groups, and the EPA. UDAQ responded to all submitted comments and made only insignificant revisions that did not warrant a second comment period; therefore, UDAQ submitted these remaining Provo Serious 2006 24-hour $PM_{2.5}$ SIP elements to the EPA on February 4, 2019.

On September 4, 2019, the UAQB proposed for public comment the Provo and Salt Lake City maintenance plans and redesignation request and revisions to R307–110–10. The public comment period was held from October 1 to October 31, 2019. UDAQ received comments from industry and citizens, and no public hearing was requested. The comments were minimal and did not prompt UDAQ to substantively revise any documents. UDAQ made minor revisions to the plan once the data and modeling were verified. On December 4, 2019, the UAQB adopted R307–110–10 and the Provo and Salt Lake City maintenance plans/redesignation requests, effective December 5, 2019. UDAQ submitted these revisions and the TSD to the EPA on January 13, 2020.

On November 20, 2019, the UAQB proposed amendments to Utah SIP Section X, Vehicle Inspection and Maintenance Program, Parts B and E; R307–110–32; and R307–110–35. The comment period was held from January 1 to 31, 2020. A public hearing was held on Monday February 3, 2020; however, due to severe weather, a second public hearing was held on Wednesday February 5, 2020. No comments were received, and no one attended either public hearing. On March 4, 2020, the UAQB adopted revisions to R307–110–32; R307–110–35 and to Utah SIP Section X, Vehicle Inspection and Maintenance Program, Parts B and E. These revisions became effective on March 5, 2020, and UDAQ submitted these revisions to the EPA on May 21, 2020.

On October 9, 2020, UDAQ submitted a draft SIP revision to the Utah SIP Section IX.H.12.i.i.C (Kennecott Power Plant), which will remove the startup/shutdown emission limits from this Utah SIP section, to the EPA for parallel processing. The comment period at the State level began October 1 and will end November 3, 2020, with a public hearing being held on November 3, 2020. UDAQ requested this parallel processing so as not to delay action on the 2006 24-hour $PM_{2.5}$ redesignations for the Salt Lake City and Provo NAAs. UDAQ is planning on submitting this SIP revision early in January 2021. After the State formally submits these revisions, the EPA will evaluate the submittal for any changes between the proposed and final versions. As discussed above in Section I.E, the EPA will determine if any changes to the draft submission would warrant another proposed rule, or if on the other hand the agency may proceed with a final action. This formal submission from the State of Utah will accompany either the final rule or the new proposed rule under this docket number.

III. Proposed Action

We are proposing to redesignate the Salt Lake City and Provo 2006 24-hour $PM_{2.5}$ NAAs, and to approve multiple related SIP submissions. We are proposing to approve the Governor of Utah's submittal of January 13, 2020, containing revisions to R307–110–10, and the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ maintenance plans and redesignation requests. We are also proposing to approve the Governor of Utah's submittal of May 21, 2020, with revisions to R307–110–32, R307–110–35, Utah SIP Section X.B., and Utah SIP Section X.E, which are the I/M programs for Davis and Weber Counties. We are proposing to approve both maintenance plans' 2035 MVEBs. In addition, we are proposing to approve the NO_X and VOC to direct $PM_{2.5}$ MVEB trading mechanisms in each maintenance plan. We are proposing approval of these submissions because UDAQ has adequately addressed all of the requirements of the Act for the SIP revisions and the redesignation to attainment applicable to the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs. We are using 2017–2019 ambient air quality data from the Provo and Salt Lake City NAAs as the basis for our decision. Upon the effective date of a subsequent final action, the designation status of the Provo and Salt Lake City areas under 40 CFR part 81 will be revised to attainment.

Additionally, we are proposing to approve SIP revisions submitted on January 19, 2017 (Utah SIP Section IX.H.13), and February 15, 2019 (Utah SIP Section IX.H.11 and 12). Additionally, we are proposing to approve, through parallel processing, Utah's draft October 9, 2020 submission removing the startup/shutdown emission limits for the Kennecott Power Plant found in Utah SIP Section IX.H.12.i.i.C, and the accompanying R307–110–17.

The EPA is proposing to approve the Utah UAC section R307–200 and R307–300 Series revisions and new rules submitted by UDAQ on April 19, 2018, May 21, 2020 and July 21, 2020, which are intended to strengthen the SIP and to serve as BACM for certain area sources for the Utah $PM_{2.5}$ SIP. These rules are R307–208, R307–230, R307–304, R307–335, R307–343, R307–344, R307–345, R307–346, R307–347, R307–348, R307–349, R307–350, R307–351, R307–352, R307–353, R307–354 and R307–355. Additionally, the EPA is proposing to approve the area sources, major stationary sources, on-road mobile sources, and non-road mobile sources BACM/BACT analyses for the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs that were submitted on February 4, 2019 and February 15, 2019.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to: R307–110–10; R307–110–17; R307–110–32; R307–110–35; R307–208; R307–230; R307–304; R307–335; R307–343; R307–344; R307–345; R307–346; R307–347; R307–348; R307–349; R307–350; R307–351; R307–352; R307–353; R307–354; R307–355; Utah SIP Section X.B.; Utah SIP Section X.E.; Utah SIP Section IX.H.11, 12, and 13; Utah SIP Section IX.A.27 (Provo 2006 24-hour $PM_{2.5}$ Maintenance Plan); Utah SIP Section IX.A.36 (Salt Lake City 2006 24-hour $PM_{2.5}$ Maintenance Plan); and the redesignation requests for the Provo and Salt Lake City 2006 24-hour $PM_{2.5}$ NAAs to attainment. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FUTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, and Wilderness areas.

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

Dated: October 29, 2020.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2020–24444 Filed 11–5–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 100

RIN 0906–AB24

National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table; Correction

AGENCY: Health Resources and Services Administration (HRSA), U.S. Department of Health and Human Services (HHS).

ACTION: Notification; correction.

SUMMARY: HHS published a document on October 29, 2020, announcing a public hearing to receive information and views on the notice of proposed rulemaking (NPRM) entitled ''National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table.'' The deadline to give oral notice of participation when there may be insufficient time to submit the required information in writing has changed from October 26, 2020, to November 5, 2020.

DATES: November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Tamara Overby, Acting Director, DICP, Healthcare Systems Bureau (HSB), HRSA, 5600 Fishers Lane, 08N–142, Rockville, Maryland 20857; 855–266–2427 or by email *TOverby@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 29, 2020, in FR Doc. 2020–23340, on page 68540, in the third column, in the fourth paragraph, correct the date October 26, 2020, to November 5, 2020.

Wilma M. Robinson,

Deputy Executive Secretary, Department of Health and Human Services.

[FR Doc. 2020–24774 Filed 11–4–20; 8:45 am]

BILLING CODE 4165–15–P

Notices

Federal Register
Vol. 85, No. 216
Friday, November 6, 2020

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 3, 2020.

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

Comments regarding this information collection received by December 7, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Animal and Plant Health Inspection Service

Title: Blood and Tissue Collection, and Recordkeeping, at Slaughtering, Rendering, and Approved Livestock Marketing Establishments and Facilities.

OMB CONTROL NUMBER: 0579–0212.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. As part of its mission to monitor and test for livestock diseases, the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), maintains with approved slaughtering, rendering, and livestock marketing establishments and facilities agreements and procedures for animal disease surveillance and reporting, maintaining livestock movement records, and collecting blood and tissue samples.

These agreements and procedures include information collection activities such as Approved Livestock Facility Agreements, Requests for Appeal of Denial of Agreement, Withdrawal of Livestock Facility Agreements, Requests for Appeal of Withdrawal of Agreements, Listing Agreements for Slaughter or Rendering Establishments, Slaughter or Rendering Facility Inspection Reports, Requests for Appeal of Denial of Listings, Requests for Appeal of Withdrawal of Listing, Schedules of Sales Days, Diseased Animal Notifications, Quarantine Signs, and maintaining animal movement records.

Need and use of the Information: The collection of this information identifies and prevents the interstate movement of unhealthy livestock animals with diseases within the United States. The information collected is used to: (1) Establish Livestock Facility Agreements and Listing Agreements between APHIS and owners and operators of slaughtering and rendering establishments and livestock marketing facilities, (2) rapidly confirm livestock disease occurrences through reporting and sampling, (3) trace the sources of diseases, as well as the movement of other potentially infected animals, and (4) provide epidemiological data for new or updated risk analyses in support of disease control programs, and, as required, opening international markets for animal products. Without the agreements and sampling/reporting procedures, the risk of contagious disease spread becomes very high with serious consequences for U.S. meat industries and export markets.

Description of Respondents: Business or other-for profit; State, Local or Tribal Government.

Number of Respondents: 791.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,111.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–24705 Filed 11–5–20; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of webhearing.

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 the Texas Advisory Committee (Committee) will hold a briefing via webex platform on Thursday, December 10, 2020 from 2:00 p.m. to 4:00 p.m. Central Time. The purpose for the meeting is to hear testimony on the civil rights implications of the government response to hurricane disasters and to hold a regular Committee business meeting.

DATES: The briefing will be held on:

- Thursday, December 10, 2020 from 2:00 p.m.–4:00 p.m. CT.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the

conference call number and conference ID number.

SUPPLEMENTARY INFORMATION:

For Members of the Public Webex Registration At: https://tinyurl.com/y648kxq8.

Members of the public are entitled to make comments during 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 Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. 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 website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Introductions
II. Panelists Remarks
III. Committee Q&A
IV. Public Comment
V. Break
VI. Committee Discussion on Testimony
VII. Adjournment

Dated: November 2, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–24618 Filed 11–5–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee

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 teleconference meeting of the Wyoming Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (MDT) Thursday, November 19, 2020. The purpose of the meeting will be to vote on their draft of the Op-Ed.

DATES: Thursday, November 19, 2020 at 1:00 p.m. MDT

Public Call Information:

Dial: 800–367–2403
Conference ID: 5851963

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or by phone at (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 5851963. Any interested member of the public may call this number and listen to the meeting. 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 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during 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 Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov*.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzliAAA*.

Please click on ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Review Draft of Op-Ed
III. Vote
IV. Public Comment
V. Adjournment

Dated: November 2, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–24617 Filed 11–5–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–66–2020]

Foreign-Trade Zone 116—Port Arthur, Texas; Application for Subzone; Port Arthur LNG, LLC; Port Arthur and Jefferson County, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, requesting subzone status for the facilities of Port Arthur LNG, LLC, located in Port Arthur and Jefferson County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on November 2, 2020.

The proposed subzone would consist of the following sites: *Site 1* (1,312 acres)—2904 South Gulfway Drive, Port Arthur; and, *Site 2* (70.022 acres)—located near the intersection of Labelle Road and Highway 73 in Jefferson County. Production activity was authorized on June 25, 2020 (B–17–2020, 85 FR 39162–39163, June 30, 2020).

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 16, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 2, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–24677 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–835, A–485–809]

Common Alloy Aluminum Sheet From Indonesia and Romania: Postponement of Final Determinations of Less-Than-Fair-Value Investigations

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

SUMMARY: The Department of Commerce (Commerce) is postponing the deadline for issuing the final determinations in the less-than-fair-value (LTFV) investigations of imports of common alloy aluminum sheet (aluminum sheet) from Indonesia and Romania, until March 1, 2021. Commerce is also extending the provisional measures from a four-month period to a period of not more than six months.

DATES: Applicable November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Glenn T. Bass Jr. and John K. Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8338 and (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2020, Commerce initiated LTFV investigations of imports of aluminum sheet from Indonesia and Romania.[1] The period of investigation is January 1, 2019 through December 31, 2019. On October 15, 2020, Commerce published the *Preliminary Determinations* in these LTFV investigations.[2]

Postponement of Final Determinations

Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2) provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by the exporters or producers who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period of not more than six months, in accordance with section 733(d) of the Act.

On October 7, 2020, Pt. Alumindo Light Metal Industry, Tbk. (Pt. Alumindo), the sole mandatory respondent in the investigation of aluminum sheet from Indonesia, requested that Commerce postpone the deadline for the final determination until no later than 135 days from the publication of the *Preliminary Determination,* and extend the application of the provisional measures from a four-month period to a period of not more than six months.[3]

On October 8, 2020, Alro, SA and the Vimetco Group (collectively, Alro), the sole mandatory respondent in the investigation of aluminum sheet from Romania, requested that Commerce postpone the deadline for the final determination until no later than 135 days from the publication of the *Preliminary Determination,* and extend the application of the provisional measures from a four-month period to a period of not more than six months.[4]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination was affirmative; (2) the request was made by the exporter and producer who accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination for these investigations until no later than 135 days after the date of the publication of the *Preliminary Determination,* and extending the provisional measures from a four-month period to a period of not more than six months. Accordingly, Commerce will issue its final determinations no later than March 1, 2021.

Notice to Interested Parties

This notice is issued and published pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: November 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–24700 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission, of the 24th Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) published the Preliminary Results of the 24th administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China) on January 15, 2020. The period of review (POR) is November 1, 2017 through October 31, 2018. The mandatory respondent in this review is Shijiazhuang Goodman Trading Co., Ltd. (Goodman). Commerce is also rescinding its review of nineteen companies including the other selected mandatory respondent Zhengzhou Harmoni Spice Co., Ltd. (Harmoni). Based upon our analysis of the comments and information received, we made no changes to the margin calculated for mandatory respondent Goodman.

DATES: Applicable November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956.

SUPPLEMENTARY INFORMATION:

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020).

[2] *See Common Alloy Aluminum Sheet from Indonesia: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value and Determination of Critical Circumstances,* 85 FR 65356 (October 15, 2020); and *Common Alloy Aluminum Sheet from Romania: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 85 FR 65358 (October 15, 2020) (together, *Preliminary Determinations*).

[3] *See* PT. Alumindo Light Metal Industry Tbk's Letter, ''Pt. Alumindo's Request to Extend the Final Determination: Less Than Fair Value Investigation of Common Alloy Aluminum Sheet from Indonesia (A–560–835),'' dated October 7, 2020.

[4] *See* Alro, SA and the Vimetco Group's Letter, ''Alro's Request to Extend the Final Determination: Less Than Fair Value Investigation of Common Alloy Aluminum Sheet from Romania (A–485–809),'' dated October 8, 2020.

Background

Commerce published the preliminary results of this administrative review of fresh garlic from China on January 15, 2020.[1] We preliminarily found that the mandatory respondent Goodman sold subject merchandise to the United States at less than normal value. We rescinded the review with respect to eight companies for which their sole requests for review had been timely withdrawn.[2] Furthermore, we preliminarily determined that the review requests submitted by the Coalition for Fair Trade in Garlic (CFTG) and Roots Farm Inc. (Roots Farm) were invalid and preliminarily rescinded the review with respect to the 19 companies solely requested by the CFTG and Roots Farm. Additionally, we found that three companies qualified for separate rate status.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[3] On June 30, 2020, Commerce extended the deadline for these final results.[4] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[5] The deadline for the final results of this review is now November 2, 2020.

The CFTG and Roots Farm each timely submitted case briefs.[6] Harmoni and the petitioners each timely filed rebuttal briefs.[7]

[1] *See Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 24th Antidumping Duty Administrative Review; 2017–2018,* 85 FR 2400 (January 15, 2020) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] Those companies are: Chengwu County Yuanxiang Industries; Jiang Hua Yao Autonomous County Nikko Biotechnology Co., Ltd.; Jiangsu Lvhui Food Co., Ltd.; Jiangyong Foreign Trade Corp.; Lianyungang Xiangjiang Food Co., Ltd.; Qingdao Ritai Food Co., Ltd.; Tianjin Calgry Import Export; and Weifang Naike Food Co., Ltd.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[4] *See* Memorandum, ''Fresh Garlic from the People's Republic of China—24th Administrative Review: Extension of Deadline for the Final Results of the Review,'' dated June 30, 2020.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[6] *See* CFTG's Letter, ''Case Brief,'' dated April 10, 2020; *see* also Roots Farm's Letter, ''Fresh Garlic From the People's Republic of China Antidumping Administrative Review: Case Brief of Roots Farm,'' dated April 13, 2020.

[7] *See* Harmoni's Letter, ''Harmoni Administrative Reply Briefs: 24th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A–570–831),'' dated April 24, 2020 at Attachment 1 and Attachment 2; *see* also Petitioners' Letter, ''Fresh Garlic from the People's Republic of China: Petitioners' Case Rebuttal Brief,'' dated April 24, 2020 .

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700, of the Harmonized Tariff Schedule of the United States (HTSUS).[8]

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Analysis of Comments Received

All comments raised in the case and rebuttal briefs are addressed in the accompanying Issues and Decision Memorandum.[9] The comments are identified in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://trade.gov/enforcement/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

[8] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994).

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results and Final Rescission, in Part, of the 2017–2018 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China,'' dated November 2, 2020, and hereby adopted by this notice.

Separate Rates

In the *Preliminary Results,* in accordance with section 777A(c)(2)(B) of the Act, Commerce employed a limited examination methodology, as we determined that it would not be practicable to examine individually all companies for which a review request was made.[10] There were three exporters of subject merchandise from China that have demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. These three exporters are listed in the *Final Results of Review* section below.

Neither the Act nor Commerce's regulations address the establishment of the rate applied to individual companies not selected for examination where Commerce limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs Commerce to use rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis,* or based entirely on facts available in investigations. In these final results of review, Goodman is the only reviewed respondent that received a weighted-average dumping margin. Goodman's margin is the only margin that is not either *de minimis* or based entirely on adverse facts available. Therefore, we have assigned Goodman's margin to the non-selected separate rate respondents.

Final Results of Review

Commerce finds that the following weighted-average dumping margins exist for the POR:

[10] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: 2017–2018: Selection of Respondents for Individual Examination,'' dated May 30, 2019.

Exporter	Weighted-average dumping margin (dollars per kilogram)
Shijiazhuang Goodman Trading Co., Ltd	4.37
Jinxiang Feiteng Import & Export Co., Ltd	4.37
Chengwu Yuanxiang Industry & Commerce Co., Ltd	4.37
Qingdao Sea-Line International Trading Co., Ltd	4.37
China-Wide Entity	4.71

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to direct CBP to assess rates based on the per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. Commerce also intends to issue assessment instructions to CBP 15 days after the publication date of the final results of review.

Pursuant to Commerce's assessment practice in NME cases, for merchandise that was not reported in the U.S. sales databases submitted by the exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce intends to instruct CBP to liquidate such entries at the NME-wide rate. In addition, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[11]

Cash Deposit Requirements

Commerce intends to instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which NV exceeds U.S. price. The following cash deposit requirements will be effective upon publication of these final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the weighted-average dumping margin established in the final results of this review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 4.71 dollars per kilogram); and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred, and the subsequent assessment of double antidumping duties.

Notifications to Interested Parties

This notice 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 written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: November 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix 1

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Final Rescission of Administrative Review
V. Discussion of the Issues:
- Issue 1: Whether the CFTG has Standing to Request a Review
- Issue 2: Whether 26 U.S.C. 6103 Is Applicable
- Issue 3: Whether Sections 782(d) and 782(e) of the Act Are Applicable
- Issue 4: Whether Section 751 of the Act Requires Country-Wide Reviews
- Issue 5: Whether Commerce May Rescind a Review for a Company that Has Not Demonstrated the Absence of *De Jure* and *De Facto* Government Control
- Issue 6: Whether Commerce Exceeded its Authority to Combine Reviews
- Issue 7: Whether the Petitioners and Harmoni's Relationship Reveals Fraudulent Activity
- Issue 8: Whether Commerce Should Pursue an 18 U.S.C.1001 Case Against Ms. Medina
- Issue 9: Whether Harmoni and the FGPA Conspired to Defraud the United States
- Issue 10: Whether Roots Farm has Standing to Request an Administrative Review
- Issue 11: Whether Commerce Should Calculate a Margin for Harmoni

VI. Recommendation

Appendix 2

List of Companies for Which Administrative Reviews Have Been Rescinded

1. Hebei Golden Bird Trading Co., Ltd.
2. Jining Yongjia Trade Co., Ltd.
3. Jinxiang Changwei Agricultural Products Co., Ltd.
4. Jinxiang Dingyu Agricultural Products Co., Ltd.
5. Jinxiang Fitow Trading Co., Ltd.
6. Jinxiang Guihua Food Co., Ltd.
7. Jinxiang Hejia Co., Ltd.
8. Jinxiang Honghua Foodstuff Co., Ltd.
9. Jinxiang Infang Fruit & Vegetable Co., Ltd.
10. Jinxiang Kingkey Trade Co., Ltd.
11. Jinxiang Wanxing Garlic Products Co. Ltd.
12. Qingdao Doo Won Foods Co., Ltd.
13. Qingdao Joinseafoods Co. Ltd.
14. Shandong Chengwu Longxing Farm Produce & By-Products Co., Ltd.
15. Weifang Hongqiao International Logistics Co., Ltd.
16. Xinjiang Longping Hongan Xiwannian Chili Products Co., Ltd.
17. Yantai Jinyan Trading, Inc.
18. Zhengzhou Harmoni Spice Co., Ltd.
19. Zhengzhou Yudishengjin Farm Products Co., Ltd.

[FR Doc. 2020–24701 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–DS–P

[11] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony With the Final Results in the Antidumping Duty Administrative Review and Notice of Amended Final Results

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

SUMMARY: On October 16, 2020, the United States Court of International Trade (CIT) issued its final judgment in *NEXTEEL* v. *United States,* Court No. 18–00083, sustaining the Department of Commerce (Commerce)'s remand redetermination concerning the final results in the antidumping duty (AD) administrative review of certain oil country tubular goods (OCTG) from the Republic of Korea (Korea), covering the period of review (POR) September 1, 2015 through August 31, 2016. Commerce is notifying the public that the CIT's final judgment in this case is not in harmony with Commerce's final results in the administrative review of OCTG from Korea. Pursuant to the CIT's final judgment, Commerce is amending the weighted-average dumping margin calculated for SeAH Steel Corporation (SeAH), NEXTEEL Co., Ltd. (NEXTEEL), and non-examined companies.

DATES: Applicable November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Chelsey Simonovich, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1979.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 2018, Commerce published the *Final Results.*[1] NEXTEEL and SeAH challenged the *Final Results* before the CIT. On June 17, 2019, the CIT remanded Commerce's determination, instructing Commerce to reconsider: (1) The application of adverse facts available (AFA) to NEXTEEL; the finding of a particular market situation (PMS); (2) the classification of proprietary SeAH grades; and (3) the deduction of general and administrative (G&A) expenses as U.S. selling expenses.[2] Commerce issued a redetermination on remand, reversing its application of AFA, and providing further explanation of its finding of a PMS, the classification of SeAH's proprietary grade products, and the deduction of G&A expenses.[3] On May 18, 2020, the CIT remanded Commerce's determination of a PMS, finding that the determination was unsupported by record evidence.[4] Commerce issued a second redetermination on remand, and, under protest, reversed its determination of a PMS and recalculated the margins of the mandatory respondents and non-examined companies.[5] On October 16, 2020, the CIT sustained the *Remand Results.*[6]

Timken Notice

In its decision in *Timken,*[7] as clarified by *Diamond Sawblades,*[8] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's October 16, 2020 judgment in this case constitutes a final decision of the court that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision, Commerce is amending its *Final Results.* Commerce finds that the revised weighted-average dumping margins are 3.40 percent for SeAH, 18.29 percent for NEXTEEL, and 10.85 percent for the non-examined companies.

Cash Deposit Requirements

The cash deposit rates calculated in the 2015–2016 administrative review for SeAH, NEXTEEL, and the non-examined companies subject to this litigation have been superseded by cash deposit rates calculated in subsequent administrative reviews of the AD order on OCTG from Korea.[9] Thus, we are not implementing the amended cash deposit rates for these companies.

Liquidation of Suspended Entries

If the CIT's final judgment is not appealed, or if it is appealed and upheld, Commerce will instruct CBP to terminate the suspension of liquidation, and to liquidate and to assess duties at the margins shown above for unliquidated entries made during the POR that were produced and exported by SeAH and NEXTEEL. Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by SeAH and NEXTEEL for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all others rate if there is no rate for the intermediate company(ies) involved in the transaction.[10]

Finally, during the pendency of litigation, including any appeal, Commerce remains enjoined by Court order from liquidating entries that: (1) Were the subject of the administrative determination published in the *Final Results;*[11] (2) were produced and/or exported by any of the following: SeAH and NEXTEEL; (3) were entered, or were withdrawn from warehouse, for consumption on or after September 1, 2015 through August 31, 2016; and (4) remain unliquidated as of 5:00 p.m. Eastern Time on April 19, 2018 for NEXTEEL and June 19, 2018 for SeAH.

Dated: October 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

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BILLING CODE 3510–DS–P

[1] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 83 FR 17146 (April 18, 2018), and accompanying Issues and Decision Memorandum (IDM) (*Final Results*).

[2] *See Nexteel Co., Ltd.* v. *United States,* Consolidated Court No. 18–00083, Slip. Op. 19–73 (June 17, 2019).

[3] *See* Final Results of Redetermination Pursuant to Court Remand Oil Country Tubular Goods from the Republic of Korea Nexteel Co. v. United States Consolidated Court No. 18–00083, Slip. Op. 19–73 (CIT June 17, 2019), dated November 5, 2019.

[4] *See Nexteel Co.* v. *United States,* Consolidated Court No. 18–00083, Slip Op. 20–69 (May 18, 2020).

[5] *See* Final Results of Redetermination Pursuant to Court Remand Oil Country Tubular Goods from the Republic of Korea Nexteel Co. v. *United States, Consolidated Court No. 18–00083, Slip Op. 20–69 (CIT May 18, 2020), dated August 3, 2020 (Remand Results).*

[6] *See NEXTEEL* v. *United States,* Consolidated Court No. 18–00083, Slip Op. 20–145 (CIT October 16, 2020), at 4.

[7] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[8] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[9] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 24085 (May 24, 2019).

[10] For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Final Results.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that sales of steel concrete reinforcing bar (rebar) from Mexico were made at below normal value during the period of review (POR) November 1, 2017 through October 31, 2018.

DATES: Applicable November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–1468.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2020, Commerce published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results.* For events subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted sales and cost verifications of Grupo Simec SAB de CV (Grupo Simec) from February 10, 2020—February 14, 2020 and February 17, 2020—February 21, 2020, respectively.[3] On April 8, 2020, we extended the deadline for these final results until July 14, 2019.[4] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[5] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[6] The deadline for the final results of this review is now November 2, 2020.

Scope of the Order

Imports covered by the order are shipments of steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The merchandise subject to review is currently classifiable under items 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other Harmonized Tariff Schedule of the United States (HTSUS) numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. 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 *https://access.trade.gov.* 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 Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received from parties and the results of Grupo Simec's verification, we have made changes to the margin calculations of Grupo Simec and Deacero S.A.P.I. de C.V. (Deacero). For Grupo Simec, we included the downstream sales from affiliates that did not pass the arm's-length test, incorporated updated information from our cost and sales verifications of Grupo Simec, and corrected an inadvertent programming error.[8] For Deacero, we corrected an inadvertent programming error.[9]

Final Results of the Review

As a result of this review, Commerce calculated a weighted-average dumping margin that is 1.46 percent for Grupo Simec and a 7.12 percent margin for Deacero for the POR. Therefore, consistent with its practice and the investigation methodology set forth in section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), Commerce assigned the weighted-average dumping margin calculated for Grupo Simec to the seven non-selected companies in these final results, as referenced below.

[1] *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 2702 (January 16, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memoranda, ''Verification of the Sales Response of Grupo Simec and Constructed Export Sales of Simec USA in the 2017–18 Administrative Review of the Antidumping Duty on Steel Concrete Reinforcing Bar from Mexico,'' dated April 16, 2020 (Sales Verification Report); and ''Verification of the Cost Response of Grupo Simec in the 2017–18 Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from Mexico,'' (Cost Verification Report) dated June 5, 2020.

[4] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated April 8, 2020.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[6] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[7] *See* Issues and Decision Memorandum for a complete description of the Scope of the Order.

[8] *See* Memorandum, ''Final Results Analysis Memorandum for Grupo Simec S.A.B. de C.V. (Grupo Simec); 2017–2018,'' dated concurrently with this memorandum (Grupo Simec Final Analysis Memorandum).

[9] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Final Results Sales and Cost Memorandum for Deacero; 2017–2018,'' dated concurrently with this memorandum (Deacero Final Calculation Memorandum).

[10] We note that there was also a request for review of DE ACERO SA. DE CV. However, the company's name is Deacero S.A.P.I. de C.V. Thus, we have not assigned a non-selected rate to DE ACERO SA. DE CV.

[11] In the *2014–2015 Review,* Commerce collapsed Orge S.A. de C.V. (Orge), Compania Siderurgica del Pacifico S.A. de C.V. (Siderurgica Pacifico), Grupo Chant S.A.P.I. de C.V. (Chant), RRLC S.A.P.I. de C.V. (RRLC), Siderurgica del Occidente y Pacifico S.A. de C.V. (Siderurgica Occidente), Simec International 6 S.A. de C.V. (Simec 6), Simec International 7 S.A. de C.V. (Simec 7), and Simec International 9 S.A. de C.V (Simec 9) into the single entity ''Grupo Simec.'' *See Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 27233 (June 14, 2017) (*2014–2015 Review*). In the *2016–2017 Review,* Commerce collapsed AEST, Fundiciones de Acero Estructurales, S.A. de C.V. (FUNACE), Perfiles Comerciales Sigosa, S.A. de C.V. (Perfiles), and Operadora into the single entity ''Grupo Simec,'' which included Simec 6 and Orge. *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 63622 (December 11, 2018), and Preliminary Decision Memorandum at 5; unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 35599 (July 24, 2019) (*2016–2017 Review*).

In this administrative review, Commerce has collapsed Siderúrgicos Noroeste, S.A. de C.V. and

Continued

Producer and/or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V.[10]	7.12
Grupo Simec (Simec International 6 S.A. de C.V.; Orge S.A. de C.V.; Aceros Especiales Simec Tlaxcala, S.A. de C.V.; Fundiciones de Acero Estructurales, S.A. de C.V.; Operadora de Perfiles Sigosa, S.A. de C.V.; Simec International, S.A. de C.V.; Simec International 7, S.A. de C.V.; Grupo Chant, S.A.P.I. de C.V.; and Siderúrgicos Noroeste, S.A. de C.V.)[11]	1.46
AceroMex S.A.	5.54
Arcelor Mittal	5.54
ArcelorMittal Celaya	5.54
ArcelorMittal Cordoba S.A. de C.V	5.54
ArcelorMittal Lazaro Cardenas S.A. de C.V	5.54
Cia Siderurgica De California, S.A. de C.V.	5.54
Compania Siderurgica de California, S.A. de C.V	5.54
Grupo Villacero S.A. de C.V	5.54
Siderurgica Tultitlan S.A. de C.V	5.54
Talleres y Aceros, S.A. de C.V	5.54
Ternium Mexico, S.A. de C.V	5.54

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of these final results in the **Federal Register**, in accordance with section 751(a) of the Act and 19 CFR 351.224(b).

Assessment Rates

Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[12] For any individually examined respondent whose weighted-average dumping margin is above *de minimis,* we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the totaled entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), Commerce will issue instructions directly to CBP to assess antidumping duties on appropriate entries. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice,[13] for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(I), in which case the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (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 subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.58 percent, the all-others rate established in the LTFV investigation.[14] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which

Simec International with Simec 6, Orge, AEST, FUNACE, Operadora, Simec 7, and Chant in the single entity, ''Grupo Simec.'' Consistent with the *2016–2017 Review,* we find that Industrias CH is affiliated with Grupo Simec but Commerce is not collapsing the company into the single entity because it is not involved in the production or sale of subject merchandise. *See* Memorandum, ''Affiliation and Collapsing Memorandum for Grupo Simec,'' dated January 9, 2020.

[12] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[13] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[14] *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 79 FR 54967 (September 15, 2014).

continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notice to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: November 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Made Since the Preliminary Results
V. Discussion of the Issues
Comments Concerning Deacero
Comment 1: Whether Constructed Export Price (CEP) Offset Should Be Granted
Comment 2: Whether Commerce Should Recalculate Credit Expense
Comment 3: Whether the Highest U.S. Freight Should Be Applied to All U.S. Sales
Comment 4: Whether to Disallow Deacero's Scrap Offset Calculation
Comment 5: Whether Section 232 Duties Should be Deducted from Constructed Export Price
Comments Concerning Grupo Simec
Comment 6: Whether Commerce Should Apply Total AFA to Grupo Simec
Comment 7: Whether Commerce Double-Counted Depreciation Expenses When Applying the Transactions Disregarded Rule to Grupo Simec
Comment 8: Whether Commerce Should Accept Grupo Simec's Minor Corrections
Comment 9: Whether Commerce Should Alter the Margin Calculation Program to Distinguish Between Prime and Non-Prime Sales
Comment 10: Whether Commerce Should Include Grupo Simec and Sigosa's Downstream Home Market Sales in the Final Margin Program
Comment 11: Whether Commerce Should Recalculate Grupo Simec's Home Market Credit Expense
VI. Recommendation

[FR Doc. 2020–24712 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) finds that the producers/exporters subject to this administrative review made sales of circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) at less than normal value (NV) during the period of review (POR), November 1, 2017 through October 31, 2018.

DATES: Applicable November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Andre Gziryan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–2201.

SUPPLEMENTARY INFORMATION:

Background

This review covers 25 producers and/or exporters of the subject merchandise.[1] Commerce selected two mandatory respondent for individual examination: Husteel Co., Ltd. (Husteel) and Nexteel Co., Ltd. (Nexteel). The producers/exporters which were not selected for individual examination are listed in Appendix II of this notice.

On January 16, 2020, Commerce published the *Preliminary Results* of this administrative review.[2] We invited interested parties to comment on the *Preliminary Results.* Between February 28, 2020 and March 12, 2020, Commerce received timely filed case and rebuttal briefs from various interested parties.[3]

April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[4] On May 26, 2020, Commerce extended the deadline for issuing these final results until September 2, 2020.[5] On July 21, 2020, Commerce tolled all deadlines for all preliminary and final results in administrative reviews by 60 days, thereby extending the deadline for these final results until November 2, 2020.[6] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is circular welded non-alloy steel pipe and tube. Imports of the product are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019).

[2] *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 2719 (January 16, 2020) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Petitioner's Letter, ''Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Case Brief of Wheatland Tube.,'' dated February 28, 2020; Husteel's Letter, ''Circular Welded Non-Alloy Steel Pipe from South Korea, Case No. A–580–809: Husteel Case Brief,'' dated February 28, 2020; Hyundai Steel's Letter, ''Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case Brief,'' dated February 28, 2020; NEXTEEL's Letter, ''Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: NEXTEEL's Case Brief,'' dated February 28, 2020; SeAH Letter, ''Administrative Review of the Antidumping Order on Circular Welded Non-Alloy Steel Pipe from Korea — Case Brief of SeAH Steel Corporation,'' dated February 28, 2020; petitioner's Letter, ''Circular Welded Non-Alloy Steel Pipe From the Republic of Korea—Rebuttal Brief of Wheatland Tube and Nucor Tubular Products Inc.,'' dated March 12, 2020; Husteel's Letter, ''Circular Welded Non-Alloy Steel Pine from Korea. Case No. A–580–809: Husteel Rebuttal Brief,'' dated March 12, 2020; Hyundai Steel's Letter, ''Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Brief,'' dated March 12, 2020; and NEXTEEL's Letter, ''Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: NEXTEEL's Rebuttal Brief,'' dated March 12, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[5] *See* Memorandum, ''Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Deadline for Final Results of 2017–2018 Antidumping Administrative Review,'' dated May 26, 2020.

[6] *See* Memorandum,'' Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

issues raised is attached to this notice at in 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 *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *htttp://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 Results

Based on our analysis of the comments received, we made certain changes to the margin calculations for Husteel and Nexteel. For a discussion of these changes, *see* the ''Changes Since the *Preliminary Results*'' section of the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

For these final results, we calculated weighted-average dumping margins for Husteel and Nexteel that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce has assigned to the companies not individually examined in this review (*see* Appendix II for a full list of these companies) a margin of 21.01 percent, which is the weighted-average of the antidumping duty margins calculated using the public ranged sales data of Husteel and Nexteel.

Final Results of Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period November 1, 2017 through October 31, 2018:

Producer/exporter	Weighted-average dumping margin (percent)
Husteel Co., Ltd	4.92
Nexteel Co., Ltd	27.28

REVIEW-SPECIFIC AVERAGE RATE APPLICABLE TO THE FOLLOWING COMPANIES

Producer/exporter	Weighted-average dumping margin (percent)
Other Respondents[8]	21.01

Disclosure

We intend to disclose to interested parties the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results.

For Husteel and Nexteel, because the weighted-average dumping margins are not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce has calculated importer-specific antidumping duty assessment rates.[9] We calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total sales value associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis.*[10] Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis.*[11]

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Husteel and Nexteel, for which the Husteel or Nexteel did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[12]

For the companies which were not selected for individual review, we will assign an assessment rate equal to the weighted-average dumping margin identified above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be the rates established in these final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 4.80 percent,[14] the all-others rate established in the investigation.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

[8] *See* Appendix II for a full list of these companies.

[9] *See* 19 CFR 351.212(b)(1).

[10] *Id.*

[11] *See* 19 CFR 351.106(c)(2).

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See* section 751(a)(2)(C) of the Act.

[14] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: November 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes since the Preliminary Results
V. Rate for Non-Examined Companies
VI. Discussion of the Issues
  Comment 1–A: Cost-Based Particular Market Situation Allegation
  Comment 1–B: Evidence of a Particular Market Situation Allegation
  Comment 1–C: Particular Market Situation Adjustment
  Comment 2: Differential Pricing
VII. Recommendation

Appendix II

List of Companies Not Individually Examined

1. Aju Besteel
2. Bookook Steel
3. Chang Won Bending
4. Dae Ryung
5. Daewoo Shipbuilding & Marine Engineering (Dsme)
6. Daiduck Piping
7. Dong Yang Steel Pipe
8. Dongbu Steel
9. Eew Korea Company
10. Histeel
11. Hyundai Rb
12. Hyundai Steel Company (including Hyundai Steel (Pipe Division))
13. Kiduck Industries
14. Kum Kang Kind
15. Kumsoo Connecting
16. Miju Steel Manufacturing
17. Samkang M&T
18. Seah Fs
19. Seah Steel
20. Steel Flower
21. Vesta Co., Ltd.
22. Yep Co.

[FR Doc. 2020–24722 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NMFS Alaska Region Vessel Monitoring System (VMS) Program

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 24, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration.

Title: NMFS Alaska Region Vessel Monitoring System (VMS) Program.

OMB Control Number: 0648–0445.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 550.

Average Hours per Response: VMS installation, maintenance, and troubleshooting, 12 hours.

Total Annual Burden Hours: 2,476 hours.

Needs and Uses: This request is for an extension of a currently approved information collection. There are no proposed changes to this information collection.

NMFS requires the owners and operators of selected vessels participating in federally managed groundfish and crab fisheries off Alaska to obtain, install, and maintain an operational, NMFS-approved Vessel Monitoring System (VMS). VMS units automatically transmit the location of a vessel several times per hour using a Global Positioning System satellite. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator. A communications service provider receives the transmission and relays it to NMFS Office for Law Enforcement (OLE).

Tracking vessel location using VMS is required to monitor compliance with area-specific catch allocations, to monitor compliance with requirements to redeploy or remove fishing gear from commercial fishing grounds, and to monitor compliance with complicated time and area closures in the GOA and BSAI designed to protect Steller sea lion or essential fish habitat.

VMS is an essential component of monitoring and management for complicated, geographically widespread fishing closures. NMFS uses information from VMS to identify where vessels are operating, to organize patrols so as to increase the number of fishing vessels visually examined, or to focus examination of vessels of greatest concern, and as evidence in prosecutions.

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefit.

Legal Authority: 16 U.S.C.1801 *et. seq.;* 16 U.S.C. 773–773k.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and

entering either the title of the collection or the OMB Control Number 0648–0445.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–24721 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA612]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys; Correction

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

ACTION: Notice; correction.

SUMMARY: On October 8, 2020, a notice was published in the **Federal Register** announcing the issuance of an incidental harassment authorization (IHA) for take of marine mammals incidental to marine site characterization surveys in coastal waters from New York to Massachusetts. That document inadvertently omitted NMFS' response to a recommendation from the Marine Mammal Commission, and contained a grammatical error. This document corrects these errors; all other information is unchanged.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8421.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a notice in the **Federal Register** on October 8, 2020 (85 FR 65308) announcing that an IHA had been issued to Ørsted Wind Power North America, LLC, authorizing the take of marine mammals incidental to marine site characterization surveys in coastal waters from New York to Massachusetts, effective for one year from the date of issuance. NMFS refers the reader to the October 8, 2020, **Federal Register** notice (85 FR 65308) for background information concerning the IHA. The information in the notice of issuance is not repeated here. As published, the notice of issuance contains errors which are corrected here.

Correction

1. In FR Doc. 2020–22307, on page 63509 in the second column, the response to *Comment 1* is corrected to read as follows:

Comment 1: The Commission assesses that ''it is reasonable to conclude that incidental taking of marine mammals could occur'' as a result of Ørsted's specified activity, while asserting that the size of the Level B harassment zones is overestimated. Given this, the Commission states that the required mitigation (*e.g.,* implementation of shutdown upon observation of marine mammals within defined zones) would ''minimize'' the potential for marine mammal takes to occur and, as a result, states its belief that issuance of an IHA for the proposed activities is unnecessary.

Response: NMFS appreciates the Commission's consideration of the proposed IHA and will consider the Commission's position in the future, should further take authorization requests be received for similar activities. As it relates to this activity, Ørsted has requested the authorization of take and NMFS has acted on that request, as required by the MMPA. As the Commission notes, it is reasonable to conclude that incidental taking could occur and, while NMFS shares the opinion that the prescribed mitigation may be effective in avoiding take for these activities, we have evaluated and authorized the take that could occur as precautionarily requested by Ørsted. As described herein, NMFS has issued the requested IHA to Ørsted.

2. On page 63517 in the third column, the final sentence is corrected to read as follows:

As described above, NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the surveys is so low as to be discountable; therefore, we do not authorize take of any marine mammals by Level A harassment.

Dated: November 3, 2020.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–24715 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Processed Products Family of Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 24th, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

Title: Processed Products Family of Forms.

OMB Control Number: 0648–0018.

Form Number(s): NOAA Forms 88–13, 88–13C.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 398.

Average Hours per Response: 15 minutes, Monthly Meat and Oil Report; 30 minutes, Annual Survey of Seafood Processors.

Total Annual Burden Hours: 178.

Needs and Uses: This is a survey of seafood and industrial fish processing firms. Firms processing fish from certain fisheries must report on their annual volume, the wholesale value of products, and monthly employment figures. Data are used in economic analyses to estimate the capacity and extent to which processors utilize domestic harvest. These analyses are necessary to carry out the provision of the Magnuson-Stevens Fishery Conservation and Management Act.

Affected Public: Business or other for-profit organizations.

Frequency: Form 88–13-Annual; Form 88–13c–Monthly.

Respondent's Obligation: Mandatory for some Federal Permit holders in the Northeast, otherwise voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0018.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–24719 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Interagency Electronic Reporting System (IERS)

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 24, 2020 (85 FR 37877), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Interagency Electronic Reporting System (IERS).

OMB Control Number: 0648–0515.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 206.

Average Hours per Response: eLandings registration, 15 minutes; electronic logbooks, 15 minutes; shoreside processor production report, 10 minutes; at-sea processor production report, 20 minutes; mothership landing report, 10 minutes; out-of-state landing report, 20 minutes; shoreside processor and catcher processor, landing reports, 30 minutes each; tender landing report, 35 minutes; registered buyer and registered crab receiver landing reports, 60 minutes each.

Total Annual Burden Hours: 20,271.

Needs and Uses: The National Marine Fisheries Services (NMFS), Alaska Regional Office, is requesting extension of a currently approved information collection for the Alaska Interagency Electronic Reporting System (IERS).

IERS is a fisheries data collection system that enables the management of commercial fisheries off Alaska and is supported through a partnership among the NMFS Alaska Regional Office, the Alaska Department of Fish and Game (ADF&G), and the International Pacific Halibut Commission (IPHC). IERS provides the Alaska fishing industry with a consolidated, electronic means of reporting commercial fish and shellfish information to multiple management agencies through a single reporting system. The recordkeeping and reporting requirements for IERS are located at 50 CFR 679.5.

Users enter information into IERS using three main components, depending on their internet access and transmission capability:

- eLandings provides web-based access for shoreside and stationary floating processors to submit landings and production information and also by some catcher/processors and motherships who have access to the internet to submit their data.
- seaLandings is a fishery harvest reporting software program that functions without constant internet connectivity and is installed on computer workstations. The seaLandings interface targets at-sea vessels with limited access to the web (typically for catcher/processors and motherships which report at sea). Landings, production, and eLog information can be sent from seaLandings via direct transmission (a report file is zipped up and sent over the internet and processed behind the scenes) or via email.
- tLandings is a USB-installed program that tender vessels with no web access can use to enter landings information.

Through IERS, NMFS collects information on landings, production, and effort for groundfish and crab species to support the agency's management responsibilities. IERS has four main information collections: Registration, landing reports, production reports, and electronic logbooks. Landing reports document the harvest of fish and shellfish that is sold, discarded, or retained by the fisherman. Production reports provide information on the amount of processed product that is generated by processors. Logbooks provide information about where and when fishing effort occurs. NMFS uses information collected in IERS for in-season and inter-season management decisions that affect the fishery resources and the fishing industry that uses those resources.

Information collected through the IERS promotes the goals and objectives of fishery management plans, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws. Collecting information from fishery participants is necessary for successful management of groundfish, crab, Pacific halibut, and salmon resources.

Compared with paper forms and conventional logbooks, IERS is a more convenient, accurate, and timely method of fisheries reporting. Benefits of IERS include improved data quality, automated processing of data, improved process for correcting or updating information, availability of more timely data for fishery managers, and reduction of duplicative reporting of similar information to multiple agencies. Additionally, IERS provides continuous online access to individual accounts for participants.

This renewal will incorporate the change request associated with the rule for Amendment 121 to Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 110 to Fishery Management Plan for Groundfish of the Gulf of Alaska (85 FR 41427, July 10, 2020). The rule reclassifies sculpins as a non-target ecosystem component (EC) species and makes minor revisions to the information collection requirements to clarify the location of the species code for sculpins in the tables to 50 CFR part 679 to note that sculpins should be reported as non-target EC species rather than target species

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: On occasion; Daily.

Respondent's Obligation: Required to Obtain or Retain Benefits.

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

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0515.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–24720 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Region Scale & Catch Weighing Requirements

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 17, 2020 (85 FR 36566), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Scale & Catch Weighing Requirements.

OMB Control Number: 0648–0330.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 85.

Average Hours Per Response: Scale Type Evaluation: 50 hours; *Installation & Maintenance:* At-Sea Scales (Maintenance only)—1 minute; Video Monitoring Systems (maintenance)—1 minute; Video Monitoring Systems (installation)—12 hours; Observer Sampling Station (installation)—12 hours; maintenance—1 minute; *Inspection Request:* 10 minutes; *Daily Scale Test:* Notify Observer of Tests—2 minutes; Record of Flow Scale Test—10 minutes; Record of Hopper Scale Test—10 minutes; *Printed Report—Flow Scale:* Catch & Cumulative Weight, Audit Trail, Calibration Log, and Fault Log—1 minute each; *Printed Report—Hopper Scale:* Catch Weight and Audit Trail—1 minute each; *Video Monitoring:* 2 hours; *Notification of Pacific Cod Monitoring Option:* 10 minutes; *Catch Monitoring and Control Plan (CMCP):* Annual Submission—40 hours; CMCP Addendum—8 hours; Printed Record from Scale—1 minute; Notify Observer—1 minute; *Crab Monitoring Plan (CMP):* Annual Submission—16 hours; CMP Addendum—8 hours; Printed Records from Scale—1 minute.

Total Annual Burden Hours: 46,037.

Needs and Uses: The National Marine Fisheries Services (NMFS), Alaska Regional Office, is requesting extension of the currently approved information collection for Alaska Region Scale & Catch Weighing Requirements.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act) authorizes the North Pacific Fishery Management Council to prepare and amend fishery management plans for any fishery in waters under its jurisdiction.

The At-Sea Scales Program was developed in response to the need for catch accounting methods that were more precise and verifiable at the level of the individual haul and less dependent on estimates generated by at-sea observers. This was necessary due to the implementation of large-scale catch share programs that required NMFS to provide verifiable and defensible estimates of quota harvest. Scale and catch-weighing monitoring is required for Western Alaska Community Development Quota Program (CDQ) catcher/processors (C/Ps), American Fisheries Act (AFA) C/Ps, AFA motherships, AFA shoreside processors and stationary floating processors, Central Gulf of Alaska Rockfish Program trawl C/Ps, non-AFA trawl C/Ps participating in Bering Sea and Aleutian Islands (BSAI) trawl fisheries, and longline C/Ps participating in BSAI Pacific cod fisheries. Scale and catch weighing requirements are located at 50 CFR parts 679 and 680.

NMFS has identified three primary objectives for monitoring catch to ensure independent and verifiable data is available for fisheries management. First, monitoring methods must ensure all catch delivered to a processor is weighed and identified to species and provide a verifiable record of the weight and species composition of each delivery. Second, all catch must be weighed using NMFS-approved scales to determine the weight of the catch and provide a record of that weight. Third, monitoring systems, such as video, must be in place to ensure that all catch is accounted for.

Shoreside processors participating in catch share programs have many of the same catch accounting and monitoring goals, but two differences require unique monitoring tools to obtain precise and verifiable catch amounts for quota management. First, shoreside processors vary more in size, facilities, and layout than do catcher/processors or motherships. Second, the State of Alaska is responsible for approving scales used for trade by shoreside processors and has developed an effective program for their inspection and approval.

Because of the wide variations in factory layout, a performance-based catch monitoring system is more appropriate for shoreside processors than a type approval process used for at-sea scales. CMCPs (Catch Monitoring and Control Plans) and CMPs (Crab Monitoring Plans) are submitted by the representative from the shoreside processor and approved by NMFS. CMCPs and CMPs detail a series of performance based standards set out in regulation that ensure that all delivered catch can be effectively monitored by NMFS-authorized personnel, that NMFS-authorized personnel can effectively conduct their monitoring duties, and that all catch is accurately sorted and weighed by species.

Vessels that participate in halibut deck sorting are required to comply with additional monitoring and equipment requirements such as the installation of an observer sampling station on deck and video monitoring requirements. These additional measures are necessary to ensure accurate accounting of halibut sorted on the deck of participating vessels.

Affected Public: Business or other for-profit organizations.

Frequency: Annually; daily, for time period.

Respondent's Obligation: Required to Obtain or Retain Benefits.

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

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0330.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–24718 Filed 11–5–20; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* December 6, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Operations and Maintenance Services

Mandatory for: Department of Health & Human Services, Hubert H. Humphrey Building, Washington, DC

Designated Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD-OR-Skookum Educational Programs, Bremerton, WA

Contracting Activity: HHS, PROGRAM SUPPORT CENTER ACQ MGMT SVC

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–24713 Filed 11–5–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* December 6, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Filter Maintenance Service

Mandatory for: U.S. Navy, NAVFAC Mid Atlantic Division, Naval Station Great Lakes, IL

Designated Source of Supply: Ada S. McKinley Community Services, Inc., Chicago, IL

Contracting Activity: DEPT OF THE NAVY, NAVAL FAC ENGINEERING CMD MID LANT

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7510–01–357–6830—Pad, Executive Message Recording, White/Yellow, 2–5/8″ x 6–1/4″, 400 Message Forms

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Designated Source of Supply: The Arkansas Lighthouse for the Blind, Little Rock, AR

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
7530–01–600–2026—Notebook, Memorandum Book, 100% PCW, 3 x 5″, 60 sheets, Narrow Rule, White
7530–01–600–2028—Notebook, Spiral Bound, 100% PCW, 8–1/2 x 11″, 80 sheets, College Rule, White
7530–01–600–2027—Notebook, Spiral Bound, 100% PCW, 8–1/2 x 11″, 100 sheets, Wide Rule, White
7530–01–600–2016—Notebook, Spiral Bound, 100% PCW, 8–1/2 x 11″, 120 sheets, College Rule, White
7530–01–600–2015—Notebook, Spiral Bound, 100% PCW, 8–1/2 x 11″, 200 sheets, College Rule, White
7530–01–600–2021—Notebook, Spiral Bound, 100% PCW, 8 x 10–1/2″, 70 sheets, Wide Rule, White

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
1005–01–134–3621—Index, Elevation

Designated Source of Supply: Arizona Industries for the Blind, Phoenix, AZ

Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

Service(s)

Service Type: Cutting and Assembly
Mandatory for: Robins Air Force Base, Robins AFB, GA
Designated Source of Supply: Middle Georgia Diversified Industries, Inc., Dublin, GA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA AVIATION
Service Type: Janitorial/Custodial
Mandatory for: Denver Federal Center: Building 95, Denver, CO
Designated Source of Supply: North Metro Community Services for Developmentally Disabled, Westminster, CO
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR
Service Type: Vehicle Washing Service
Mandatory for: U.S. Customs and Border Protection, Island of Puerto Rico & Virgin Islands, San Juan, PR
Mandatory Source of Supply: The Corporate Source, Inc., Garden City, NY
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, BORDER ENFORCEMENT CTR DIV
Service Type: Janitorial/Grounds Maintenance
Mandatory for: U.S. Customs and Border Protection, Big Bend Sector Texas, Marfa, TX
Designated Source of Supply: Professional Contract Services, Inc., Austin, TX
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, BORDER ENFORCEMENT CTR DIV
Service Type: Janitorial/Custodial
Mandatory for: Naval Intelligence Command Building: (NIC II including trailers 1, 2 and 3), Suitland, MD
Designated Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR
Service Type: Custodial & Grounds Maintenance
Mandatory for: Immigration and Customs Enforcement: Penthouse Floor and Parking Floor, San Juan, PR
Mandatory for: Immigration and Customs Enforcement: Calle Gonzalez Clemente #30, Mayaguez, PR
Designated Source of Supply: The Corporate Source, Inc., Garden City, NY
Contracting Activity: U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, MISSION SUPPORT DALLAS
Service Type: Janitorial/Custodial
Mandatory for: GSA, Leased Space: 603–11 East 2nd Street, Des Moines, IA
Mandatory for: U.S. Courthouse Annex, Des Moines, IA
Designated Source of Supply: Goodwill Solutions, Inc., Johnston, IA
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PUBLIC BUILDINGS SERVICE
Service Type: Custodial service
Mandatory for: National Counterdrug Training Center Campus, Annville, PA
Designated Source of Supply: Opportunity Center, Incorporated, Wilmington, DE
Contracting Activity: DEPT OF THE ARMY, W7NX USPFO ACTIVITY PA ARNG
Service Type: Janitorial/Custodial
Mandatory for: Annapolis USARC, Annapolis, MD
Designated Source of Supply: CHI Centers, Inc., Silver Spring, MD
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA
Service Type: Janitorial/Custodial
Mandatory for: Jecelin USARC, Baltimore, MD
Designated Source of Supply: CHI Centers, Inc., Silver Spring, MD
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building, Courthouse and Post Office, Thomasville, GA
Designated Source of Supply: Thomas Grady Service Center, Inc., Thomasville, GA
Contracting Activity: PUBLIC BUILDINGS SERVICE, ACQUISITION DIVISION/SERVICES BRANCH
Service Type: Grounds Maintenance
Mandatory for: U.S. Army Reserve Center: 1635 Armor Road, Akron, OH
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–24694 Filed 11–5–20; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Fiscal Year 2020 Performance Review Board Membership

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of Navy (DON) announces the appointment of members to the DON Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) Fiscal Year 2020 Performance Review Board (PRB). The purpose of the PRB is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance-based bonuses and performance-based pay increases.

FOR FURTHER INFORMATION CONTACT: Kimberly Sylke, Executive Management Program Office, Office of Civilian Human Resources at 202–685–6185.

SUPPLEMENTARY INFORMATION: Composition of the specific PRB is provided below:

Mr. Scott Bray
Mr. Andrew Haeuptle
Mr. Robert Hogue
Ms. Catherine Kessmeier
Ms. Jennifer LaTorre
Mr. Garry Newton
Mr. Gary Ressing
Ms. E. Anne Sandel
Mr. James Smerchansky
Mr. Frederick Stefany
Ms. Mary Tompa

(Authority: 5 U.S.C. 4314(c)(4))

Dated: November 2, 2020.

K.R. Callan,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2020–24622 Filed 11–5–20; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Department of Energy/National Science Foundation High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 3, 2020; 9:00 a.m. to 6:00 p.m.

Friday, December 4, 2020; 8:30 a.m. to 4:00 p.m.

ADDRESSES: This meeting is open to the public. This meeting will be held digitally via Zoom. Information to participate can be found on the website closer to the meeting date at *https://science.osti.gov/hep/hepap/meetings/.*

FOR FURTHER INFORMATION CONTACT: Michael Cooke, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–35/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–4140, email: *michael.cooke@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda:

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program

- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Michael Cooke, (301) 903–4140 or by email at: *Michael.Cooke@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the High Energy Physics Advisory Panel website: *https://science.osti.gov/hep/hepap/meetings/.*

Signed in Washington, DC, on November 3, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–24746 Filed 11–5–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of Form OE–417 *Electric Emergency Incident and Disturbance Report,* OMB Control Number 1901–0288. Form OE–417 collects information for DOE to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and the U.S. Territories). The information collected allows DOE to conduct post-incident reviews examining significant interruptions of electric power or threats to the national electric system.

DATES: Comments on this information collection must be received no later than December 7, 2020. Written comments and recommendations for the information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Matthew Tarduogno, U.S. Department of Energy, *matthew.tardugono@hq.doe.gov,* 202–586–2892. The forms and instructions are available online at: *https://www.oe.netl.doe.gov/oe417.aspx.*

SUPPLEMENTARY INFORMATION: This information collection request contains

(1) *OMB No.:* 1901–0288;

(2) *Information Collection Request Title:* Electric Emergency Incident and Disturbance Report;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* DOE uses Form OE–417 *Electric Emergency Incident and Disturbance Report* to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and the U.S. Territories) and to investigate significant interruptions of electric power or threats to the electric system reliability. Form OE–417 also enables DOE to meet the Department's national security responsibilities as the coordinating agency for Emergency Support Function (ESF) #12—Energy, under the National Response Framework, and the Sector-Specific Agency for the energy sector, pursuant to Presidential Policy Directive 21—*Critical Infrastructure Security and Resilience,* Presidential Policy Directive 41—*United States Cyber Incident Coordination,* and the Fixing Americas Surface Transportation (FAST) Act, Public Law 114–94. The information may also be shared with other non-regulatory federal agencies assisting in emergency response and recovery operations, or investigating the causes of an incident or disturbance to the national electric system. Public summaries are published on Form OE–417 web page at *https://www.oe.netl.doe.gov/oe417.aspx* on a monthly basis to keep the public informed.

(4a) *Changes to Information Collection:* DOE is changing the form number from Form OE–417 to Form DOE–417. The other changes to Form OE–417 align the reporting requirements with the recently approved North American Electric Reliability Corporation (NERC) CIP–008–6 Reliability Standard, which established new definitions for a Cyber Security Incident and a Reportable Cyber Security Incident. CIP–008–6 also expanded the reporting requirements; including expanding the applicable systems to report on and adding new reporting requirements for attempted compromises of high and medium impact BES cyber systems and their associated electronic access control or monitoring systems. The continued alignment between Form OE–417 and NERC reporting requirements helps minimize confusion among industry stakeholders about where and how to file reports and enable industry stakeholders to train personnel to report using a single form. By incorporating the requirements established by NERC CIP–008–6 Reliability Standard in Form OE–417, entities may only be required to submit Form OE–417. This change reduces the reporting burden for the electric power industry. Additional changes to Form OE–417 clarify reporting criteria and allow respondents to select potentially applicable exceptions under the Freedom of Information Act. While submitters may mark information as potentially exempt, whether information is or is not exempt as part of a FOIA response will be determined by the Department at the time of processing the FOIA request. See DOE's FOIA regulations at 10 CFR part 1004 for more information. Three changes were made to the form and one addition was made to the directions based on comments received during the 60-day public comment period. A summary of these and other changes to Form OE–417 is provided below:

- Changed the lettering or name of the form from ''Form OE–417'' to ''Form DOE–417''
- Added new reporting requirements from the North American Electric Reliability Corporation (NERC) CIP–008–6 Standard to reduce the combined burden on respondents reporting to NERC and DOE and streamline responses. It is expected that for NERC reporting entities registered in the United States; NERC will accept use of Form OE–417 to meet the submittal requirements that will be established by CIP–008–6 to the Department of Homeland Security and the Electricity Information Sharing and Analysis Center
- Updated the ''Response Due'' criteria with new line numbers and added the following:

○ If criterion 2 is met, also submit the Cyber Attributes on line T in Schedule 2.''

○ ''By the end of the next calendar day after a determination, submit Schedule 1 and lines N—S and the Cyber Attributes on line T in Schedule 2 as an Attempted Cyber Compromise if criterion 14 is met.''

○ ''If multiple criterion are met by an incident, Schedule 1 and any additionally required information (as noted above), must be submitted within timeframe established by the criteria with the shortest reporting timeline.''

○ ''For criterion 14 only, updates can be submitted within 7 calendar days of a determination of new or changed attribute information.''

• Renumbered reporting criteria due to the new reporting requirements.

• To align with reporting requirements established by the NERC CIP–008–06 standard:

○ Reworded Criteria 2 to ''Reportable Cyber Security Incident''

○ Added new Criteria 3 ''Cyber event that is not a Reportable Cyber Security Incident that causes interruptions of electrical system operations.''

• To align with reporting requirements established by the NERC CIP–008–06 standard

○ Added ''Attempted Cyber Compromise'' Alert Type to be filed within 1-Day

○ Added corresponding criteria ''Cyber Security Incident that was an attempt to compromise a High or Medium Impact Bulk Electric System Cyber System or their associated Electronic Access Control or Monitoring Systems''

• Updated Line Numbers throughout Schedule 1 and Schedule 2

• Added self-identified FOIA Exemption criteria for respondents to identify whether the respondent considers the information in Schedule 1 Lines C & D may be exempt FOIA due to the following:

○ ''Privileged or confidential information, *e.g.,* trade secrets, commercial, or financial information''

○ ''Critical Electric Infrastructure Information''

○ ''Other information exempt from FOIA''

• Added self-identified FOIA Exemption criteria for respondents to identify whether information in Schedule 2 may be exempt FOIA due to the following:

○ ''Privileged or confidential information, *e.g.,* trade secrets, commercial, or financial information''

○ ''Critical Electric Infrastructure Information''

○ ''Other information exempt from FOIA''

• Added the following to the direction to the Narrative Section ''Cyber Attributes: For cyber events, including attempted cyber compromises, provide the following attributes (at a minimum): (1) The functional impact, (2) the attack vector used, and (3) the level of intrusion that was achieved or attempted.''

• Added the DHS CISA Central or their successor(s) to Line W.

• Added ''For respondents that have reporting requirements under EOP–004, criteria 6, 7, and 15–26 satisfy the EOP–004 reporting if shared with NERC by DOE. For respondents that have reporting requirements under CIP–008, criteria 2 and 14 satisfy the CIP–008 reporting if shared with the E–ISAC and DHS CISA Central by DOE. For DOE to share the form, the appropriate boxes must be selected under Schedule 2, line W. If a particular incident meets both EOP–004 and CIP–008 requirements, then the respondent can file separate DOE–417 reports, if they only want certain information to be shared by DOE with NERC, the E–ISAC, and DHS CISA Central. DOE will share all of the information provided on the form with the entities selected in Schedule 2, line W'' to the instructions.

(5) *Annual Estimated Number of Respondents:* 2,514.

(6) *Annual Estimated Number of Total Responses:* 250.

(7) *Annual Estimated Number of Burden Hours:* 5,455.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $437,164 (5,455 burden hours times $80.14 per hour). EIA estimates that respondents will have no additional costs associated with the survey other than the burden hours.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b), 764(b); 764(a); and 790a and 42 U.S.C. 7101 *et seq.* and the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601, Public Law 93–275).

Signing Authority: This document of the Department of Energy was signed on October 22, 2020, by Nicholas Andersen, Deputy Assistant Secretary, Office of Cybersecurity, Energy Security, and Emergency Response, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 3, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–24687 Filed 11–5–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–9034–000]

Hicks, Bradley H.; Notice of Filing

Take notice that on October 30, 2020, Bradley H. Hicks, submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2020) and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45 (2020), and Order No. 664.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this

document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on November 20, 2020.

Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24698 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–285–000]

Sigurd Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Sigurd Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24704 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ21–2–000]

City of Vernon, California; Notice of Filing

Take notice that on October 27, 2020, the City of Vernon, California submitted its tariff filing: Filing 2021 TRR and TRBAA to be effective 1/1/2021.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on November 17, 2020.

Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24703 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–254–000]

Harmony Florida Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Harmony Florida Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24702 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–255–000]

Taylor Creek Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Taylor Creek Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24709 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–19–000.

Applicants: Sigurd Solar LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sigurd Solar LLC.

Filed Date: 10/30/20.

Accession Number: 20201030–5358.

Comments Due: 5 p.m. ET 11/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2154–014.
Applicants: Twin Eagle Resource Management, LLC.
Description: Notice of Change in Status of Twin Eagle Resource Management, LLC.
Filed Date: 10/29/20.
Accession Number: 20201029–5273.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER20–2424–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–10–29_SA 3520 Deficiency Response OTP-Red Pine Wind FSA (H081) to be effective 8/1/2020.
Filed Date: 10/29/20.
Accession Number: 20201029–5004.
Comments Due: 5 p.m. ET 11/19/20.

Docket Numbers: ER21–90–001.
Applicants: Sun Streams 2, LLC.
Description: Tariff Amendment: Supplement to Market-Based Rate Application and Request for Expedited Action to be effective 12/9/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5343.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–290–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: RS 43–SD—EP&C Agreement with East River Electric Power Co-op (Napa Junction) to be effective 11/2/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5338.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–291–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2020–10–30_PSCo Transmission Formula Rate Filing to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5341.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–292–000.
Applicants: Dynegy Oakland, LLC.
Description: § 205(d) Rate Filing: Annual Reliability Must Run Agreement and Schedule F Informational Filings to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5344.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–293–000.
Applicants: Horizon West Transmission, LLC.
Description: § 205(d) Rate Filing: Horizon West Transmission, LLc Proposed Formula Rate to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5347.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–294–000.
Applicants: Public Service Electric and Gas Company.
Description: § 205(d) Rate Filing: Amendment to PECO PSE&G Amtrak Agreement to be effective 1/1/2021.
Filed Date: 10/30/20.
Accession Number: 20201030–5353.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–295–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits ECSAs, Nos. 5715, 5716, 5717, 5718, and 5719 to be effective 12/30/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5354.
Comments Due: 5 p.m. ET 11/20/20.

Docket Numbers: ER21–296–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL–TECO Revisions to Rate Schedule No. 23 Contract for Interchange Service to be effective 10/20/2020.
Filed Date: 11/2/20.
Accession Number: 20201102–5002.
Comments Due: 5 p.m. ET 11/23/20.

Docket Numbers: ER21–297–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3746 Tenaska Power Services Co. Attachment AO to be effective 10/1/2020.
Filed Date: 11/2/20.
Accession Number: 20201102–5009.
Comments Due: 5 p.m. ET 11/23/20.

Docket Numbers: ER21–298–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5836; Queue No. AE2–227/AF2–255 to be effective 9/30/2020.
Filed Date: 11/2/20.
Accession Number: 20201102–5021.
Comments Due: 5 p.m. ET 11/23/20.

Docket Numbers: ER21–299–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5837; Queue No. AE2–228/AF2–256 to be effective 9/30/2020.
Filed Date: 11/2/20.
Accession Number: 20201102–5026.
Comments Due: 5 p.m. ET 11/23/20.

Docket Numbers: ER21–300–000.
Applicants: Wisconsin Power and Light Company.
Description: § 205(d) Rate Filing: QF Rider Wholesale Rate Filing (WPL) to be effective 12/31/2020.
Filed Date: 11/2/20.
Accession Number: 20201102–5050.
Comments Due: 5 p.m. ET 11/23/20.

Docket Numbers: ER21–301–000.
Applicants: San Diego Gas & Electric Company.
Description: § 205(d) Rate Filing: 2021 TRBAA Update to be effective 1/1/2021.
Filed Date: 11/2/20.
Accession Number: 20201102–5091.
Comments Due: 5 p.m. ET 11/23/20.

Docket Numbers: ER21–302–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205 filing re: Implementation Agreement (SA 2575) with Helix Ravenswood to be effective 11/5/2020.
Filed Date: 11/2/20.
Accession Number: 20201102–5101.
Comments Due: 5 p.m. ET 11/23/20.

Docket Numbers: ER21–303–000.
Applicants: Tri-State Generation and Transmission Associations, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 822 to be effective 10/30/2020.
Filed Date: 11/2/20.
Accession Number: 20201102–5132.
Comments Due: 5 p.m. ET 11/23/20.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC21–1–000.
Applicants: I Squared Capital.
Description: Self-Certification of FC of I Squared Capital.
Filed Date: 10/30/20.
Accession Number: 20201030–5373.
Comments Due: 5 p.m. ET 11/20/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24697 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–258–000]

Todd Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Pioneer Todd Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24699 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–284–000]

Groton Station Fuel Cell, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Groton Station Fuel Cell, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24696 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–73–001.

Applicants: DTE Gas Company.

Description: Tariff filing per 284.123(b),(e)/: DTE Gas Supplemental OS Filing to be effective 10/1/2020.

Filed Date: 10/30/2020.

Accession Number: 202010305043.

Comments/Protests Due: 5 p.m. ET 11/13/2020.

Docket Numbers: RP21–131–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming—Leidy South—Partial Interim Service to be effective 12/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5005.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–132–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Citadel Energy Marketing LLC SP362133 to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5006.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–133–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Compliance filing Ozark Gas Cost and Revenue Study Compliance Filing.
Filed Date: 10/30/20.
Accession Number: 20201030–5007.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–134–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Macquarie Energy LLC to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5008.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–135–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Mercuria Energy America, LLC to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5009.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–136–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Targa Gas Marketing to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5010.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–137–000.
Applicants: Equitrans, L.P.
Description: Compliance filing Operational Purchases and Sales Report for 2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5011.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–138–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Remove Reference to Extension of Time for NAESB 3.1 to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5012.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–139–000.
Applicants: Rager Mountain Storage Company LLC.
Description: § 4(d) Rate Filing: Remove Reference to Extension of Time for NAESB 3.1 to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5013.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–140–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—XTO to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5014.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–141–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Refile Inadvertently Overwritten Negotiated Rate Agreements to be effective 8/22/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5015.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–142–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: OTRA Winter 2020 to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5037.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–143–000.
Applicants: Fayetteville Express Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 10–30–20 to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5050.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–144–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—RNG Gas Quality Filing to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5052.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–145–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 11–01–2020 to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5057.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–146–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Atmos 32658 Neg Rate Agreement to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5059.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–147–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Quarterly Fuel and L&U Update to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5062.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–148–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 10–30–20 to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5069.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–149–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: § 4(d) Rate Filing: CGT Sabine Pass NRA Amendment to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5070.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–150–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2020 October Negotiated Rate Amendments to be effective 11/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5072.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–151–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2020 Miscellaneous & Housekeeping Filing to be effective 12/15/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5074.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–152–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2020 October Housekeeping Orig Vol 1A Tariff to be effective 11/30/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5075.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–153–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: TETLP PCB DEC 2020 FILING to be effective 12/1/2020.
Filed Date: 10/30/20.
Accession Number: 20201030–5099.
Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–154–000.
Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 releases eff 11–1–2020) to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5112.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–155–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmts (Wells Fargo 51758 and Tenaska 51757) to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5119.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–156–000.

Applicants: Dominion Energy Transmission, Inc.

Description: § 4(d) Rate Filing: DETI—October 30, 2020 Nonconforming Service Agreements to be effective 12/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5123.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–157–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 53220 to Exelon 53225) to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5126.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–158–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Permanent Cap Rel to Neg Rate Agmt (Mobile 42488 to Southern 53174) to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5127.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–159–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Marathon 51753, 51754 to Spire 53271, 53272) to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5128.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–160–000.

Applicants: Ruby Pipeline, L.L.C.

Description: § 4(d) Rate Filing: EPC and FL&U Percentage Update to be effective 12/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5132.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–161–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: 2020 Fuel Tracker Filing to be effective 4/1/2021.

Filed Date: 10/30/20.

Accession Number: 20201030–5143.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–162–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Amedment to Negotiated Rate Agreements Filing—Tenaska Marketing Ventures to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5153.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–163–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Tesoro) to be effective 12/5/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5154.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–164–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: List of Non-Conforming Service Agreements (Leidy South_Interim Svc) to be effective 12/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5197.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–165–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: AGT FRQ 2020 Filing to be effective 12/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5251.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–166–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (Conoco) to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5274.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–167–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20201030 Negotiated Rate to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5297.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–168–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Nov. 20 Negotiated Rate Agmt Amends to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5302.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–169–000.

Applicants: Destin Pipeline Company, L.L.C.

Description: Compliance filing Annual Fuel Retention Adjustment.

Filed Date: 10/30/20.

Accession Number: 20201030–5312.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–170–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: TETLP ASA DEC 2020 FILING to be effective 12/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5321.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–171–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—ConEd 910950 Release eff 11–1–20 to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5328.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–172–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—ConEd 911704 Release eff 11–1–20 to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5337.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–173–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Keyspan 510369 Releases eff 11–01–20 to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5348.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–174–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Vol. 2-Neg. Rates-Spotlight, Tenaska, Conexus & Non-Conforming Discount-Empire to be effective 10/30/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5350.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–175–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2020–10–30 Negotiated Rate Agreements to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5352.

Comments Due: 5 p.m. ET 11/12/20.

Docket Numbers: RP21–176–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Brooklyn Union 803151 Releases eff 11–01–20 to be effective 11/1/2020.

Filed Date: 10/30/20.

Accession Number: 20201030–5357.

Comments Due: 5 p.m. ET 11/12/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–24708 Filed 11–5–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0514; FRL–10015–77]

Atrazine, Simazine, and Propazine Registration Review; Draft Endangered Species Act Biological Evaluations; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the Environmental Protection Agency's (EPA or the Agency) draft biological evaluations (BEs) for the registration review of the pesticides atrazine, simazine, and propazine, and opens a public comment period on these documents.

DATES: Comments must be received on or before January 5, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0514, through the Federal eRulemaking Portal at *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.

Please note that due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Tracy Perry, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 308–0128; email address: *perry.tracy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides and/or the potential impacts of pesticide use on threatened or endangered (listed) species and designated critical habitat. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

A. Authority

The Endangered Species Act (ESA) requires federal agencies, such as EPA, to ensure that their actions are not likely to jeopardize the continued existence of species listed as threatened or endangered under the ESA or destroy or adversely modify the designated critical habitat of such species. The final registration review determination of reevaluating a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) constitutes an EPA ''action'' under the ESA. If EPA determines a pesticide may affect a listed species or its designated critical habitat, EPA must initiate informal or formal consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (collectively referred to as the Services), as appropriate. EPA initiates formal consultation with the Services through the conduct and transmittal of a biological evaluations (BE) with its findings.

B. Background

The Agency has completed comprehensive, nationwide draft BEs for atrazine, simazine, and propazine uses relative to the potential effects on listed species and their designated critical habitats. The schedule for conducting the atrazine and simazine BEs was negotiated as part of a partial settlement agreement pursuant to a joint stipulation filed on October 18, 2019 and entered by the court on October 22,

2019, in *Center for Biological Diversity et al.* v. *EPA et al.* (N.D. Ca) (3:11–cv–00293).

The atrazine, simazine and propazine BEs follow the *Revised Method for National Level Listed Species Biological Evaluations of Conventional Pesticides* (see docket ID number EPA–HQ–OPP–2019–0185–0084 at *www.regulations.gov*). EPA utilized the Revised Method for the first time when conducting the methomyl and carbaryl draft BEs, for which the Agency solicited public comment for a total of 120 days. EPA is currently evaluating public comments received and will take them into consideration for the final BEs for these pesticides. Comments received on carbaryl and methomyl that are applicable to the broader BE methodology will also be incorporated into the final BEs for atrazine, simazine, and propazine.

After reviewing comments received during the public comment period on the atrazine, simazine, and propazine draft BEs, EPA will issue final BEs and a response to public comments document. If EPA determines that these pesticides may affect listed species and/or their designated critical habitats, EPA will initiate consultation with the Services. Based on the BEs, the Services will then develop Biological Opinions for atrazine, simazine, and propazine.

C. Public Comments Sought

Pursuant to 40 CFR 155.53(c) and consistent with the enhanced stakeholder engagement practices (see docket ID number EPA–HQ–OPP–2012–0442), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft BEs for atrazine, simazine, and propazine. Such comments could address, among other things, the application of the Agency's revised risk assessment methodologies to and assumptions for these draft BEs.

The file sizes of the draft BEs for atrazine, simazine, and propazine exceed the docket system's file size limitation, therefore these documents are not posted to this BE docket. Instead, the BEs are posted on EPA's endangered species web page (see web links provided in the Table below). Commenters are instructed to post comments on the BEs to this BE docket (EPA–HQ–OPP–2020–0514) in *www.regulations.gov,* as indicated in the Table below.

TABLE—PESTICIDE DOCKET ID NUMBERS FOR POSTING COMMENTS ON THE ATRAZINE, SIMAZINE, AND PROPAZINE DRAFT BES AND LINKS TO THE DRAFT BES

Document	Pesticide docket ID No. for public comments	Links to the draft BEs
Atrazine BE	EPA–HQ–OPP–2020–0514	*https://www.epa.gov/endangered-species/draft-national-level-listed-species-biological-evaluation-atrazine.*
Simazine BE	EPA–HQ–OPP–2020–0514	*https://www.epa.gov/endangered-species/draft-national-level-listed-species-biological-evaluation-simazine.*
Propazine BE	EPA–HQ–OPP–2020–0514	*https://www.epa.gov/endangered-species/draft-national-level-listed-species-biological-evaluation-propazine.*

1. *Other related information.* Additional information on endangered species risk assessment and the NAS report recommendations are available at *https://www.epa.gov/endangered-species/implementing-nas-report-recommendations-ecological-risk-assessment-endangered-and.* Information on the Agency's registration review program and its implementing regulation is available at *https://www.epa.gov/pesticide-reevaluation.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audio-graphic or video-graphic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 2, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–24680 Filed 11–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2016–0762; FRL–10016–12–OMS]

Proposed Information Collection Request; Comment Request; General Administrative Requirements for Assistance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''General Administrative Requirements for Assistance Programs'' (EPA ICR No. 0938.22, OMB Control No. 2030–0020 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2021. In addition, this ICR includes EPA's Disadvantaged Business Enterprise (DBE) Program as a result of the

relocation of the DBE Program from the Office of Small and Disadvantaged Business Utilization to the Office of Grants and Debarment. The information collection activities for the DBE Program were previously covered under OMB Control Number 2090–0030. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 5, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2016–0762 online using *www.regulations.gov* (our preferred method), by email to *docket_oms@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Elizabeth January, Office of Grants and Debarment, National Policy, Training and Compliance Division, Mail Code: 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (617) 918–8655; fax number: (202) 565–2470; email address:*January.Elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it 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 will have practical utility; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The information is collected from applicants and recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program which includes the Agency's DBE program. The information collected is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). For awards made prior to December 26, 2014, 40 CFR part 30, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' establishes the management requirements for institutions of higher education, hospitals, and other non-profit organizations, as well as procurement requirements for non-governmental recipients. For awards made prior to December 26, 2014, 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' includes the management requirements for States, local governments, and Indian Tribal governments. These regulations include only those provisions mandated by statute, required by Office of Management and Budget (OMB) Circulars, or added by EPA to ensure sound and effective financial assistance management. For awards made after December 26, 2014, 2 CFR 200 and EPA's implementation of 2 CFR 200 at 2 CFR 1500 ''Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards'' establishes the management requirements for all entity types. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. For all awards, 40 CFR part 33 ''Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements'' establishes DBE utilization requirements for all entity types. These regulations include only those provisions mandated by statue or added by EPA to ensure sound and effective financial assistance management with respect to DBE utilization. This ICR combines all of these requirements under OMB Control Number 2030–0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately.

Form Numbers:

EPA Form 190–F–04–001, ''EPA Payment Request''
EPA Form 190–F–05–001, ''Fellowship Stipend Payment Enrollment Form''
EPA Form 4700–4, ''Preaward Compliance Review Report for All Applicants and Recipients Requesting Federal Financial Assistance''
EPA Form 5700–52A, ''MBE/WBE Utilization Under Federal Grants and Cooperative Agreements''
EPA Form 5700–53, ''Lobbying and Litigation Certification for Grants and Cooperative Agreements''
EPA Form 5700–54, ''Key Contacts Form,'' and EPA Form 5700–54–2, ''Key Contacts Form for Multiple Principal Investigators''
EPA Form 5770–2, ''Fellowship Application''
EPA Form 5770–3, ''Fellowship Facilities and Commitment Statement''
EPA Form 5770–5, ''Agency Fellowship Certification''
EPA Form 5770–7, ''EPA Fellowship Activation Notice''
EPA Form 5770–8, ''Fellowship Agreement''
EPA Form 5770–9, ''Completion of Studies Notice''
EPA Form 6600–01, ''EPA Administrative and Financial Onsite Review Questionnaire''
EPA Form 6600–06, ''Certification Regarding Lobbying''
EPA Form 6600–08, ''Lobbying Cost Certificate for Indirect Costs/

Certificate of Indirect Costs for State and Local Governments''
EPA Form 6600–09, ''EPA Administrative Capability Questionnaire''
NCER Form 5, ''Current and Pending Support''

Respondents/affected entities: The primary recipients of EPA assistance agreements are State and local governments, Indian Tribes, educational institutions, and not-for-profit institutions.

Respondent's obligation to respond: Required to obtain an assistance agreement (40 CFR part 30, 40 CFR part 31, and 40 CFR part 33 for awards made prior to December 26, 2014, and 2 CFR 200, 2 CFR 1500, and 40 CFR part 33 for awards made after December 26, 2014).

Estimated number of respondents: 5,492 (total).

Frequency of response: On occasion, quarterly, and annually.

Total estimated burden: 102,122 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $6,149,228 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: Estimates are likely to stay substantially the same compared with the ICR currently approved by OMB and the former DBE ICR due to limited programmatic changes or changes in the estimated respondent universe.

Dated: October 30, 2020.

Michael Osinski,

Director, Office of Grants and Debarment.

[FR Doc. 2020–24714 Filed 11–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9053–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)
Filed October 26, 2020 10 a.m. EST Through November 2, 2020 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200217, Final, USFS, CO, Pike & San Isabel National Forests Motorized Travel Management (MVUM) Analysis, Review Period Ends: 12/21/2020, Contact: John Dow 719–250–5311.
EIS No. 20200218, Draft, TREAS, MD, Construction and Operation of a Currency Production Facility, Comment Period Ends: 12/21/2020, Contact: Chuck Davis 202–578–8507.
EIS No. 20200219, Draft, AZDOT, FHWA, AZ, Sonoran Corridor Tier 1 Environmental Impact Statement, Comment Period Ends: 01/08/2021, Contact: Ammon Heier 602–382–8983.
EIS No. 20200220, Final, USFWS, OR, Deschutes Basin Habitat Conservation Plan, Review Period Ends: 12/07/2020, Contact: Bridget Moran 541–383–7146.

Amended Notice

EIS No. 20200196, Final, FTA, CA, Final Environmental Impact Statement/Final Environmental Impact Report (Vol. 1) for the East San Fernando Valley Transit Corridor Project, Review Period Ends: 11/17/2020, Contact: Ms. Charlene Lee Lorenzo 213–202–3952.

Revision to FR Notice Published 10/02/2020; Extending the Comment Period from 11/02/2020 to 11/17/2020.

Dated: November 2, 2020.

Candi Schaedle,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–24695 Filed 11–5–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1171; FRS 17209]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 5, 2021. 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 to *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: 3060–1171.

Title: Commercial Advertisement Loudness Mitigation (''CALM'') Act; 73.682(e) and 76.607(a).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,937 respondents and 4,868 responses.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Estimated Time per Response: 0.25–80 hours.

Total Annual Burden: 6,036 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i) and (j), 303(r) and 621.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission will use this information to determine compliance with the CALM Act. The CALM Act mandates that the Commission make the Advanced Television Systems Committee (''ATSC'') A/85 Recommended Practice mandatory for all commercial TV stations and cable/multichannel video programming distributors (MVPDs).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–24646 Filed 11–5–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for an extension with change of the existing collection requirements related to licensing of ocean transportation intermediaries.

DATES: Written comments must be submitted on or before December 7, 2020.

ADDRESSES: Comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 725—17th Street NW, Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV*, Fax: (202) 395–5806, and to: Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, *omd@fmc.gov.*

Please reference the information collection's title and OMB approved number that can be found below in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Donna Lee at 202–523–5800 or email: *omd@fmc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Commission invites the general public and other Federal agencies to comment on the proposed information collection. On July 14, 2020, the Commission published a notice and request for comment in the **Federal Register** (85 FR 42400) regarding the agency's request to OMB for an extension for an information collection as required by the Paperwork Reduction Act of 1995. The Commission received no comments on the request for extension. The Commission has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Open for Comment

Title: 46 CFR part 515—Licensing, Registration, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries.

OMB Approval Number: 3072–0018 (December 31, 2022).

Abstract: The Shipping Act of 1984 (the Act), 46 U.S.C. 40101–41309, as amended, provides that no person in the United States may advertise, hold oneself out, or act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The Commission has implemented the Act's OTI requirements in regulations contained in 46 CFR part 515, including financial responsibility Forms FMC–48, FMC–67, FMC–68, and FMC–69, Optional Rider Forms FMC–48A and FMC–69A, its related license application Form FMC–18, and the related foreign-based unlicensed NVOCC registration/renewal Form FMC–65.

Type of Request: Extension with change.

Proposed Changes: Through a Final Rule published in Docket No. 19–06, the Commission revised its regulations to implement the provisions of the Frank LoBiondo Coast Guard Authorization Act of 2018. The revisions included amendments to the regulations governing OTIs to reflect statutory changes to the types of persons that are required to be licensed and maintain a bond, insurance, or other surety. The Final Rule also revised the regulations governing the general duties of non-vessel-operating common carriers (NVOCCs) to reflect amendments to several prohibited acts. In particular, the Final Rule eliminated the requirement that registered NVOCCs use only licensed OTIs as agents in the United States. Consistent with this change, the Commission proposes to remove that portion of the certification in the Form FMC–65 that requires applicants to certify that they will only use licensed OTIs for any OTI activities performed on their behalf in the United States.

Purpose: The Commission uses information obtained under this part and through Form FMC–18 to determine the qualifications of OTIs and their compliance with the Act and regulations, and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing. The Commission would also not be able to effectively assess the compliance of foreign-based, unlicensed NVOCCs without the required registration information.

Frequency: This information is collected when applicants apply for a license or submit a registration, complete the triennial renewal, or when existing licensees or registrants change their application forms.

Type of Respondents: The types of respondents are persons desiring to obtain or maintain a license or registration to act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier, or both.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 6,475 entities.

Estimated Time per Response: The time per response to complete application Form FMC–18 averages 2 hours and to complete the triennial renewal is 10 minutes. The time to complete a financial responsibility form averages 20 minutes. The time to complete Form FMC–65 to submit or renew a registration as a foreign-based,

unlicensed NVOCC averages 15 minutes.

Total Annual Burden: The Commission estimates the total annual burden at 3,918 hours.

Rachel Dickon,

Secretary.

[FR Doc. 2020–24627 Filed 11–5–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 23, 2020.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *James C. Falciani, as managing member of Falciani Investments I, LLC, and Jasalyn Falciani, individually and as trustee of James C. Falciani 2019 Family Trust, all of Decatur, Alabama;* to join the previously approved Organizing Control Group and acquire voting shares of Merit Holdings, LLC, and thereby indirectly acquire voting shares of Merit Bank, both of Huntsville, Alabama.

B. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *John Ed Chambers III, Danville, Arkansas; Gene C. Jones, Jerral Wayne Jones, Charlotte L. Anderson, Jerral W. Jones Jr., and John Stephen Jones, all of Frisco, Texas; Patricia C. Dixon, Plano, Texas; Kathryn C. Counce, Springdale, Arkansas; John Ed Chambers III, Charlotte L. Anderson, and Patricia C. Dixon, each as co-trustees to the Kathryn Chambers Counce Irrevocable Trust, Springdale, Arkansas;* and

John Russell Meeks and Susan Lydia Chambers Sharits, both of Fayetteville, Arkansas; and Melissa Meeks Ireland, Dallas, Texas; to join the Chambers family control group by retaining voting shares of Chambers Bancshares, Inc., and thereby indirectly retaining voting shares of Chambers Bank, both of Danville, Arkansas.

In addition, *John Stephen Jones, as general partner of the 2020 Chambers Family Limited Partnership, LLLP, Danville, Arkansas, and the GCJ Family, L.P., and as the sole owner of Marina Holdings, LLC, Frisco, Texas;* to join the Chambers family control group by acquiring voting shares of Chambers Bancshares, Inc., and thereby indirectly acquiring voting shares of Chambers Bank.

C. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Todd J. Zaun, Sartell, Minnesota, individually and as trustee of the Todd J. Zaun Grantor Trust and the Todd J. Zaun Revocable Trust, each of Sartell, Minnesota; and Steven M. Zaun, Pacific Palisades, California, individually and as trustee of the Steven M. Zaun Grantor Trust, and the SMZ Trust, each of Pacific Palisades, California;* to join the Zaun Family Group, a group acting in concert to retain and acquire voting shares of Farmers & Merchants Agency, Inc., and thereby indirectly acquire voting shares of Farmers & Merchants State Bank of Pierz, both of Pierz, Minnesota.

D. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

Michael D. Miller, as voting trustee of The Miller Investment Group Voting Trust Agreement, Melissa Miller, Bryce Dirks, Stacy Dirks, Logan Hedlund, and Kelsey Hedlund, all of Montezuma, Kansas; Jay Zehr, Joan Unruh, Jeff Unruh, and Sharleen Unruh, all of Copeland, Kansas; Terry Rabe and Melinda Rabe, both of Dodge City, Kansas; Tom Huelskamp and Janet Huelskamp, both of Fowler, Kansas; Mitch Little and Debbie Little, both of Meade, Kansas; Debora Calhoun, Cimarron, Kansas; Robert Irsik, Ingalls, Kansas; and Franck Meyer and Michelle Meyer, both of Seiling, Oklahoma; to become members of The Miller Investment Group Voting Trust Agreement and to acquire voting shares of FSB Bankshares, Inc., and indirectly acquire voting shares of Fowler State Bank, both of Fowler, Kansas.

Board of Governors of the Federal Reserve System, November 2, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–24674 Filed 11–5–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* 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), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 7, 2020.

A. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Broadway Financial Corporation, Los Angeles, California;* to become a bank holding company by acquiring 100 percent of CFBanc Corporation and thereby indirectly acquiring City First Bank of D.C., N.A., both of Washington, DC, and also to retain its current thrift subsidiary, Broadway Federal Bank, FSB, Los Angeles, California, for a moment in time and thereby engage in nonbanking activities.

2. *City First Enterprises, Inc., Washington, DC,* to acquire Broadway Financial Corporation, Los Angeles, California, and also to acquire Broadway Federal Bank, FSB, also of Los Angeles, for a moment in time and thereby engage in nonbanking activities.

Board of Governors of the Federal Reserve System, November 2, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–24676 Filed 11–5–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0013; Docket No. 2020–0053; Sequence No. 16]

Information Collection; Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning certified cost or pricing data and data other than certified cost or pricing data. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2021. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by January 5, 2021.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

B. Need and Uses

The Truth in Negotiations Act, 10 U.S.C. 2306a and 41 U.S.C. 3502, requires the Government to obtain certified cost or pricing data from contractors prior to the award of certain contract actions. Contractors may be exempt from this requirement under certain conditions. This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

a. *52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.* When contracting by sealed bidding, this clause requires contractors to require subcontractors to submit certified cost or pricing data for a modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4(a)(1).

b. *52.215–12, Subcontractor Certified Cost or Pricing Data.* When contracting by negotiation, this clause requires contractors to require subcontractors to submit certified cost or pricing data.

c. *52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications.* When contracting by negotiation, this clause requires contractors to require subcontractors to submit certified cost or pricing data for a modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4(a)(1).

d. *52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.* When contracting by negotiation, this provision requires offerors, if not granted an exception, to prepare and submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, unless the contracting officer and the contractor agree to a different format.

e. *52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.* When contracting by negotiation, this clause requires contractors, if not granted an exception, to submit, for a modification or price adjustment expected to exceed the threshold set forth at FAR 15.403–4(a)(1), certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, unless the contracting officer and the contractor agree to a different format.

Certified cost or pricing data is used by agencies to assure that contract prices and any subsequent contract modifications are fair and reasonable.

C. Annual Burden

Respondents: 28,399.

Total Annual Responses: 148,094.

Total Burden Hours: 9,160,160.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.*

Please cite OMB Control No. 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

William F. Clark,

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

[FR Doc. 2020–24614 Filed 11–5–20; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0250; Docket No. 2020–0001; Sequence No. 7]

Information Collection; General Services Administration Acquisition Regulation; Zero Burden Information Collection Reports

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division (MVCB) 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 Zero Burden Information Collection Reports.

DATES: *Submit comments on or before:* December 7, 2020.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, General Services Acquisition Policy, at 202–445–0390 or via email at *Thomas.olinn@gsa.gov*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information requirement consists of reports that do not impose collection burdens upon the public. These collections require information which is already available to the public at large, or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process.

Under clause 552.238–73, ''Identification of Electronic Office Equipment Providing Accessibility for the Handicapped,'' (previous clause number 552.238–70) the offeror is encouraged to identify office equipment, including any special peripheral that will facilitate electronic office equipment accessibility for handicapped individuals in its commercial catalogs and pricelists accepted by the Government.

B. Annual Reporting Burden

None.

C. Public Comments

A 60-day notice published in the **Federal Register** at 85 FR 53003 on August 27, 2020. No comments were received.

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. 3090–0250, Zero Burden Information Collection Reports, in all correspondence.

Jeffrey A. Koses,

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

[FR Doc. 2020–24725 Filed 11–5–20; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 Center for Complementary and Integrative Health Special Emphasis Panel; Clinical and Data Coordinating Center; Applications for NCCIH Multi-Site Clinical Trials of Mind and Body Interventions.

Date: November 30, 2020.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative, DEM II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–547, 301–435–2591, *pamela.jeter@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: November 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24667 Filed 11–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 materials, 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 Library of Medicine Special Emphasis Panel; Conflicted SEP.

Date: December 10, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Video Assisted Meeting.

Contact Person: Leonid V. Tsap, Ph.D., Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, 301–827–7077, *tsapl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24669 Filed 11–5–20; 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, 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; Clinical trials for COVID 19 management in older individuals.

Date: December 11, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 2, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24615 Filed 11–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Treatment of Hermansky-Pudlak Syndrome and Idiopathic Pulmonary Fibrosis

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Heart, Lung and Blood Institute (NHLBI) and the National Human Genome Research Institute (NHGRI), both of the National Institutes of Health, Department of Health and Human Services, are contemplating the grant of an exclusive patent license to Inversago Pharma Inc., located in Montreal, Quebec, Canada, to practice the inventions embodied in the patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Only written comments and/or applications for a license which are received by the National Human Genome Research Institute's Technology Transfer Office on or before November 23, 2020 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent license should be directed to: Anna Solowiej, Ph.D., J.D., Senior Licensing and Patenting Manager, NHGRI Technology Transfer Office; Telephone (301) 435–7791; Email: *anna.solowiej@nih.gov.*

SUPPLEMENTARY INFORMATION: The following and all continuing U.S. and foreign patents/patent applications thereof are the intellectual properties to be licensed under the prospective agreement to Inversago Pharma Inc.:

NIH ref No.	Patent No. or application No.	Issue date	Filing date	Title
E–282–2012–0–US–01	61/725,949		November 13, 2012	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–PCT–02	PCT/US2013/069686		November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–03	9,765,031	September 19, 2017	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–CA–04	2889697		April 27, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–EP–05	13802153.0	TBD	June 01, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–CH–12	13802153.0	TBD	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–DE–13	13802153.0	TBD	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–FR–14	13802153.0	TBD	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–GB–15	13802153.0	TBD	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–IE–16	13802153.0	TBD	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–IN–06	3733/DELNP/2015		May 1, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–JP–07	6272626	January 12, 2018	May 11, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–CN–08	ZL201380069389.9	August 20, 2019	July 3, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–09	10,683,270	June 16, 2020	August 10, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–10	15/674,333	TBD (application allowed)	August 10, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–11	16/870,093		May 8, 2020	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–US–01	62/171,179		June 4, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–PCT–02	PCT/US2016/035291		June 1, 2016	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–EP–05	16728547.7		June 1, 2016	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–US–08	15/579,123		December 1, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–US–09	16/438,850		June 12, 2019	Cannabinoid Receptor Mediating Compounds.
E–282–2012–2–US–01	15/061,829		March 4, 2016	Cannabinoid Receptor Mediating Compounds.
E–282–2012–2–PCT–02	PCT/US2017/020250		March 1, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–2–CN–03	2017800118698		March 1, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–2–EP–04	17711443.6		March 1, 2017	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–US–01	61/991,333		May 9, 2014	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–PCT–02	PCT/US2015/029946		May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–AU–03	2015255765		November 7, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–CA–04	2948349		May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–CN–05	201580028788.X	February 7, 2020	May 8, 2015	Cannabinoid Receptor Mediating Compounds.

NIH ref No.	Patent No. or application No.	Issue date	Filing date	Title
E–140–2014–0–EP–06	15728668.3		May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–IN–07	201637038171		November 8, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–JP–08	2017–511558	TBD (application allowed)	May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–US–09	10,329,259	June 25, 2019	November 8, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–HK–10	17105705.6		June 9, 2017	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–AU–11	2019227889		May 8, 2015	Cannabinoid Receptor Mediating Compounds.

The patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective exclusive patent license territory may be worldwide and a field of use limited to human therapeutics for Hermansky-Pudlak syndrome and idiopathic pulmonary fibrosis.The invention covered by the patents and patent applications pertaining to HHS Ref. No. E–282–2012 relates to cannabinoid receptor 1 (CB_1R) inverse agonists. CB_1R activation plays a key role in appetitive behavior, metabolism, and tissue fibrosis. Of importance as a therapeutic target here is that the receptor is expressed in both peripheral tissue as well as the central nervous system. The invention is a class of pyrazole compounds that act as CB1 receptor inverse agonists and have been shown effective at reducing obesity and its associated metabolic consequences while having no experimentally discernable neuropsychotropic side effects that are considered adverse, unlike the earlier antagonists rimonabant. These CB_1R receptor compounds were developed with the goals of limiting their brain penetrance without losing their metabolic efficacy due to CB1 inverse agonism, and having a primary metabolite directly targeting enzymes involved in inflammatory and fibrotic processes associated with metabolic and other disorders. The patents are both compositions of matter and methods of use.

The inventions covered by HHS Ref. E–140–2014–0 also pertain to pyrazole CB_1R receptor inverse agonists. In addition, some of these compounds also have a direct inhibitory effect on inducible nitric oxide synthase (iNOS), whereas another group of the compounds directly activates AMP kinase. There is evidence that the metabolic effects of endocannabinoids are mediated by CB1 receptors in peripheral tissues. These dual-target compounds may be useful for treating metabolic disease and related conditions such as obesity and diabetes and their complications, including various forms of tissue fibrosis, without the dangerous side effects. This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive patent license will be royalty bearing and may be granted unless within fifteen (15) days from the date of this published notice, NHGRI receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent license.

Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: November 2, 2020

Claire T. Driscoll,

Director, Technology Transfer Office, National Human Genome Research Institute.

[FR Doc. 2020–24616 Filed 11–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; R13 Conferences and Scientific Meetings.

Date: December 11–14, 2020.

Time: 11:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20814 (Virtual Meeting).

Contact Person: Keith A Mintzer, Ph.D., Scientific Review Officer, Office of Review Branch/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–G, Bethesda, MD 20892–7924, (301) 827–7949, *mintzerk@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Institutional Training Grants.

Date: December 15, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–H, Bethesda, MD 20892, (301) 827–7969, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24670 Filed 11–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognitive and Neuropathological signatures of Alzheimer's Disease, Brain Injury and Aging.

Date: December 1, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms and Modulators of Cognition, Impairment, Reward.

Date: December 1, 2020.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pathophysiology of Eye Diseases: Retinopathies, Degeneration and Infection.

Date: December 2, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205, MSC 7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Language, Speech, Communication and Motor Function.

Date: December 2, 2020.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine Colona Morasch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–9147, *moraschkc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 2, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24672 Filed 11–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 of Allergy and Infectious Diseases Special Emphasis Panel; Long Acting Treatments for HIV and HIV-Associated Co-Infections (R61/R33 Clinical Trial Not Allowed).

Date: December 3, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Mohammed S. Aiyegbo, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy & Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20852, (301) 761–7106, *mohammed.aiyegbo@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 2, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24666 Filed 11–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Special Emphasis Panel, December 17, 2020, 10:00 a.m. to 5:30 p.m. This notice was published in the **Federal Register** on October 26, 2020, 85 FR 207, Page 67747.

This notice is being amended to change the date to December 22, 2020. The meeting is closed to the public.

Dated: November 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24668 Filed 11–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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/or contract proposals the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Biology of Development and Disease.

Date: November 20, 2020.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6710B Rockledge

Drive, Bethesda, MD 20892 (Video-Assisted Meeting).

Contact Person: Luis E. Dettin, Ph.D., M.S., M.A., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (301) 827–8231, *luis_dettin@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: November 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–24671 Filed 11–5–20; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Adoption of Policy Statement on Promotion and Value of Traditional Trades Training

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of adoption of policy statement on promotion and value of traditional trades training.

SUMMARY: The Advisory Council on Historic Preservation has adopted Policy Statement on Promotion and Value of Traditional Trades Training.

DATES: The policy statement was adopted on October 19, 2020.

ADDRESSES: Address any questions concerning the policy statement to Druscilla J. Null, Advisory Council on Historic Preservation, 401 F Street NW, Suite 308, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Druscilla J. Null, (202) 517–1487, *dnull@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP), an independent federal agency created by the National Historic Preservation Act (NHPA), works to promote the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy.

One of the ACHP's statutory duties under the NHPA is to encourage training and education in the field of historic preservation. In keeping with that mandate, at its November 7, 2019, business meeting, the ACHP initiated discussions regarding traditional trades training. America is suffering from a shortage of skilled workers in the specialized traditional trades often required for historic preservation projects. Expanding opportunities for traditional trades training would be an important step in addressing this problem. Doing so is critical to the maintenance of our nation's historic places and to filling jobs that will help revitalize communities both physically and economically.

At its March 13, 2020, business meeting, the ACHP further explored traditional trades training and discussed the possibility of creating a task force to address the issue. The idea of developing a policy statement on the topic also was discussed. On May 28, 2020, ACHP Chairman Aimee Jorjani announced the creation of the ACHP Traditional Trades Training Task Force (Task Force). One of its stated goals was to develop recommendations for federal action that could be embodied in a formal ACHP policy statement.

The Task Force includes representatives of several federal agencies and individuals with historic preservation, education, and architecture expertise. In addition to ACHP Chairman Jorjani and ACHP Vice Chairman Rick Gonzalez, the following agencies and organizations are represented on the Task Force: The Department of the Interior; Department of Education; National Park Service Historic Preservation Training Center; National Park Service Western Center for Historic Preservation; National Center for Preservation Technology and Training; National Endowment for the Arts; National Trust for Historic Preservation; Preservation Maryland; Savannah Technical College; and Turner Restoration of Detroit.

Based on Task Force meeting discussions throughout the summer and fall, ACHP staff developed a draft policy statement that was reviewed by the Task Force. Based upon input on the outline, a draft of the policy statement was developed and provided to both the Task Force and the ACHP's standing Preservation Initiatives Committee for review. Following further refinement, the draft policy statement was sent to the full ACHP membership for review. The final version of the policy statement was adopted by vote of the ACHP members on October 19, 2020.

The ACHP Policy Statement on Promotion and Value of Traditional Trades Training discusses the need for and the benefits of expanded traditional trades training; suggests key principles that should guide federal, state, and local workforce development and training efforts; and offers recommendations for action.

Text of the Policy Statement on Promotion and Value of Traditional Trades Training

What follows is the text of the adopted policy statement:

ACHP Policy Statement on Promotion and Value of Traditional Trades Training

Quality restoration work on historic buildings requires skilled workers in the traditional trades. Masons, carpenters, painters, plasterers, and others in the construction trades who know how to—and why we should—preserve, repair, replicate, and maintain historic materials and finishes are essential to historic preservation projects. However, the unfortunate reality is that there is an increasingly short supply of such craftspeople. More recognizable opportunities for workforce development and training in the traditional trades not only would help address this problem critical to the maintenance of our nation's historic places, but also would contribute to economic recovery and wellbeing through career pathways that benefit local communities.

The importance and value of the skilled craftworker and the need to support traditional trades training has been recognized in the historic preservation field for many years. The National Trust for Historic Preservation addressed the issue in its 1968 *Whitehill Report on Professional and Public Education for Historic Preservation* and revisited it almost 40 years later in a 2005 issue of its *Forum Journal* titled ''Building Trades Education in the 21st Century.'' The National Park Service (NPS) also addressed the importance of traditional trades training in a 1997 issue of its publication *Cultural Resource Management* titled ''Preservation Trades and Crafts: Working in Preservation and Fostering the Trades.'' In the years since these publications were issued, with an aging workforce and building stock, the need to increase the number of skilled craftspeople has only become more acute.

The federal government can play an important role in promoting traditional trades training. NPS already makes a significant contribution through the work of the agency's Historic Preservation Training Center, Western Center for Historic Preservation, and National Center for Preservation Technology and Training. Expanding the scope and scale of traditional trades

training in America will require broadening federal engagement.

The Advisory Council on Historic Preservation (ACHP), an independent federal agency created by the National Historic Preservation Act (NHPA), works to promote the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy. One of the ACHP's stated duties in the NHPA is to encourage training and education in the field of historic preservation. In this policy statement, the ACHP discusses the need for and the benefits of expanded traditional trades training; suggests key principles that should guide federal, state, and local workforce development and training efforts; and offers recommendations for action.

Scope of Need and Potential Benefits of Expanded Training

The recent societal trend to devalue the skilled trades as an alternative to college and a worthwhile career path has led to a shortage of new workers entering the construction trades. This is occurring at the same time that many in the existing workforce are retiring. According to a 2019 survey by the Associated General Contractors of America, 80 percent of construction firms reported having difficulty in filling craft positions that represent the bulk of the construction workforce. Similarly, a survey by the National Association of Home Builders found 82 percent of respondents expected labor shortages to be their top issue in 2019. This lack of skilled workers is further magnified for the specialized traditional trades often needed for historic preservation projects.

The relative scarcity of skilled workers in the traditional trades is brought into sharp relief in the wake of natural disasters. After addressing immediate emergency issues, full rehabilitation of damaged historic buildings is often delayed or compromised because of a lack of craftspeople who have expertise working with historic building materials.

Despite this shortage, various public policies promote historic preservation projects that require skilled traditional trades craftspeople. For instance, the Great American Outdoors Act signed into law in 2020 will provide up to $9.5 billion in funding for deferred maintenance within NPS and at other federal facilities. Historic buildings make up about 46 percent of the NPS deferred maintenance backlog, and their repair will boost the demand for skilled workers in the traditional trades. Another relevant policy example is incentivizing preservation through tax credits. The federal Historic Tax Credit for rehabilitation of income-producing historic properties and similar historic tax credits in 37 states require that projects meet quality standards (generally the Secretary of the Interior's Standards for Rehabilitation). Meeting such standards often requires work by craftspeople trained in the traditional trades.

Growing the ranks of skilled traditional trades workers would help to build preservation capacity in the construction trades and ensure that precious historic resources are preserved for future generations. Expanded traditional trades training also would bolster local economies, helping to fill vacant jobs. Enhancing traditional trades training opportunities—notably for youth and veterans—would allow people to acquire marketable knowledge, skills, and abilities that employers are seeking. Resulting jobs often are well-paid and secure. Median wages in construction have been outpacing the national median wage, according to the National Association of Home Builders. Additionally, the current shortage of traditional trades workers coupled with projected continued demand will provide new entrants into those trades with considerable job security.

Framework for Expanding Traditional Trades Training

The effectiveness of efforts to expand training opportunities in the traditional trades will be maximized if grounded upon the following key concepts.

—*Training opportunities in the traditional trades should be widely available.* There should be national and regional traditional trades training opportunities with a variety of options and pathways of different durations (immersion, apprenticeships, degree programs) and educational levels (high school, vocational school, community college, college) in order to maximize the number of new workers entering the field. Tradespeople already working in related fields also should have opportunities to add traditional trades expertise to their skill set. Likewise, craftspeople already in the traditional trades would benefit from continuing education opportunities.

—*Importance of open-source training curriculum.* Each traditional trades training program currently has to create its own curriculum. This problem of reinventing the wheel would be minimized if open-source curriculum options were available. Standardized programs of study that could be tailored to unique local needs would ease creation of training programs, make them more sustainable, and encourage the growth of a community of instructors in such programs.

—*Apprenticeship programs are essential.* By its very nature, traditional trades training requires hands-on instruction and mentoring. Apprenticeships provide that gateway for entry-level students to learn from experienced craftspeople. They can alleviate the burden of student loans. Apprenticeships also are a key way of matching students with the companies that need their services for direct job placement.

—*Importance of industry-recognized credentials and/or qualification standards.* Currently, there are no third-party credentialing organizations bestowing credentials for the traditional trades and no specific qualification standards that must be met in order to claim proficiency. Such formal recognition verifies a person's competence in their chosen skill, is sought after by employers, and would be advantageous for traditional trades craftspeople seeking to document their expertise. Credentialing would be a significant step toward enhancing the stature of traditional trades craftspeople relative to the other professionals (architectural historians, architects, engineers, etc.) who collaborate to restore and rehabilitate historic properties.

Recommendations for Federal Action

The federal government can play an important role in promoting traditional trades training and workforce development. The following recommendations address both use of existing federal programs and consideration of new policies and programs.

—*Integrate traditional trades into existing Department of Labor (DOL) apprenticeship programs.* DOL oversees the National Apprenticeship Program, a system of registered apprenticeships implemented by DOL and state apprenticeship agencies that in 2020 was supplemented with a new model of industry-recognized apprenticeships. There are significant untapped opportunities to accommodate and encourage traditional trades apprenticeships in this national apprenticeship framework. DOL should include traditional trades in its Occupational Information Network Program and the

Standard Occupational Classification Codes upon which that program is based.

—*Encourage states to use existing Department of Education (ED) career and technical education funding for traditional trades training in state Perkins plans.* Under the Carl D. Perkins Career and Technical Education Act, ED awards more than $1 billion a year in state formula grants and competitive discretionary grants for the improvement of career and technical education programs across the nation. While decisions about how the money is spent rests at the state and local level, there is ED oversight of state plans and implementation. In that context, ED should pursue opportunities to advise states on the potential benefits of traditional trades training in meeting the labor market need for such craftspeople.

—*Encourage recipients of existing Department of Housing and Urban Development (HUD) funding to address traditional trades training when meeting workforce development requirements.* Under Section 3 of the Housing and Urban Development Act, recipients of certain HUD financial assistance must, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods. To meet Section 3 requirements, HUD grantees and their contractors sometimes run or participate in training and apprenticeship programs that prepare community residents for jobs. HUD should pursue opportunities to encourage addressing the traditional trades, particularly for projects involving historic properties and the rehabilitation of affordable housing.

—*Consider options for federal support in development of open-source traditional trades training curriculum.* NPS's Historic Preservation Training Center, Western Center for Historic Preservation, and National Center for Preservation Technology and Training are logical focal points for a federal response to the need for traditional trades training curriculum, with development work either being done in-house or through contracts. As a first step, there should be a review of existing programs and curriculum to serve as a baseline for next steps in curriculum development. Once curriculum is developed, federal support might also assist in ''training the trainers'' to help institutions and individuals become familiar with the curriculum.

—*Develop federal qualification standards for the traditional trades.* As directed by the NHPA, the Secretary of the Interior has developed advisory Historic Preservation Professional Qualification Standards (Qualification Standards). The intent is to assist federal agencies in ensuring that the employees and contractors responsible for preservation of federally managed historic properties have the knowledge, skills, and abilities to do so effectively. Published in 1983, the Qualification Standards focus on the academic disciplines of history, archaeology, architectural history, architecture, and historic architecture, as identified in the NHPA. Left unaddressed is the competency of the craftspeople in the traditional trades performing the work of applying the preservation treatments. NPS should include the traditional trades in any future revision of the Secretary's Qualification Standards or should explore development of a parallel set of standards that could be used to assess and document proficiency in the traditional trades.

—*Include traditional trades training in implementation of the Great American Outdoors Act.* The passage of the Great American Outdoors Act is anticipated to create a significant demand for skilled workers in the traditional trades to address deferred maintenance at properties managed by NPS (principally) and also the USDA Forest Service, Fish and Wildlife Service, Bureau of Land Management, and Bureau of Indian Education. Using a small portion of the billions of dollars that will become available under the law for traditional trades training would be a strategic investment to address an immediate need as well as a way of having a lasting positive impact on the current shortage of traditional trades craftspeople.

—*Promote traditional trades training in the work of conservation corps.* Used by federal agencies, Indian tribes, states, and local communities, conservation corps engage young adults and veterans in service projects addressing recreation, conservation, disaster response, and other needs. While many corps focus principally on natural resources, conservation corps also assist in the preservation of historic properties, with a few focusing solely on historic preservation projects. Such projects offer important opportunities to introduce corps members to the traditional trades and provide training. Federal land-managing agencies should set an example by maximizing use of conservation corps to address historic preservation needs on public lands.

—*Explore use of COVID–19 recovery/stimulus funding to create jobs and job training in the traditional trades.* Much of COVID–19 recovery funding to date has focused on direct aid for individuals, businesses, organizations, and institutions (including museums and non-profits), and funding for agencies to directly respond to the pandemic. If future legislation is passed that addresses economic recovery from COVID–19 more broadly, there may be opportunities to support traditional trades training as part of enhanced funding for existing programs or creation of new programs. For instance, any new or augmented programs to create affordable housing might incorporate job training for local residents in the rehabilitation of existing older housing stock. New programs might build—both literally and figuratively—upon the example of Depression-era public works programs. Buildings and structures created by the Works Progress Administration and Civilian Conservation Corps are now historic properties, and a program to train youth in restoring those properties would be one economic stimulus program restoring the work of another.

—*Utilize the Historic Preservation Fund (HPF) for traditional trades training grants, as authorized by the NHPA.* The NHPA authorizes the Department of the Interior (DOI) to administer a grants program for ''the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation'' (54 U.S.C. 302904). The funding source is the HPF. This skilled labor component of the HPF remains to be funded. DOI should seek funding to support this grants program in future fiscal year budget requests.

—*Explore development of sustainable, dedicated funding that would be a continuing source of revenue for traditional trades training.* While funding from the HPF for traditional trades training already is authorized and would help in combatting the current shortage of craftspeople, there are other important programs competing for HPF dollars. Creation of dedicated, sustainable sources of funding specifically for traditional

trades training would be a significant step forward. Such funding should be established not only at the federal level but also through state and local government action. The shape that such funding might take and the ways in which the federal government might support it merit further development and consideration. The ACHP should promote a dialogue on the issue with key partners, including DOI, the National Conference of State Historic Preservation Officers, the National Association of State Workforce Agencies, Certified Local Governments, the National Alliance of Preservation Commissions, and the National Trust for Historic Preservation.

Traditional trades are critically important to preserving the heritage of our historic built environment for future generations. They also can translate into secure, well-paying jobs that help revitalize communities both physically and economically. Expanding training opportunities and networks in the traditional trades is essential. It is critical to do what we can to enable this important field to expand into pathways that are available to the American worker.

Wide ranging in lines of expertise, it is the skilled craftworker who is making preservation happen through hands-on and on-site work. The connection to preservation is the central theme that brings many different skill sets together. It is the contract worker, the stone mason, the woodcrafter, the conservator, the trade union member, the craft guild member, maintenance crews, and building managers—all preserving on a daily basis.

Placing trust with the decision making on the qualified tradesperson or providing the opportunity to share the responsibility at the preservation job site with both the preservation professional and the skilled tradesperson empowers this field. By broadening this vision of the preservation expert—the skilled craftworker—the ACHP has adopted this policy statement to encourage and help guide efforts and partnerships to address this urgent need while offering rewarding careers and professional fulfillment.

Authority: 54 U.S.C. 304102.

Dated: November 2, 2020.

Javier Marqués,

General Counsel.

[FR Doc. 2020–24645 Filed 11–5–20; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–47]

30-Day Notice of Proposed Information Collection: Family Self-Sufficiency (FSS) Program; OMB Control No.: 2577–0178

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 7, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/Start* Printed Page 15501PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 30, 2020 at 85 FR 45917.

A. Overview of Information Collection

Title of Information Collection: Family Self-Sufficiency (FSS) Program.

OMB Control Number: 2577–0178.

Type of Request: Revision of currently approved collection.

Agency Form Numbers: HUD–52650, HUD–52651, HUD–52652, HUD–50058, HUD–2880, HUD 52755, SF–424, SF–LLL, HUD–1044.

Description of the Need for the Information and Proposed Use: The FSS program, which was established in the National Affordable Housing Act of 1990, promotes the development of local strategies that coordinate the use of public housing assistance and assistance under the Section 8 rental certificate and voucher programs (now known as the Housing Choice Voucher Program) with public and private resources to enable eligible families to increase earned income and financial literacy, reduce or eliminate the need for welfare assistance, and make progress toward economic independence and self-sufficiency. Public Housing Agencies consult with local officials to develop an Action Plan, enter into a Contract of Participation with each eligible family that opts to participate in the program, compute an escrow credit for the family, report annually to HUD on implementation of the FSS program, and complete a funding application for the salary of an FSS program coordinator. This Revision represents a revision under the current FSS statute. There will be a further revision of this Collection concurrent with the promulgation of new Regulations pursuant to the new FSS statute established as Section 306 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115–174) on May 24, 2018.

Respondents (i.e., affected public): Public Housing Agencies, State or Local Governments.

Estimated Annual Reporting and Recordkeeping Burden:

Information collection	Number of respondents	Number of responses per respondents	Total annual responses	Burden hours/ minutes per response	Total burden hours
SF424—Application for Federal Assistance	800	1	800	0	0
SF LLL—Disclosure of Lobbying Activities	40	1	40	0	0
HUD–2880—Applicant/Recipient/Disclosure/Update Form (OMB No. 2510–0011)	800	1	800	0	0

Information collection	Number of respondents	Number of responses per respondents	Total annual responses	Burden hours/ minutes per response	Total burden hours
HUD–52755—Sample Contract Admin. Partnership Agreement (OMB No. 2577–0229)	40	1	40	0	0
HUD–52651—FSS Application	800	1	800	1.50	1,200
Subtotal (Application)	800	1	800	1.50	1,200
Action Plan	20	1	20	10	200
HUD–52650—Contract of Participation	900	10	9,000	.25	2,250
HUD–52652—Escrow Account Credit Worksheet	740	100	74,000	.85	62,900
HUD–1044—Grant Agreement*	700	1	700	0	0
Annual Report (Narrative)	700	1	700	1	700
HUD–50058—Family Report (OMB No. 2577–0083)	740	100	74,000	0	0
Subtotal (Program Reporting/Recordkeeping)	740	213		12.1	66,050
Total	740	Varies	Varies	Varies	67,257

*HUD–1044, Award/Amendment is completed by HUD staff, signed by the recipient of the grant, and returned to HUD. This form is a certification and HUD ascribes no burden to its use.

Burden hours for forms showing zero burden hours in this collection are reflected in the OMB approval number cited or do not have a reportable burden.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the pubic and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of burden of the proposed collection of information;

(3) Ways to enhance the quality, utility and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–24640 Filed 11–5–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. FWS–R1–ES–2019–0091; FXES11140100000–212–FF01E00000]

Final Environmental Impact Statement and Final Deschutes Basin Habitat Conservation Plan; Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: In accordance with the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service and National Marine Fisheries Service (together, the Services), announce the availability of a final environmental impact statement (FEIS) and habitat conservation plan (HCP) addressing covered activities by the Deschutes Basin Board of Control (DBBC)'s eight-member irrigation districts, and the City of Prineville (applicants). The applicants are seeking incidental take permits (ITPs) covering the incidental take of four covered species over a 30-year period. The HCP describes the steps the applicants will take to minimize, mitigate, and monitor the impacts of incidental take of the covered species. The FEIS has been prepared, pursuant to NEPA, in response to these applications.

DATES: The Services' ITP decisions will occur no sooner than 30 days after publication of the U.S. Environmental Protection Agency's notice of the FEIS in the **Federal Register**, and will be documented in each agency's record of decision.

ADDRESSES: You may obtain copies of the documents by any of the following methods:

- *Internet: http://www.regulations.gov* under Docket No. FWS–R1–ES–2019–0091, or at *https://www.fws.gov/Oregonfwo/articles.cfm?id=149489716.*
- *Upon Request:* You may request alternative formats of the documents directly from the Services (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Bridget Moran, by telephone at 541–383–7146, or by email at *bridget_moran@fws.gov;* or Scott Carlon, by telephone at 971–322–7436, or by email at *scott.carlon@noaa.gov.* Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (jointly, the Services) announce the availability of a final environmental impact statement (FEIS) and final habitat conservation plan (HCP) addressing covered activities by the Deschutes Basin Board of Control

(DBBC) member districts (Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo Irrigation Districts) and the City of Prineville (applicants) in Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon. The applicants are requesting an incidental take permit (ITP) covering the take of the federally threatened Oregon spotted frog (*Rana pretiosa*) and the threatened bull trout (*Salvelinus confluentus*) from FWS; and a separate ITP covering take of the federally threatened Middle Columbia River steelhead trout (*Oncorhynchus mykiss*) and the non-listed sockeye salmon (*O. nerka)* from NMFS. Hereafter, these four species are collectively referred to as the ''covered species.''

The ITPs, if issued, would authorize take of the covered species that may occur over the 30-year permit term incidental to the storage, release, diversion, and return of irrigation water by the DBBC member districts, and groundwater withdrawals, effluent discharges, and surface water diversions by the City of Prineville (collectively, the ''covered activities'').

The HCP describes the impacts that will likely result from the take of the covered species and describes the steps the applicants will take to minimize and mitigate such impacts. The HCP also describes the covered species' life history and ecology, as well as the biological goals and objectives of the HCP, adaptive management, monitoring, and funding assurances.

The FEIS was prepared by FWS in response to the ITP applications from the applicants, with input from NMFS as a cooperating agency. The Services also jointly considered comments received on the draft HCP and draft environmental impact statement (DEIS), in accordance with the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*).

Background

All eight water districts are quasi-municipal corporations formed and operated according to Oregon State law to distribute water to irrigators (patrons) within designated geographic boundaries and in accordance with the individual water rights held by those patrons. The City of Prineville operates City-owned infrastructure and provides essential services—including public safety, municipal water supply, and sewage treatment—for more than 9,000 residents. The applicants have determined that continued operation of irrigation and essential services requires ITPs to address unavoidable take of covered species, which is ongoing.

The applicants have proposed a conservation program to avoid, minimize, and mitigate the impacts of taking of the covered species. The HCP addresses the adverse effects of the covered activities on the covered species by reducing or eliminating those effects to the maximum extent practicable, and by mitigating effects that cannot be eliminated altogether. In general, adverse effects on listed species can result from direct harm or injury of individuals of the species, and through changes in habitat that interfere with the essential life activities of the species. Both types of effects are addressed in the HCP conservation measures. The covered activities affect the covered species primarily through changes in the hydrology (flow) of occupied waters associated with the storage, release, diversion, and return of irrigation water.

In the course of storing, releasing, diverting, and returning irrigation water, the applicants alter the hydrology of the Deschutes River and a number of its tributaries. In a similar fashion, the pumping of groundwater for municipal water supply by the City of Prineville affects the hydrology in one of those tributaries, the Crooked River. In most cases, the hydrologic changes resulting from activities covered by the HCP have adverse impacts on aquatic habitats for the covered species. When flows are reduced, the total area of usable habitat for aquatic species generally decreases and water temperatures typically increase to the extent that habitat quality is negatively impacted. The HCP's conservation measures will modify irrigation activities that reduce in-stream flow (storage and diversion of water) to address the adverse effects. As a result, with implementation of the HCP, flows in the affected reaches will be higher than they were historically (over the last 50+ years) in the winter, and water temperatures (particularly peak summer temperatures) will be lower.

The actions considered in the FEIS are approval of the HCP and issuance of ITPs (one from each of the Services) with a term of 30 years to the applicants, if permit issuance criteria are met. The Services will each make an independent decision regarding coverage for incidental take of the species under its respective jurisdiction.

Endangered Species Act

Section 9 of the ESA and its implementing regulations prohibit ''take'' of fish and wildlife species listed as endangered (16 U.S.C. 1538(a)(1)). Section 4 of the ESA allows FWS and NMFS to issue regulations which prohibit the take of any fish and wildlife species listed as threatened, as well (16 U.S.C. 1533(d)). The take prohibition has been extended, in whole or in part, to the three covered species that are listed as threatened. However, steelhead that occur above Round Butte Dam on the Deschutes River are designated as a nonessential experimental population under section 10(j) of the ESA. Incidental take is allowed for legally authorized activities that may affect this species. This designation will expire on January 15, 2025, at which time take prohibitions shall be in place. Under section 3 of the ESA, the term ''take'' means to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct'' (16 U.S.C. 1538). Under section 10(a) of the ESA, the Services may issue permits to authorize incidental take of listed fish and wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
3. The applicant will ensure that adequate funding for the HCP will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that the Services may require as being necessary or appropriate for purposes of the HCP.

National Environmental Policy Act

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), FWS prepared a FEIS analyzing the proposed action (identified as the Services' preferred alternative), a no-action alternative, and two additional alternatives to the proposed action. The environmental consequences of each alternative were analyzed to determine if significant impacts to the human environment would occur.

Alternative 1—No-action Alternative: No ITPs would be issued, and the applicants' HCP would not be implemented. Under Alternative 1, ongoing applicant activities would remain subject to the take prohibition for listed species under section 9 of the ESA. This alternative assumes continuation of actions covered in an ESA section 7 biological opinion issued

to the Bureau of Reclamation addressing the effects of water management activities in the Upper Deschutes River Basin to the Oregon spotted frog, and continuation of actions covered in other ESA section 7 consultation documents addressing the effects of Deschutes River Basin projects to the Middle Columbia River steelhead trout and the bull trout.

Alternative 2—Proposed Action, Deschutes Basin HCP: Under this alternative, identified as the preferred alternative in the FEIS, the Services would issue 30-year ITPs to the applicants for incidental take of the four covered species caused by covered activities in the plan area, and the applicants would implement the HCP. Over the 30-year period of HCP implementation, in-stream flows would be modified to mimic more natural flow patterns to support the various life stages of the covered species.

Alternative 3—Enhanced Variable Streamflows: Under this alternative, the Services would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, covered activities, and permit term as described for the proposed action, but with modifications to the HCP conservation strategy, including increased fall and winter flows in the Deschutes River below Wickiup Dam, in-stream protection of uncontracted water releases on the Crooked River for fish and wildlife, and the inclusion of a habitat improvement fund for projects in the Upper Deschutes River Basin.

Alternative 4—Accelerated Schedule for Enhanced Variable Streamflows: Under this alternative, the Services would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, and covered activities as described for the proposed action, but with a 20-year permit term and modifications to the HCP conservation strategy for an accelerated schedule for increases in fall and winter flows in the Deschutes River below Wickiup Dam, in-stream protection of additional uncontracted water releases on the Crooked River for fish and wildlife, and the habitat improvement fund for projects in the Upper Deschutes River Basin.

As the DEIS was developed prior to the Council on Environmental Quality's issuance of updated regulations implementing NEPA which went into effect on September 14, 2020 (40 CFR 1506.13), the FEIS was completed under the previous regulations in the interest of time and efficiency.

EPA's Role in the EIS Process

The Environmental Protection Agency (EPA) is charged with reviewing all Federal agency EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions addressed in these EISs. Therefore, EPA is publishing a notice in the **Federal Register** announcing this EIS, as required under section 309 of the Clean Air Act. EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Public Involvement

The notice of intent (NOI) to prepare a DEIS was published in the **Federal Register** on July 24, 2017 (82 FR 34326). The NOI also announced a public scoping period (July 24, 2017, through September 22, 2017), during which interested parties were invited to provide written comments related to the proposal. Four public scoping meetings were held: Two in Madras, Oregon, on August 14, 2017; and two in Bend, Oregon, on August 15, 2017. The meetings were convened in accordance with NEPA procedures (40 CFR 1501.7). Using public scoping comments, FWS prepared a DEIS to analyze the effects of the above alternatives on the human environment, with input from NMFS as a cooperating agency. A notice of availability (NOA) of the DEIS and draft HCP was published by FWS in the **Federal Register** on October 4, 2019 (84 FR 53164), opening a 45-day public comment period. Also on that day, NMFS published a NOA for the draft HCP in the **Federal Register** (84 FR 53114), also announcing a 45-public comment period. The Services also published a 15-day extension of the comment period on October 29, 2019 (84 FR 58169; 85 FR 61026), bringing the total comment period to 60 days for both the DEIS and draft HCP. Two public open-house meetings were held, on October 15, 2019, in Bend, Oregon, and on October 16, 2019, in Prineville, Oregon, to solicit additional input from the public on the DEIS and draft HCP. A total of 1,611 comment letters and electronic submissions were received from the public. The official comment period ended on December 4, 2019.

Next Steps

The Services will evaluate the permit applications, associated documents, and public comments in reaching a final decision on whether the applications meet the requirements of section 10(a) of the ESA (16 U.S.C. 1539 *et seq.*). The Services will also each evaluate whether the proposed permit action would comply with section 7 of the ESA. If the requirements are met, the Services will issue the ITPs to the applicants. Each agency (FWS and NMFS) will issue a record of decision, and approve or deny the request for an ITP no sooner than 30 days after publication of EPA's NOA of the FEIS in the **Federal Register**.

Public Review

We are not requesting public comments on the FEIS and HCP, but any written comments we receive will become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in a 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA and its implementing regulations (40 CFR 1503.1 and 1506.6).

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service.

Angela Somma,

Chief, Endangered Species Conservation, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–24636 Filed 11–5–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2020–N136; FXGO1664091HCC0–FF09D00000–190]

Hunting and Shooting Sports Conservation Council; Public Meeting by Videoconference

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting via videoconference of the Hunting and Shooting Sports Conservation Council (Council), in accordance with the Federal Advisory Committee Act. The videoconference is open to the public.

DATES: *Videoconference:* Thursday, December 3, 2020, from 1:00 p.m. to 4:00 p.m. Eastern Time.

Deadlines: For deadlines for registration, requests for accommodation, or comment submission, please see Public Input under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Designated Federal Officer, by email at *doug_hobbs@fws.gov,* by telephone at 703–358–2336, or by the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Council was established to further the provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701–1785), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–ee), other statutes applicable to specific bureaus, and Executive Order 13443 (August 16, 2007), ''Facilitation of Hunting Heritage and Wildlife Conservation.'' The Council's purpose is to provide recommendations to the Federal Government, through the Secretary of the Interior and the Secretary of Agriculture, regarding policies and endeavors that (a) benefit wildlife resources; (b) encourage partnership among the public; sporting conservation organizations; and Federal, State, Tribal, and territorial governments; and (c) benefit recreational hunting and recreational shooting sports.

Meeting Agenda

- Review issues and recommendations from the 2018–2020 Council term and consider a final report of activities.
- Discuss issues for future Council consideration.
- Conduct other miscellaneous Council business.
- Open public comment period.

The final agenda and other related meeting information will be posted on the Council website at *https://www.fws.gov/hsscc.* The Designated Federal Officer will maintain detailed minutes of the meeting, which will be posted for public inspection within 90 days after the meeting at *https://www.fws.gov/hsscc.*

Public Input

If you wish to	You must contact the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than
Listen to the meeting via telephone (listen-only mode)	November 30, 2020.
Request special accommodations	November 27, 2020.
Submit written information before the meeting for the Council to consider during the videoconference	November 30, 2020.
Give an oral presentation during the videoconference	December 3, 2020.
Submit a copy of oral statement or expanded statement, or to submit statement because time constraints prevented presentation during the videoconference.	Up to 30 days after the videoconference date.

Submitting Written Information

Interested members of the public may submit relevant information for the Council to consider during the videoconference. Written statements must be received by the Council Designated Federal Officer no later than the date in Public Input so that the information may be made available to the Council for their consideration prior to the videoconference. Written statements must be supplied to the Council Designated Federal Officer via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file) (see **FOR FURTHER INFORMATION CONTACT**).

Giving an Oral Presentation

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Interested parties should contact the Council Designated Federal Officer, in writing (see **FOR FURTHER INFORMATION CONTACT**), for placement on the public speaker list for this videoconference. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Designated Federal Officer up to 30 days following the meeting. Requests to address the Council during the videoconference will be accommodated in the order the requests are received. Requests to address the Council during the teleconference will be accommodated in the order the requests are received.

Accommodations

The Service is committed to providing access to this videoconference to all participants. Please direct all requests for accommodations to Douglas Hobbs (see **FOR FURTHER INFORMATION CONTACT**) by close of business on the date in Public Input. If you are hearing impaired or speech impaired, contact Douglas Hobbs via the Federal Relay Service at 800–877–8339.

Availability of Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Appendix 2)

Matthew Huggler,

Acting Assistant Director—External Affairs.

[FR Doc. 2020–24619 Filed 11–5–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212L1109AF LLNMA01000 L12200000.PM0000 241A]

Second Call for Nominations for the Rio Puerco Management Committee, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request a second call for public nominations for members to the Bureau of Land Management's (BLM) Rio Puerco Management Committee (Committee).

DATES: A completed nomination form and accompanying nomination/recommendation letters must be received by December 7, 2020.

ADDRESSES: Send nominations to Mark Matthews, BLM acting Albuquerque District Manager, 100 Sun Blvd. NE, Suite 330, Albuquerque, NM 87109, Attention: Rio Puerco Management Committee Nominations.

FOR FURTHER INFORMATION CONTACT: Contact Allison Sandoval, Public Affairs Specialist, BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508, phone (505) 954–2019, or email *aesandoval@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8229, to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Omnibus Parks and Public Lands Management Act, Section 401, reauthorized through the John D. Dingell, Jr. Conservation, Management, and Recreation Act, Section 1122, directs the Secretary of the Interior to establish the Committee. The Committee will be regulated by the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2) and section 309 of the Federal Land Policy and Management Act (FLPMA). The BLM rules governing advisory committees are found at 43 CFR subpart 1784.

The Committee shall advise the Secretary, acting through the Director of the BLM, on the development and implementation of the Rio Puerco Management Program and serve as a forum for information about activities that may affect or further the development and implementation of the best management practices. The Committee shall be convened by a representative of the Bureau of Land Management and shall include representatives from:

(1) The Rio Puerco Watershed Committee;

(2) affected tribes and pueblos;

(3) the United States Forest Service of the Department of Agriculture;

(4) the Bureau of Reclamation;

(5) the United States Geological Survey;

(6) the Bureau of Indian Affairs;

(7) the United States Fish and Wildlife Service;

(8) the Army Corps of Engineers;

(9) the Environmental Protection Agency;

(10) the Natural Resources Conservation Service of the Department of Agriculture;

(11) the State of New Mexico, including the New Mexico Environment Department of the State Engineer;

(12) affected local soil and water conservation districts;

(13) the Elephant Butte Irrigation District;

(14) private landowners; and

(15) other interested citizens.

Members will be appointed by the Secretary to staggered 3-year terms.

Nominating Potential Members: Nomination forms may be obtained from the Rio Puerco Field Office (address listed above) or *https://www.blm.gov/get-involved/resource-advisory-council/near-you/New-Mexico.* All nominations must include a completed Resource Advisory Council application (OMB Control No. 1004–0204), letters of reference from the represented interests or organizations, and any other information that speaks to the candidate's qualifications. The specific category the nominee would be representing should be identified in the letter of nomination and on the application form.

Non-Federal members of the Committee serve without compensation. However, while away from their homes or regular places of business, Committee and subcommittee members engaged in Committee or subcommittee business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, in the same manner as persons employed intermittently in Federal Government service. The Committee shall meet approximately two to four times annually, and at such other times as determined by the Designated Federal Officer.

Certification Statement: I hereby certify that the Rio Puerco Management Committee is necessary and is in the public interest in connection with the performance of duties pursuant to the Department of the Interior's authority under the Omnibus Parks and Public Lands Management Act, the Omnibus Public Land Management Act of 2009, and the John D. Dingell, Jr. Conservation, Management, and Recreation Act.

Authority: 43 CFR 1784.4–1.

Mark Matthews,

Acting Albuquerque District Manager.

[FR Doc. 2020–24757 Filed 11–5–20; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031097; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State Police, Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Michigan State Police (MSP) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Michigan State Police. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Michigan State Police at the address in this notice by December 7, 2020.

ADDRESSES: Hanna Friedlander, Human Remains Analyst, Michigan State Police, Intelligence Operations Division—Missing Persons Coordinator Unit, 7150 Harris Drive, Lansing, MI 48821, telephone (517) 242–5731, email *friedlanderh@michigan.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Michigan State Police, Lansing, MI. The human remains were removed from Frenchtown Charter Township, Monroe County and Jackson County, MI.

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 the Michigan State Police professional staff in consultation with representatives of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi (previously listed as Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Saginaw Chippewa Indian Tribe of Michigan.

History and Description of the Remains

On April 22, 2009, human remains representing, at minimum, one individual were removed from Frenchtown Charter Township, Monroe County, MI (Frenchtown Twp.). MSP Monroe was dispatched to a private residence along the Lake Erie shoreline in Frenchtown Twp., on April 22, 2009, following the reported finding of a possible human jaw laying in the sand on the lakeside. The homeowners had removed the mandible from the lakeside to their patio to protect it. Upon arrival, the officer examined the human remains, collected them, and took them to the Michigan State Police Northville Lab for assessment. The remains were determined to be human and sent to the University of North Texas Center for Human Identification (UNTCHI) for analysis. A sample of bone was taken for DNA analysis and extraction while at the UNTCHI. The human remains were returned to MSP Monroe on September 4, 2012. On March 13, 2013, the human remains were transferred to the Wayne County Medical Examiner's Office (WCMEO) in Detroit, MI. On December 16, 2019, Ms. Hanna Friedlander located the human remains at the WCMEO and transferred them to the MSP Headquarters in Lansing, MI, where they are known as MSP 28–1233–09.

Based on the robustness of the mandible and the bilobate chin, the mandible was determined to be male. The teeth showed pronounced occlusal wear, most likely from a diet high in coarse materials. The clasis on the lingual side of the mandible was minimal, suggesting a younger individual. The pronounced parabolic arch, in combination with the dental wear, yielded an assessment that the individual was of Native American descent. This determination was made by John A. Servello, BA, and overseen by Dr. H. Gill-King, D–ABFA. No known individual was identified. No associated funerary objects are present.

On July 22, 2019, human remains representing, at minimum, one individual were removed from their resting spot in Jackson County, MI. The remains were transported to Michigan State University for forensic anthropological assessment, which was completed by MA student Alex Groots and Dr. Joseph Hefner, D–ABFA. On October 10, 2019, the human remains were returned to the Michigan State Police, where they are known as FA020–19.

The recovered human remains consist of 13 maxillary and 11 mandibular fragments, fragmentary cranium and mandible, seven approximately unidentifiable cranial fragments, four fragmentary left ribs, four unsided rib fragments, two fragmentary cervical vertebrae, one fragmentary thoracic vertebra, one left clavicle fragment, one unsided scapula fragment, the shaft of the left tibia, the left navicular, and approximately 17 unidentifiable post-cranial fragments. Analysis of the human remains indicate that the individual was an adult male over the age of 50. The cranial features include a large mastoid process, blunt supraorbital margins, and a robust glabella (Buikstra and Ubelaker 1994); this is confirmed via a logistic regression equation (Walker 2008). The age of the individual was determined via the complete obliteration of the transverse palatine suture, in combination with the complete eruption of all third molars and extensive tooth wear. Based on a three-group discriminant function analysis, the individual exhibits macromorphoscopic traits most similar to those of Native Americans. In addition, the dentition of this individual is characteristic of Native American ancestry. The taphonomy of the human remains indicates they had been buried for a long time. No known individual was identified. The 22 associated funerary objects are seven sherds of cord-impressed pottery, three worked stones, and 12 assorted fire-cracked rocks. The funerary objects are consistent with prehistoric Native American burials.

Determinations Made by the Michigan State Police

Officials of the Michigan State Police have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the dental occlusal wear, the post-mortem interval as indicated by the shells, mollusks, and other aquatic indications left on the mandible, and a three-group discriminant function analysis using macromorphic traits, in addition to dental characteristics including shovel shaped incisors and extreme tooth wear.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 22 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and 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 Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band

Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians (previously listed as Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca (previously listed as Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation (hereafter referred to as ''The Tribes'').

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes.

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Hanna Friedlander, Human Remains Analyst, Michigan State Police, Intelligence Operations Division—Missing Persons Coordinator Unit, 7150 Harris Drive, Lansing, MI 48821, telephone (517) 242–5731, email *friedlanderh@michigan.gov,* by December 7, 2020. After that date, if no additional requestors have come forward, transfer of control of the Monroe County human remains to The Tribes may proceed.

The Michigan State Police is responsible for notifying The Tribes that this notice has been published.

Dated: October 22, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–24686 Filed 11–5–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031088; 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 and associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the TVA at the address in this notice by December 7, 2020.

ADDRESSES: Dr. Thomas O. Maher, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, 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 and associated funerary objects under the control of the Tennessee Valley Authority, Knoxville, TN. The human remains and associated funerary objects were removed from the Colbert Creek Mound, 1LU54, in Lauderdale County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by TVA professional staff in consultation with representatives of the Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and The Muscogee (Creek) Nation (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

From February 2 to May 12, 1937, human remains representing, at minimum, 26 individuals were removed from the Colbert Creek Mound, 1LU54, in Lauderdale County, AL, by the Alabama Museum of Natural History (AMNH) at the University of Alabama. Details regarding the excavation of this mound may be found in a report by William Webb and David DeJarnette, *An archeological Survey of Pickwick Basin in the Adjacent Portions of the States of Alabama, Mississippi and Tennessee.* TVA acquired this site on November 10, 1936, for the Pickwick Reservoir project. This site was located near the confluence of Colbert Creek and the Tennessee River. While there are no radiocarbon dates from this site, the excavated artifacts indicate that the mound was created during the Copena phase (A.D. 100–500).

This burial mound was placed on a natural rise in the second terrace adjacent to the Tennessee River. In the historic period, the site became part of an African American cemetery. This resulted in disturbance of the prehistoric occupation. As the soil was comprised of acidic clay and was relatively rock-filled, identifying burial units was difficult. Preservation of bone and other organic remains was restricted to teeth, skull fragments and impressions of long bones. Both extended and bundled burials were encountered. The fragmentary nature of the human remains made it difficult to identify sex. One set of remains is identified as female and the rest are of indeterminate sex. Twenty individuals are adults and six are sub-adults. No known individuals were identified. The 13 associated funerary objects include seven pieces of galena, one Hillabee schist spade, one chert biface, one chert uniface, and three soil and charcoal samples.

Determinations Made by the Tennessee Valley Authority

Officials of Tennessee Valley Authority 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 sites and osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 26 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 13 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects 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.
- The Treaty of September 20, 1816, indicates that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1)(ii), TVA must offer to transfer control of the human remains to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma. The Cherokee Nation and the Eastern Band of Cherokee Indians have declined to accept transfer of control of the human remains. The United Keetoowah Band of Cherokee Indians in Oklahoma has not responded. Accordingly, TVA has decided to transfer control of the human remains to The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(4), TVA has decided to transfer control of the funerary objects associated with the culturally unidentifiable human remains to The Chickasaw Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Thomas O. Maher, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by December 7, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Chickasaw Nation may proceed.

The Tennessee Valley Authority is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: October 22, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–24681 Filed 11–5–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031086; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Gilcrease 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 unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Gilcrease 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 Gilcrease Museum at the address in this notice by December 7, 2020.

ADDRESSES: Laura Bryant, Gilcrease Museum, 1400 North Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Gilcrease Museum, Tulsa, OK, 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 Item(s)

Likely in the late 19th or early 20th century, two cultural items were removed from an unknown location. Thomas Gilcrease likely acquired these items as part of a larger collection in the mid-1900s, though the exact details are unknown. Thomas Gilcrease transferred his collection to the City of Tulsa in 1955 and 1964. The two unassociated funerary objects are pipe bags (accession numbers 84.507 and 84.521).

Both pipe bags were identified as Cheyenne in the Gilcrease Museum's records, and that affiliation was confirmed during consultation with the Cheyenne and Arapaho Tribes, Oklahoma. Both pipe bags are covered in dirt and show signs of having been buried. Pipe bags are known to have been buried with individuals.

In the late 19th or early 20th century, one cultural item was removed from an unknown location and acquired by Joseph H. Sharp, an American artist. In the mid-20th century, the Thomas Gilcrease Foundation purchased part of Sharp's collection. Thomas Gilcrease transferred his collection to the City of Tulsa in 1955 and 1964. The one unassociated funerary object is a pipe bag (accession number 84.524).

The pipe bag was identified as Cheyenne in the Gilcrease Museum's records, and that affiliation was confirmed during consultation with the Cheyenne and Arapaho Tribes, Oklahoma. The pipe bag is covered in dirt and shows signs of having been buried. Pipe bags are known to have been buried with individuals.

In the late 19th or early 20th century, two cultural items were removed from an unknown location. Likely in the early 20th century, Emil Lenders, a

European artist who immigrated to the United States in the 1890s and traveled throughout the Midwest, acquired these two items. The Thomas Gilcrease Foundation purchased Lenders' collection on June 7, 1950. Thomas Gilcrease transferred his collection to the City of Tulsa in 1955 and 1964. The unassociated funerary objects are two pairs of moccasins (accession numbers 84.425a–b and 84.426a–b).

The moccasins were identified as Cheyenne in Gilcrease Museum's records, and that affiliation was confirmed during consultation with the Cheyenne and Arapaho Tribes, Oklahoma. Both pairs of moccasins are covered in dirt and show signs of having been buried. Moccasins are regularly buried with individuals.

Determinations Made by the Gilcrease Museum

Officials of the Gilcrease Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the five cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Cheyenne and Arapaho Tribes, Oklahoma (previously listed as Cheyenne-Arapaho Tribes of Oklahoma).

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 Laura Bryant, Gilcrease Museum, 1400 North Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu,* by December 7, 2020. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Cheyenne and Arapaho Tribes, Oklahoma (previously listed as Cheyenne-Arapaho Tribes of Oklahoma) may proceed.

The Gilcrease Museum is responsible for notifying the Cheyenne and Arapaho Tribes, Oklahoma (previously listed as Cheyenne-Arapaho Tribes of Oklahoma) that this notice has been published.

Dated: October 22, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–24684 Filed 11–5–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031106; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, Indianapolis, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, through the agency of Ball State University, Department of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology through Ball State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology through Ball State University at the address in this notice by December 7, 2020.

ADDRESSES: Kevin C. Nolan, Applied Anthropology Laboratories, Ball State University, 2000 W University Ave., Muncie, IN 47306, telephone (765) 285–5325, email *kcnolan@bsu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, Indianapolis, IN. The human remains were removed from site 12–M–623, in Madison County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

As agents of the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, a detailed assessment of the human remains was made by the Ball State University, Department of Anthropology professional staff in consultation with representatives of the Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Hannahville Indian Community, Michigan; Miami Tribe of Oklahoma; and Pokagon Band of Potawatomi Indians, Michigan and Indiana (hereafter referred to as ''The Consulted Tribes'').

The following Tribes were invited to consult, but did not participate: Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cherokee Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of

Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as Huron Potawatomi, Inc.); Omaha Tribe of Nebraska; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation (previously listed as Prairie Band of Potawatomi Nation, Kansas); Quapaw Nation (previously listed as The Quapaw Tribe of Indians); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians (previously listed as Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; The Osage Nation (previously listed as Osage Tribe); Tonawanda Band of Seneca (previously listed as Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; and the Wyandotte Nation (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

In 1994, human remains representing, at minimum, three individuals were removed from site 12–M–623, in Madison County, IN, during a construction project. At the request of the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, Ball State University, Department of Anthropology conducted a salvage excavation. The materials have been on loan to Ball State University, Department of Anthropology since their recovery. The human remains include the partial skeleton of an adult male 30–35 years old; the partial skeleton of a juvenile of unknown sex less than 6 years old; and a single clavicle fragment belonging to an individual of unknown age and sex. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology

Officials of the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the context of discovery and analysis of the human remains.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three 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 associated funerary objects 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 and associated funerary objects were removed is the aboriginal land of the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Miami Tribe of Oklahoma (hereafter referred to as ''The Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Kevin C. Nolan, Applied Anthropology Laboratories, Ball State University, 2000 W University Avenue, Muncie, IN 47306, telephone (765) 285–5325, email *kcnolan@bsu.edu,* by December 7, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: October 22, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–24683 Filed 11–5–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031105; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Michigan 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 Michigan 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 Michigan State University at the address in this notice by December 7, 2020.

ADDRESSES: Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.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 Michigan State University, East Lansing,

MI. The human remains were removed from Kodiak Island Borough, AK.

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 Michigan State University professional staff in consultation with representatives of the Alutiiq Museum and Archaeological Repository, acting as agent for the Alutiiq Tribe of Old Harbor (previously listed as Native Village of Old Harbor and Village of Old Harbor); Kaguyak Village; Native Village of Afognak; Native Village of Akhiok; Native Village of Larsen Bay; Native Village of Ouzinkie; Native Village of Port Lions; Sun'aq Tribe of Kodiak (previously listed as Shoonaq' Tribe of Kodiak); and the Tangirnaq Native Village (previously listed as Lesnoi Village (aka Woody Island)). The Native Village of Karluk was invited to consult but did not participate. Hereafter, the Tribes identified in this paragraph are referred to as ''The Tribes.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from an unknown location in Kodiak Island Borough, AK. On an unknown date, the human remains (catalog number 4) were transferred to Michigan State University. On October 4, 2017, they were found in Michigan State University's Forensic Anthropology Laboratory. No known individual was identified. No associated funerary objects are present.

Determinations Made by Michigan State University

Officials of Michigan 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 based on biological evidence.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes, based on archeological and geographical evidence.

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 Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu,* by December 7, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Michigan State University is responsible for notifying The Tribes that this notice has been published.

Dated: October 22, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–24685 Filed 11–5–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1228]

Certain Automated Storage and Retrieval Systems, Robots, and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 1, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of AutoStore Technology AS of Norway; AutoStore AS of Norway; and AutoStore System Inc. of Derry, New Hampshire. A supplement to the complaint was filed on October 22, 2020. The complaint, as supplemented, alleges violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated storage and retrieval systems, robots, and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,093,525 (''the '525 patent''); U.S. Patent No. 10,294,025 (''the '025 patent''), U.S. Patent No. 10,474,140 (''the '140 patent''); U.S. Patent No. 10,494,239 (''the '239 patent''); and U.S. Patent No. 10,696,478 (''the '478 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusive and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 2, 2020, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–6 of the '525 patent; claims 1 and 18–20 of the '025 patent; claims 1–4 and 11–15 of the '140 patent; claims 1, 2, and 5–15 of the '239 patent; and claim 19 of the '478 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the

investigation, is ''robots, grid systems (including tracks on top to allow for the movement of the robots), storage bins, controllers, and components (including software)'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

AutoStore Technology AS, Stokkastrandvegen 85, 5578 Nedre Vats, Norway

AutoStore AS, Stokkastrandvegen 85, 5578 Nedre Vats, Norway

AutoStore System Inc., 3 Corporate Park Drive, Unit 1, Derry, NH 03038

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ocado Group Plc, Buildings One & Two, Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9UL, United Kingdom

Ocado Central Services Ltd., Buildings One & Two, Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9UL, United Kingdom

Ocado Innovation Ltd., Buildings One & Two, Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9UL, United Kingdom

Ocado Operating Ltd., Buildings One & Two, Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9UL, United Kingdom

Ocado Solutions, Ltd., Buildings One & Two, Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9UL, United Kingdom

Ocado Solutions USA Inc., 1600 Tysons Boulevard, 4th Floor, Tysons Corner, VA 22102

Tharsus Group Ltd., Coniston Rd, Blyth, Northumberland, NE24 4RF, United Kingdom

Printed Motor Works Ltd., Newman Lane, Alton, Hampshire GU34 2QW, United Kingdom

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge. The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 2, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–24637 Filed 11–5–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0096]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection Environmental Information—ATF Form 5000.29

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 5, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Shawn Stevens, Acting Chief, Federal Explosives Licensing Center, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Shawn.Stevens@atf.gov,* or by telephone at 304–616–4400.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83): Extension without change of a currently approved collection.

2. *The Title of the Form/Collection:* Environmental Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): ATF Form 5000.29. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other (if applicable): None.

Abstract: The National Environmental Policy Act, 42 U.S.C Chapter 55, authorizes the execution of Environmental Information—ATF Form 5000.29, during the explosives application process, to ensure compliance with the Act. ATF personnel reviews the collected

information to determine if there is any adverse impact on the environment due to the applicant's business operations, or disposal of waste products.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 680 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 340 hours, which is equal to 680 (# of respondents) * .5 (30 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 3, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–24756 Filed 11–5–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Information Collection; Reciprocity Questionnaire—ATF Form 8620.59

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 5, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Lakisha Gregory, Deputy Chief, Personnel Security Division either by mail at 99 New York Ave NE, Washington, DC 20226, by email at *Lakisha.Gregory@atf.gov,* or by telephone at 202–648–9260.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83): New collection.

2. *The Title of the Form/Collection:* Reciprocity Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): ATF F 8620.59. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other (if applicable): None.

Abstract: The Reciprocity Questionnaire—ATF Form 8620.59 will be used to determine if a candidate for Federal or contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) previously completed a background investigation and/or polygraph examination with another Federal agency.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will utilize the form annually, and it will take each respondent approximately 10 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 333 hours, which is equal to 2000 (# of respondents) * .16667 (10 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 3, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–24753 Filed 11–5–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0004]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change, of a Currently Approved Collection; Number of Full-Time Law Enforcement Employees as of October 31

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 7, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning

the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Number of Full-time Law Enforcement Employees as of October 31.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is: 1–711. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, in the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, state, county, city, and tribal law enforcement agencies.

Abstract: Under Title 34, United States Code (U.S.C.) Section 41303 and 28 U.S.C § 534, this collection requests the number of full- and part-time law enforcement employees by race/ethnicity for both officers and civilians, from federal, state, county, city, and tribal law enforcement agencies in order for the Federal Bureau of Investigation Uniform Crime Reporting Program to serve as the national clearinghouse for the collection and dissemination of police employee data and to publish these statistics in *Crime in the United States.*

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,667 law enforcement agency respondents that submit once a year for a total of 18,667 responses with an estimated response time of eight minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 2,489 hours, annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 3, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–24755 Filed 11–5–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Water Act

On November 2, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Alabama in the lawsuit entitled *United States and Alabama Department of Environmental Management* v. *Kronospan, LLC,* Civil Action No. 1:20–cv–01720—ACA.

The Complaint alleges violations of the pretreatment regulations under the Clean Water Act (''CWA'') at Kronospan's wood processing facility in Eastaboga, Calhoun County Alabama. The State of Alabama, Department of Environmental Management (''ADEM'') is a co-plaintiff in the civil action, alleging violations of the Alabama Water Pollution Control Act. The proposed Consent Decree requires the defendant to perform injunctive relief and pay a $900,000 civil penalty which will be split evenly between the United States and ADEM. In addition, the defendant will perform a project to install an evaporation system to reduce the frequency and total annual volume of process wastewater currently being treated by the Facility's pretreatment system and discharged to the publicly owned treatment works. The cost of the project is about $7.7 million.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Alabama Department of Environmental Management* v. *Kronospan, LLC,* D.J. Ref. No. 90–5–1–1–10934. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $45.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–24748 Filed 11–5–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Water Act

On November 2, 2020, the Department of Justice filed a Complaint and concurrently lodged a proposed consent decree with the United States District Court for the Northern District of West Virginia in the lawsuit entitled *United States of America, the State of West Virginia, and the Commonwealth of Pennsylvania* v. *Koppers Inc.,* Civil Action No. 5:20–cv–236.

The lawsuit seeks injunctive relief and civil penalties for alleged violations of the Clean Water Act, the Pennsylvania Clean Streams Law, the Pennsylvania Storage Tank and Spill Prevention Act, and the West Virginia Above Ground Storage Tank Act, at facilities currently or formerly owned and operated by Koppers Inc. in

Clairton, Pennsylvania, Green Spring, West Virginia, and Follansbee, West Virginia. The alleged violations relate to failures to adhere to precautionary requirements designed to prevent or contain discharges of oil into navigable waters, such as testing of oil storage tanks and ensuring facilities had adequate measures in place for containing discharges of oil.

The proposed Consent Decree requires Koppers Inc. to conduct integrity testing on the two noncompliant tanks at its only owned and operated facility in Follansbee, West Virginia and to update its regulatory plans as necessary. The proposed Consent Decree also requires Koppers Inc. to pay civil penalties in the amount of $800,000 to the United States; $175,000 to WVDEP; and $24,500 to PA DEP.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Koppers Inc.,* D.J. Ref. No. 90–5–1–1–11701. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–24769 Filed 11–5–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0013]

Agency Information Collection Activities; Proposed Collection; Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative (Form EOIR–31A)

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting 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 proposed information collection request was previously published in the **Federal Register** on Tuesday, October 20, 2020, allowing a 30-day comment period.

The proposed information collection request is currently under review for additional edits, and the agency will publish a new 30-day notice for public commenting in place of the previous publication.

FOR FURTHER INFORMATION CONTACT: If additional information is required, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

Dated: November 3, 2020.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–24747 Filed 11–5–20; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Program for Iowa

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Iowa.

The following change has occurred since the publication of the last notice regarding the Iowa's EB status:

• Iowa's 13-week insured unemployment rate (IUR) for the week ending October 10, 2020, was 4.73 percent, falling below the 5.00 percent threshold necessary to remain ''on'' EB. Therefore, the EB period for Iowa will end on October 31, 2020. The state will remain in an ''off'' period for a minimum of 13 weeks.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the state by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing claims for EB of the forthcoming termination of the EB period and its effect on the individual's right to EB (20 CFR 615.13 (c)).

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–24651 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Program for Arkansas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Arkansas.

The following change has occurred since the publication of the last notice regarding the Arkansas' EB status:

• Arkansas' 13-week insured unemployment rate (IUR) for the week ending September 26, 2020, was 4.99 percent, falling below the 5.00 percent threshold necessary to remain ''on'' EB. Therefore, the EB period for Arkansas ended on October 17, 2020. The state

will remain in an ''off'' period for a minimum of 13 weeks.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the state by the U.S. Department of Labor. In the case of a state ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing claims for EB of the forthcoming termination of the EB period and its effect on the individual's right to EB (20 CFR 615.13(c)).

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–24652 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2020 Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Secretary of Labor signed the annual certifications on October 31, 2020 under the Federal Unemployment Tax Act, thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter, the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

October 31, 2020

The Honorable Steven T. Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Mnuchin:

Enclosed are an original and a copy of two separate certifications regarding unemployment compensation laws pursuant to the Federal Unemployment Tax Act, for the 12-month period ending on October 31, 2020. One certification is with respect to the ''normal'' federal unemployment tax credit under Section 3304 of the Internal Revenue Code of 1986, and the other certification is with respect to the ''additional'' tax credit under Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,

EUGENE SCALIA

Enclosures

CERTIFICATION OF STATES TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3304(c) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following States, to the Secretary of the Treasury, for the 12-month period ending on October 31, 2020, in regard to the unemployment compensation laws of those states, which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 2020.

EUGENE SCALIA

CERTIFICATION OF STATE UNEMPLOYMENT COMPENSATION LAWS TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3303(b)(1) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury, for the 12-month period ending on October 31, 2020:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts

Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b), subject to the limitations of Section 3302(c) of the Code.

Signed at Washington, DC, on October 31, 2020.

EUGENE SCALIA

[FR Doc. 2020–24650 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hoist Operators' Physical Fitness

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mining Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 7, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines. Title 30 CFR 56.19057 and 57.19057 require the examination and certification of hoist operators' physical fitness by a qualified, licensed physician, within 12 months preceding hoisting duties. The safety of all metal and nonmetal miners riding hoist conveyances is largely dependent upon the attentiveness and physical capabilities of the hoist operator. Improper movements, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to passengers.

For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 12, 2020 (85 FR 28039).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Hoist Operators' Physical Fitness.

OMB Control Number: 1219–0049.

Affected Public: Private sector.

Total Estimated Number of Respondents: 212.

Total Estimated Number of Responses: 1,060.

Total Estimated Annual Time Burden: 35 hours.

Total Estimated Annual Other Costs Burden: $399,620.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: November 2, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–24654 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Escape and Evacuation Plans

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mining Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 7, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) (30 U.S.C. 813(h)), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101 (a) of the Mine Act (30 U.S.C. 811) authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. Title 30 of the Code of Federal Regulations (CFR) section 57.11053 requires the development of specific escape and evacuation plans that address the unique conditions of each underground metal and nonmetal mine. Section 57.11053 also requires that mine operators make revisions to the escape and evacuation plan for an underground metal and nonmetal mine as mining progresses. The plan must be available to representatives of MSHA and conspicuously posted at the mine at locations convenient to all persons on the surface and underground. The mine operator and MSHA are required to jointly review the plan at least once every 6 months. The following information is required with each escape and evacuation plan submission:

- Mine maps or diagrams showing directions of principal air flow, location of escape routes, and locations of existing telephones, primary fans, primary fan controls, fire doors, ventilation doors, and refuge chambers;
- Procedures to show how the miners will be notified of an emergency;
- An escape plan for each working area in the mine, including instructions showing how each working area should be evacuated;
- A firefighting plan;
- Procedures for surface personnel to follow in an emergency, including the notification of proper authorities and the preparation of rescue equipment and other equipment which may be used in rescue and recovery operations; and
- A statement of the availability of emergency communication and transportation facilities, emergency power, and ventilation, and the location of rescue personnel and equipment.

For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 17, 2020 (85 FR 36619).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Escape and Evacuation Plans.

OMB Control Number: 1219–0046.

Affected Public: Individuals and households.

Total Estimated Number of Respondents: 193.

Total Estimated Number of Responses: 386.

Total Estimated Annual Time Burden: 3,281 hours.

Total Estimated Annual Other Costs Burden: $1,930.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: November 2, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–24653 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mining Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 7, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the

Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. The Mine Act and 30 CFR parts 75 and 77, mandatory safety standards for coal mines, make this collection of information necessary. Inadequate maintenance of electric equipment is a major cause of serious electrical accidents in the coal mining industry. It is imperative that mine operators adopt and follow an effective maintenance program to ensure that electric equipment is maintained in a safe operating condition to prevent electrocutions, mine fires, and mine explosions. MSHA regulations require the mine operator to establish an electrical maintenance program by specifying minimum requirements for the examination, testing, and maintenance of electric equipment. The regulations also contain recordkeeping requirements that help operators in implementing an effective maintenance program. (a) Examinations of Electric Equipment (1) Section 75.512 requires that all electric equipment be frequently examined, tested, and maintained by a qualified person to assure safe operating conditions and that a record of such examinations be kept. Section 75.512–2 specifies that required examinations and tests be made at least weekly. (2) Section 75.703–3(d)(11) requires that all grounding diodes be tested, examined, and maintained as electric equipment and records of these activities be kept in accordance with the provisions of § 75.512. (3) Section 77.502 requires that electric equipment be frequently examined, tested, and maintained by a qualified person to ensure safe operating conditions and that a record of such examinations be kept. Section 77.502–2 requires these examinations and tests at least monthly. (b) Examinations of High-Voltage Circuit Breakers (1) Section 75.800 requires that circuit breakers protecting high-voltage circuits, which enter the underground area of a coal mine, be properly tested and maintained as prescribed by the Secretary. Section 75.800–3 requires that such circuit breakers be tested and examined at least once each month. Section 75.800–4 requires that a record of the examinations and tests be made. (2) Section 75.820 requires persons to lock-out and tag disconnecting devices when working on circuits and equipment associated with high-voltage longwalls. (3) Section 75.821(a) requires testing and examination of each unit of high-voltage longwall equipment and circuits to determine that electrical protection, equipment grounding, permissibility, cable insulation, and control devices are being properly maintained to prevent fire, electrical shock, ignition, or operational hazards. These tests and examinations, including the activation of the ground-fault test circuit, are required once every seven days. Section 75.821(b) requires that each ground-wire monitor and associated circuits be examined and tested at least once every 30 days. Section 75.821(d) requires that, at the completion of examinations and tests, the person making the examinations and tests must certify that they have been conducted. In addition, a record must be made of any unsafe condition found and any corrective action taken. These certifications and records must be kept at least 1 year. (4) Section 77.800 requires that circuit breakers protecting high-voltage portable or mobile equipment be properly tested and maintained. Section 77.800–1 requires that such circuit breakers be tested and examined at least once each month. Section 77.800–2 requires a record of each test, examination, repair, or adjustment of all circuit breakers protecting high-voltage circuits. (c) Examinations of Low- and Medium Voltage Circuits (1) Section 75.900 requires that circuit breakers protecting low- and medium voltage power circuits serving three-phase alternating-current equipment be properly tested and maintained. Section 75.900–3 requires that such circuit breakers be tested and examined at least once each month. Section 75.900–4 requires that a record of the required examinations and tests be made. (2) Section 77.900 requires that circuit breakers protecting low- and medium voltage circuits which supply power to portable or mobile three-phase alternating-current equipment be properly tested and maintained. Section 77.900–1 requires that such circuit breakers be tested and examined at least once each month. Section 77.900–2 requires that a record of the examinations and tests be made. (d) Tests and Calibrations of Automatic Circuit Interrupting Devices Section 75.1001–1(b) requires that automatic circuit interrupting devices that protect trolley wires and trolley feeder wires be tested and calibrated at intervals not to exceed 6 months. Section 75.1001–1(c) requires that a record of the tests and calibrations be kept. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 23, 2020 (85 FR 44546).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls.

OMB Control Number: 1219–0116.

Affected Public: Businesses or other for-profits institutions.

Total Estimated Number of Respondents: 674.

Total Estimated Number of Responses: 291,074.

Total Estimated Annual Time Burden: 55,339 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: November 2, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–24655 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Secretary's Order 10–2020—Statement of Policy Regarding Independence of Advisory Committee Members

ACTION: Notice.

SUPPLEMENTARY INFORMATION:

1. *Purpose.* To strengthen the quality and reliability of advice provided by advisory committees to the Department of Labor, by identifying factors to be used in selecting committee members that will increase transparency in the disbursement of taxpayer dollars, enhance public confidence in advisory committees, and promote efficiency in the selection of candidates to serve on advisory committees.

2. *Authorities and Directives Affected.*

A. Authorities. This Order is issued pursuant to the following authorities:

1. 29 U.S.C. 551 *et seq.*;

2. 5 U.S.C. 301–02; and

3. 5 U.S.C. app. 2 §§ 1–15.

B. Directives Affected. This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order.

3. *Definitions.*

''*Committee*'' means any advisory committee, committee, board, task force, or working group to which the Secretary of Labor or the designee of the Secretary appoints individuals subject to the Federal Advisory Committee Act (FACA), and the subcommittees of such bodies. This term does not include internal committees, boards, task forces, or working groups, or apply to purely interagency committees, boards, task forces, or working groups.

''*Organization*'' means any organized concern, whether legally recognized or otherwise.

4. *Background.*

The Department's Committees provide advice and recommendations that agency heads and other decision-makers may use in fulfilling the Department's mission of promoting the welfare of the American workforce. The Department sponsors several Committees, which focus separately on the use of labor market data, employee benefit plans, job training programs, international labor standards, trade agreement policy, and worker safety and health.

Under FACA, Committees can be established by Congress, the President, or the Department. FACA requires that all Committees operate in an independent, orderly, balanced, and transparent manner. Membership selection is a critical step in fulfilling these goals. All members must be qualified and knowledgeable in their respective fields, and must be positioned to offer counsel and advice independent of any motive other than the best interests of the Department and those it serves. Unless otherwise provided by statute, Presidential directive, or other authority establishing a Committee, the Secretary or his designee has the authority and responsibility to appoint Committee members. This authority includes the prerogative to establish eligibility and selection criteria to ensure the Department receives the best advice possible from a broad spectrum of experts and stakeholders. This statement of policy sets forth factors to consider in selecting members to help ensure these FACA requirements are met.

This Policy Statement is intended to provide notice to the public and direction to the Department on how the Secretary or his designees will consider the financial interests of potential Committee members. Policies and requirements are already in place which prohibit Committee members from participating in certain matters in which they have a financial interest. *See* 18 U.S.C. 208; 5 CFR part 2640; DLMS 1604(A), 1605(C), 1614(E). This Policy Statement is not intended to change or add to those provisions, create any mandatory rules restricting otherwise-eligible individuals from serving on Committees, or to affect the fair balance of Committee members required by FACA.[1]

Instead, this Statement serves the separate purpose of aiming to ensure that the Department receives high-quality advice and that the public has confidence in the expertise of Committee members. The Department's portfolio of contracts and grants has grown over time, as have the number of laws and regulations on which Committee members may be asked to provide advice, increasing the circumstances where Committee members may be called to provide advice on Department programs as to which their professional judgment may be influenced, or appear to be influenced, by their financial interests. This influence or appearance of influence may not rise to the level of an ethical or legal concern covered by existing laws and policies, but may nonetheless diminish the integrity of advice given the Department in ways that are inconsistent with the Department's interest in obtaining the most reliable and impartial advice possible. This Statement helps guard against such concerns. Further, this Statement promotes public confidence in the Department by helping to ensure that advice given to the Department is free of bias, and instead solely reflects Committee members' experience and expertise.[2]

5. *Responsibilities.*

A. The Deputy Secretary is delegated authority and assigned responsibility for issuing written guidance, as necessary, to implement this Policy Statement.

B. The Solicitor of Labor is responsible for providing legal advice to the Department on all matters arising in the implementation and administration of this Policy Statement.

6. *Factors for Consideration.* In making Committee appointments, the Secretary or his designee will consider whether prospective Committee members are sufficiently financially independent from the Department programs and activities for which they may be called upon to provide advice.

A. In circumstances where a prospective member (or any spouse, parent, or child of a prospective member) is:

(i) A principal investigator or co-investigator on a research project funded by a Department grant;

(ii) an officer or employee of an Organization in receipt of a Department grant; or

(iii) an officer or employee of an Organization in receipt of disbursements under a contract with the Department,

the Secretary or his designee will consider whether the grant or contract in question is so directly related to the Department programs, activities, or other matters about which the prospective member may be called upon to provide advice that it would cause an objective, disinterested observer to entertain a significant doubt about the prospective member's ability to provide independent, high-quality advice to the Department with respect to such programs, activities, or other matters.

B. Except under the circumstances described in § 6(A)(i), a prospective member's position (or any spouse's, parent's, or child's position) as an officer or employee of an institution of higher education or a state, tribal, or local government agency shall not be considered when determining whether the prospective member is sufficiently independent from the relevant Department programs and activities.

C. The purpose of this Policy Statement is to improve the quality of advice given to the Department and should be followed to the extent it accomplishes that objective. For instance, some Committee members are called upon to provide advice with

[1] The Department's current FACA Committees comprise representatives of employees, employers, experts in fields such as economics and occupational health and safety, and the general public. The Department does not believe its contracts and grants go disproportionately to any one of these groups, or that any large percentage of any of these groups is in receipt of Department contracts or grants. Special provisions have been made in § 6(B) of this Statement for employees of state, local and tribal entities, as those entities do regularly and predictably receive Department funding.

[2] On the public's confidence in public institutions, see, for example, Pew Research Center, ''Americans' View of Government: Low Trust, but Some Positive Performance Ratings'' (September 14, 2020), *https://www.pewresearch.org/politics/2020/09/14/americans-views-of-government-low-trust-but-some-positive-performance-ratings/*; Gallup, ''Confidence in U.S. Institutions Still Below Historical Norms'' (June 15, 2015), *news.gallup.com/poll/183593/confidence-institutions-below-historical-norms.aspx.*

respect to national security or veterans affairs, or are part of a Committee that involves other federal agencies or international bodies, where heavy reliance on the factors above may impede rather than further the Department's ability to obtain quality advice. The Secretary or his designee may give less weight to the factors above when doing so is in the best interests of the Department.

7. *Certification.* Candidates for Committee membership subject to this Policy Statement shall provide, in writing, sufficient information for the Secretary or his designee to consider the factors articulated in § 6(A) of this Statement, in such form as the Secretary or his designee may prescribe.

8. *Application and Exceptions.*

A. This Policy Statement shall apply only to the appointments or reappointments of individuals to Committees made after the Effective Date of this Statement.

B. This Policy Statement shall not apply to ex officio members.

C. This Policy Statement shall not apply to members and prospective members of the Advisory Board on Toxic Substances and Worker Health.[3]

D. This Policy Statement shall not apply to appointments made by someone other than the Secretary or his designee.

E. In cases where a Committee member's independence comes into question for a reason articulated under § 6 of this Order after his appointment, the Committee member may serve the remainder of his term on such Committee. The member should, however, consider recusing himself from providing advice to the Department on any programs or activities as to which he would not be considered financially independent under this Statement.

9. *Privacy.* This Policy Statement is subject to the applicable laws, regulations, and procedures concerning the privacy of Committee candidates.

10. *Controlling Law; Administrative Matters.* This Policy Statement is intended to be general in nature, and accordingly shall be construed and implemented consistent with more specific requirements of any statute, Executive Order, or other law governing the composition of a particular Committee. If a conflict arises, the specific statute, Executive Order, or other law shall govern. The appointment considerations articulated in this Statement are in addition to internal administrative procedures regarding the appointment of individuals to Committees.

11. *Redelegation of Authority.* Except as otherwise provided within this Policy Statement or by law, all authorities delegated in this Order may be redelegated to serve the purposes of this Statement.

12. *Effective Date.* This Order is effective immediately.

Signed in Washington, DC, this 2nd day of November, 2020.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–24726 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–HL–P

[3] Congress has previously enacted specific protections regarding the independence of these Committee members.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Comment Request; Department of Labor Events Management Platform

AGENCY: United States Department of Labor (DOL–OS).

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the DOL is soliciting public comments regarding this OS-sponsored information collection to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments pertaining to this information collection are due on or before January 5, 2021.

ADDRESSES:

Electronic submission: You may submit comments and attachments electronically at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail submission: 200 Constitution Ave. NW, Room S–5315, Washington, DC 2020.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the DOL, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the DOL's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL Events Management Platform is a shared service that allows a DOL agency to collect registration information in a way that can be tailored to a particular event. As the information needed to register for specific events may vary, this ICR provides a generic format to obtain any required PRA authorization from the OMB. DOL notes that registration requirements for many events do not require PRA clearance, because the information requested is minimal (*e.g.* information necessary to identify the attendee, address). This information collection, however, is subject to the Paperwork Reduction Act (PRA). A Federal agency generally cannot conduct or sponsor a collection of information and the public is generally not required to respond to an information collection unless the OMB approves it for use and the agency 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 OMB Control Number.

The DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an Information Collection Review cannot be for more than three (3) years without renewal. The DOL notes that currently approved information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Agency: DOL–OS.

Title of Collection: Department of Labor Events Management Platform.

OMB Control Number: 1290–0002.

Total Estimated Number of Respondents: 1,600.

Total Estimated Number of Responses: 3,200.

Total Estimated Annual Time Burden: 250 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Dated: November 2, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–24657 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Sealing of Abandoned Areas

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mining Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 7, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: MSHA's standards for sealing abandoned areas in underground coal mines include requirements addressing the design and construction of new seals and the examination, maintenance, and repair of all seals. Section 75.335(b) sets forth procedures for the approval of seal design applications. Section 75.335(c) requires the submission and certification of information for seal installation. Section 75.336(a)(2) requires the mine operator to evaluate the atmosphere in the sealed area to determine whether sampling through the sampling pipes in seals provides appropriate sampling locations of the sealed area. The mine operator will make an evaluation for each area that has seals. Section 75.336(c) requires that when a sample is taken from the sealed atmosphere with seals of less than 120 psi and the sample indicates that the oxygen concentration is 10 percent or greater and methane is between 4.5 percent and 17 percent, the mine operator must immediately take an additional sample and then immediately notify the District Manager.

Section 75.336(e) requires a certified person to record each sampling result, including the location of the sampling points and the oxygen and methane concentrations. Also, any hazardous conditions found must be corrected and recorded in accordance with existing section 75.363. Section 75.337(c)(1)–(c)(5) requires a certified person to perform several tasks during seal construction and repair and certify that the tasks were done in accordance with the approved ventilation plan. In addition, a mine foreman or equivalent mine official must countersign the record. Section 75.337(d) requires a senior mine management official, such as a mine manager or superintendent, to certify that the construction, installation, and materials used were in accordance with the approved ventilation plan. Section 75.337(e) requires the mine operator to notify MSHA of certain activities concerning the construction of seals. Section 75.337(e)(1) requires the mine operator to notify the District Manager between 2 and 14 days prior to commencement of seal construction. Section 75.337(e)(2) requires the mine operator to notify the District Manager, in writing, within 5 days of completion of a set of seals and provide a copy of the certifications required in section 75.337(d). Section 75.337(e)(3) requires the mine operator to submit a copy of the quality control test results for seal material properties specified by section 75.335 within 30 days of completion of such tests. Section 75.337(g)(3) requires the mine operator to label sampling pipes to indicate the location of the sampling point when the mine operator installs more than one sampling pipe through a seal. Section 75.338(a) requires mine operators to certify that persons conducting sampling were trained in the use of appropriate sampling equipment, techniques, the location of sampling points, the frequency of sampling, the size and condition of sealed areas, and the use of continuous monitoring systems, if applicable, before they conduct sampling, and annually thereafter. Section 75.338(b) requires mine operators to certify that miners constructing or repairing seals, designated certified persons, and senior mine management officials were trained prior to constructing or repairing a seal and annually thereafter. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 27, 2020 (85 FR 45241).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Sealing of Abandoned Areas.

OMB Control Number: 1219–0142.

Affected Public: Businesses or other for-profits institutions.

Total Estimated Number of Respondents: 177.

Total Estimated Number of Responses: 47,194.

Total Estimated Annual Time Burden: 4,870 hours.

Total Estimated Annual Other Costs Burden: $709,972.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: November 2, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–24656 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2020–0003]

Advisory Committee on Construction Safety and Health (ACCSH): Charter Renewal

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

ACTION: Renewal of the ACCSH charter.

SUMMARY: The Secretary of Labor (Secretary) has renewed the charter for ACCSH.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about ACCSH: Mr. Damon Bonneau, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2183; email: *bonneau.damon@dol.gov.*

SUPPLEMENTARY INFORMATION: The Secretary has renewed the ACCSH charter. The new ACCSH charter will be available to read or download at *http://www.regulations.gov* (Docket No. OSHA–2020–0003), the federal rulemaking portal. The charter will also be available on the ACCSH page on OSHA's web page at *http://www.osha.gov* and through the OSHA Docket Office, N–3653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–2350. Please note: While OSHA's Docket Office is continuing to accept and process requests, due to the COVID–19 pandemic, the Docket Office is closed to the public. In addition, the charter is available for viewing or download at the Federal Advisory Committee Database at *http://www.facadatabase.gov.* The new charter will expire two years from the filing date.

Congress established ACCSH in Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3704(d)(4)), to advise the Secretary in the formulation of construction safety and health standards as well as on policy matters arising under the CSA and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and the implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (8/31/2020). Pursuant to FACA (5 U.S.C. App. 2, 14(b)(2)), the ACCSH charter must be renewed every two years.

The new charter clarifies the procedures for the formulation of meeting agendas and the creation of Committee subcommittees and work groups.

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 40 U.S.C. 3704(a)(2), 5 U.S.C. App. 2, Secretary of Labor's Order No. 8–2020 (85 FR 58393), and 29 CFR part 1912.

Signed at Washington, DC, on November 3, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–24728 Filed 11–5–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 18, 2020, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on November 2, 2020 to:

1. Jonathan Schwartz—Permit No. 2021–005

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2020–24643 Filed 11–5–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Executive Committee (EC), pursuant to National Science Foundation regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Thursday, November 12, 2020, from 12:45–1:45 EST.

PLACE: This meeting will be held by teleconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Open.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; approval of Executive Committee minutes of July 2, 2020; and discuss issues and topics for an agenda of the NSB meetings scheduled for December 9–10, 2020.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: James Hamos, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703/292–8000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates may be found at *http://www.nsf.gov/nsb/notices/.jsp#sunshine.* Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–24849 Filed 11–4–20; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Social, Behavioral and Economic Sciences (#1171) (Virtual).

Date and Time: December 3–4, 2020; 12:00 p.m.–5:00 p.m. (EST).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314. Virtual AC Meeting via Zoom. Advance registration is required: *https://nsf.zoomgov.com/webinar/register/WN_-BGhgnjcQjugMpfk5X_yMQ.*

Type of Meeting: Open.

Contact Person: Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences; National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–8700.

Summary of Minutes: Will be available on SBE advisory committee website at: *https://www.nsf.gov/sbe/advisory.jsp.*

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate (SBE) programs and activities.

Agenda Items

- Welcome, Introductions, Approval of Previous Advisory Committee Meeting Summary
- Social, Behavioral, and Economic Sciences Directorate (SBE) Update
- COVID–19-related Research in the Social, Behavioral, and Economic Sciences
- Meeting with NSF Leadership
- Collaborations between SBE and the Directorate for Computer & Information Science & Engineering
- SBE Office of Multidisciplinary Activities Committee of Visitors Report
- Partnerships
- Federal Data Strategy
- Committee on Equal Opportunities in Science and Engineering Update
- Advisory Committee on Environmental Research and Education Update
- New SBE Funding Opportunities
- Wrap-up, Assignments, Closing Remarks

Dated: November 3, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–24678 Filed 11–5–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Computer and Information Science and Engineering (CISE) (1115).

Date and Time: December 2, 2020, 11:00 a.m. to 5:00 p.m.; December 3, 2020, 11:00 a.m. to 5:00 p.m.

Place: Virtual meeting attendance only; To attend the virtual meeting, please send your request for the virtual meeting link to the following email: *cmessam@nsf.gov.*

Type of Meeting: Open.

Contact Person: KaJuana Mayberry, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8900; email: *kmayberr@nsf.gov.*

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities in support of CISE research, education, and research infrastructure. To provide advice to the NSF Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees and working groups to carry out needed studies and tasks.

Agenda

- NSF and CISE updates
- CISE Future Visions
- Breakout discussions on Partnerships and CISE Graduate School Enrollments
- Joint Session with the Social, Behavioral, and Economic Sciences Advisory Committee

Dated: November 3, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–24711 Filed 11–5–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

SES Performance Review Board

AGENCY: National Transportation Safety Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Transportation Safety Board, Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Emily T. Carroll, Chief, Human Resources Division, Office of Administration, National Transportation Safety Board, 490 L'Enfant Plaza SW, Washington, DC 20594–0001, (202) 314–6233.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards (PRB). The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the 2020 Performance Review Board of the National Transportation Safety Board (NTSB):

Mr. Paul Sledzik, Principal Deputy Managing Director, Office of Managing Director, National Transportation Safety Board, PRB Chair.

Ms. Dolline Hatchett, Director, Office of Safety Recommendations and Communications, National Transportation Safety Board.

Ms. Susan A. Kantrowitz, Director, Office of Administration, National Transportation Safety Board.

Mr. Jerold Gidner, Director, Bureau of Trust Funds Administration, Department of Interior.

Ms. Claudia J. Postell, Associate Commissioner, Office of Civil Rights and Equal Opportunity, Social Security Administration.

Ms. Florence Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission (alternate).

Candi R. Bing,

Federal Register Liaison.

[FR Doc. 2020–24679 Filed 11–5–20; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0220]

Information Collection: Fitness-for-Duty Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Fitness-for-Duty Programs.''

DATES: Submit comments by January 5, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0220. For

technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0220 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0220. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0220 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Licensees and other entities can use three NRC Forms to report information under part 26 of title 10 of the *Code of Federal Regulations* (10 CFR) requirements: NRC Form 890, ''Single Positive Test Form,'' NRC Form 891, ''Annual Reporting Form for Drug and Alcohol Tests,'' and NRC Form 892, ''Annual Fatigue Reporting Form.'' A copy of NRC Forms 890, 891 and 892 may be obtained without charge by accessing ADAMS Accession Nos. ML20209A550, ML20209A388, and ML18214A192, respectively. The supporting statement and burden change spreadsheet are available in ADAMS under Accession Nos. ML20213C286 and ML20213C285.

• *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0220 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 26, ''Fitness-for-Duty Programs.''

2. *OMB approval number:* 3150–0146.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 890, ''Single Positive Test Form,'' NRC Form 891, ''Annual Reporting Form for Drug and Alcohol Tests,'' and NRC Form 892, ''Annual Fatigue Reporting Form.''

5. *How often the collection is required or requested:* Annually and on occasion. The NRC receives reports on an annual basis that detail fitness-for-duty (FFD) program performance. The NRC also receives, on occasion, reports associated with FFD policy violations or programmatic failures. Depending on the type of violation or programmatic failure, the report would be made within 24 hours of the event occurrence, or within 30 days of completing an investigation into a programmatic failure.

6. *Who will be required or asked to respond:* Nuclear power reactor licensees licensed under 10 CFR parts 50 and 52 (except those who have permanently ceased operations and have verified that fuel has been permanently removed from the reactor); all holders of nuclear power plant construction permits and early site permits with a limited work authorization and applicants for nuclear power plant construction permits that have a limited work authorization under the provisions of 10 CFR part 50; all holders of a combined license for a nuclear power plant issued under 10 CFR part 52 and applicants for a combined license that have a limited work authorization; all licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) under the provisions of 10 CFR part 70; all holders of a certificate of compliance of an approved compliance plan issued under 10 CFR part 76, if the holder engages in activities involving formula quantities of SSNM; and all contractor/vendors (C/Vs) who implement FFD programs or program elements to the extent that the licensees and other entities listed in this paragraph rely.

7. *The estimated number of annual responses:* 378,286 responses (306 reporting responses + 46 recordkeepers + 377,934 third-party disclosure responses).

8. *The estimated number of annual respondents:* 72,770 respondents (25 drug and alcohol testing programs + 21 fatigue management programs + 72,724 third party respondents).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 616,636.

10. *Abstract:* The NRC regulations in 10 CFR part 26 prescribe requirements

to establish, implement, and maintain FFD programs at affected licensees and other entities. The objectives of these requirements are to provide reasonable assurance that persons subject to the rule are trustworthy, reliable, and not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way could adversely affect their ability to safely and competently perform their duties. These requirements also provide reasonable assurance that the effects of fatigue and degraded alertness on individual's abilities to safely and competently perform their duties are managed commensurate with maintaining public health and safety. The information collections required by part 26 are necessary to properly manage FFD programs and to enable effective and efficient regulatory oversight of affected licensees and other entities. These licensees and other entities must perform certain tasks, maintain records, and submit reports to comply with part 26 drug and alcohol and fatigue management requirements. These records and reports are necessary to enable regulatory inspection and evaluation of a licensee's or other entity's compliance with NRC regulations, FFD performance, and significant FFD-related events to help maintain public health and safety, promote the common defense and security, and protect the environment.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: November 3, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–24691 Filed 11–5–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Senior Executive Service-Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Carmen Garcia, OPM Human Resources, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, (202) 606–1048.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

The following have been designated as members of the Performance Review Board of the U.S. Office of Personnel Management:

Basil Parker, Chief of Staff, Chair
Alexandra Czwartacki, Senior Advisor for Operations
Mark Robbins, General Counsel
Kathleen McGettigan, Chief Management Officer
George Nesterczuk, Senior Advisor to the Director
Lisa Loss, Director of Suitability Executive Agent Programs
Dennis Coleman, Chief Financial Officer
Tyshawn Thomas, Chief Human Capital Officer
Mark Lambert, Associate Director for MSAC

[FR Doc. 2020–24693 Filed 11–5–20; 8:45 am]

BILLING CODE 6325–45–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90314; File No. SR–NYSENAT–2020–34]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 7.31

November 2, 2020.

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 October 20, 2020, NYSE National, Inc. (''NYSE National'' or ''Exchange'') 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 Rule 7.31 to cancel ALO Orders that lock displayed interest. The proposed rule change is available on the Exchange's website 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 Rule 7.31 (Orders and Modifiers) to provide that ALO Orders that lock displayed interest would be cancelled. Specifically, the Exchange proposes to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

amend Rules 7.31(e)(2), which describes how the Exchange processes ALO Orders, and 7.31(e)(3)(D), which describes how the Exchange processes Day ISO ALO Orders. Currently, under Rule 7.31(e)(2)(B)(iii), an arriving ALO Order to buy (sell) with a limit price that would lock a displayed order priced equal to or below (above) the PBO (PBB) on the Exchange Book will be assigned a working price and display price one minimum price variation (''MPV'') below (above) the displayed order. Day ISO ALO Orders that would lock displayed interest on the Exchange Book are processed in the same manner.[4] The Exchange proposes to amend these rules to provide that arriving ALO and Day ISO ALO Orders with a limit price that would lock displayed interest on the Exchange Book would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31(e)(2)(B)(iii) providing that an ALO Order that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the Exchange Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31(e)(2)(B)(iii), as revised, into Rule 7.31(e)(2)(B)(ii). Proposed amended Rule 7.31(e)(2)(B)(ii) would thus provide:

> If the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the Exchange Book priced equal to or below (above) the PBO (PBB), it will trade as the liquidity taker with such order(s). Any untraded quantity of the ALO Order will have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB), provided that if the limit price of the ALO Order to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the Exchange Book priced equal to or below (above) the PBO (PBB), it will be cancelled.

The Exchange also proposes the following conforming changes to Rules 7.31(e)(2)(B) and 7.31(e)(2)(C) to reflect the proposed change to how ALO Orders that lock displayed interest would be handled:

- The Exchange proposes to renumber current Rule 7.31(e)(2)(B)(iv) as 7.31(e)(2)(B)(iii) to accommodate the proposed combination of current Rules 7.31(e)(2)(B)(ii) and 7.31(e)(2)(B)(iii), as described above.
- The Exchange proposes to replace introductory references providing that an ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31(e)(2)(B), 7.31(e)(2)(B)(iv)(a) (which would become Rule 7.31(e)(2)(B)(iii)(a) after renumbering), 7.31(e)(2)(C), and 7.31(e)(2)(C)(i). The Exchange proposes to use the term ''processed'' because some ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to renumber current Rule 7.31(e)(2)(B)(v) as 7.31(e)(2)(B)(iv) to accommodate the proposed combination of current Rules 7.31(e)(2)(B)(ii) and 7.31(e)(2)(B)(iii), as described above.
- The Exchange further proposes to revise Rule 7.31(e)(2)(C)(i) to delete the reference to orders ranked Priority 2—Display Orders because, as noted above, an ALO Order would no longer be repriced based on contra-side Priority 2—Display Orders and instead would be cancelled. Accordingly, the only time a resting ALO Order would be repriced is if the contra-side PBBO re-prices.

The Exchange proposes to amend Rule 7.31(e)(3)(D) to align the rules governing Day ISO ALOs with the proposed changes to ALO Orders. Currently, pursuant to Rule 7.31(e)(3)(D)(ii), if the limit price of an arriving Day ISO ALO locks the display price of a displayed order on the Exchange Book, it will be assigned a working price and display price one MPV below (above) the price of the displayed order. As with ALO Orders, the Exchange proposes to amend this rule to specify that arriving Day ISO ALOs that lock displayed interest would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31(e)(3)(D)(ii) that provides that a Day ISO ALO that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the Exchange Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31(e)(3)(D)(ii), as revised, with Rule 7.31(e)(3)(D)(i). Proposed amended Rule 7.31(e)(3)(D)(i) would thus provide:

> If the limit price of the Day ISO ALO to buy (sell) crosses the working price of any displayed or non-displayed order on the Exchange Book, it will trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO will have a working price and display price equal to its limit price, provided that if the limit price of the Day ISO ALO to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the Exchange Book, it will be cancelled.

The Exchange also proposes the following conforming changes consistent with the proposed change to cancel Day ISO ALOs that lock displayed interest:

- The Exchange proposes to renumber Rule 7.31(e)(3)(D)(iii) as Rule 7.31(e)(3)(D)(ii) to accommodate the proposed combination of current Rules 7.31(e)(3)(D)(i) and 7.31(e)(3)(D)(ii), as described above.
- The Exchange proposes to replace introductory references providing that a Day ISO ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31(e)(3)(D) and 7.31(3)(D)(ii)(a) (as renumbered). The Exchange proposes this change to reflect that certain ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to delete Rule 7.31(e)(3)(D)(iv), which currently specifies how a Day ISO ALO will be processed after it is displayed. Because a Day ISO ALO would now either display at its limit price (because, by its terms, it can be displayed at a price that locks or crosses the contra-side PBBO)[5] or be cancelled if it locks displayed interest on the Exchange Book, there would no longer be any circumstances where a resting Day ISO ALO would reprice and therefore this rule text would no longer be applicable.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that the proposed changes will be implemented in January 2021.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by simplifying the treatment of ALO Orders that lock displayed orders. The Exchange believes

[4] *See* Rule 7.31(e)(3)(D)(ii).

[5] *See* Rule 7.31(e)(3)(C).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

that cancelling ALO Orders that lock displayed interest, rather than repricing them, would provide ETP Holders with greater determinism with respect to how ALO Orders would be processed on the Exchange and enhance ETP Holders' ability to manage order flow to suit their business needs. In addition, the Exchange believes that cancelling ALO Orders that would otherwise be marketable against displayed interest on the Exchange Book is consistent with the terms of the ALO Order, *i.e.,* that such orders would not take liquidity on the Exchange. The Exchange further believes that the proposed changes would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed behavior to cancel ALO Orders on the Exchange if the limit price would lock contra-side displayed orders would be consistent with functionality available on other exchanges for similar order types when they lock displayed interest.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would reduce the burden on competition because it would simplify the treatment of such orders when they lock displayed interest and promote consistency with functionality offered for similar order types on other exchanges.[9]

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.

[8] *See, e.g.,* Cboe BZX Exchange, Inc. (''BZX'') Rules 11.9(c)(6), 11.9(g)(1)(D), 11.9(g)(2)(D), and 11.13(a)(2)(C) (a Post Only Order that locks displayed interest on BZX may be cancelled at the User's option); Nasdaq Stock Exchange LLC (''Nasdaq'') Rule 4702(b)(4)(A) (Nasdaq Participants may opt to have Post-Only Orders cancel if they lock orders displayed on the Nasdaq Book); MEMX LLC (''MEMX'') Rules 11.6(a), 11.6(l), and 11.8(b)(10) (Users have the option to apply Post Only and Cancel Back instructions to orders that would lock displayed interest, and MEMX cancels ISO orders with Post Only and Day instructions if they lock displayed interest).

[9] *See id.*

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–NYSENAT–2020–34 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–NYSENAT–2020–34. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–34 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24635 Filed 11–5–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90310; File No. SR–NYSEAMER–2020–77]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend Rule 7.31E

November 2, 2020.

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 October 20, 2020, NYSE American LLC (''NYSE American'' or ''Exchange'') 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 Rule 7.31E to cancel ALO Orders that lock displayed interest. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Rule 7.31E (Orders and Modifiers) to provide that ALO Orders that lock displayed interest would be cancelled. Specifically, the Exchange proposes to amend Rules 7.31E(e)(2), which describes how the Exchange processes ALO Orders, and 7.31E(e)(3)(D), which describes how the Exchange processes Day ISO ALO Orders. Currently, under Rule 7.31E(e)(2)(B)(iii), an arriving ALO Order to buy (sell) with a limit price that would lock a displayed order priced equal to or below (above) the PBO (PBB) on the Exchange Book will be assigned a working price and display price one minimum price variation (''MPV'') below (above) the displayed order. Day ISO ALO Orders that would lock displayed interest on the Exchange Book are processed in the same manner.[4] The Exchange proposes to amend these rules to provide that arriving ALO and Day ISO ALO Orders with a limit price that would lock displayed interest on the Exchange Book would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31E(e)(2)(B)(iii) providing that an ALO Order that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the Exchange Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31E(e)(2)(B)(iii), as revised, into Rule 7.31E(e)(2)(B)(ii). Proposed amended Rule 7.31E(e)(2)(B)(ii) would thus provide:

If the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the Exchange Book priced equal to or below (above) the PBO (PBB), it will trade as the liquidity taker with such order(s). Any untraded quantity of the ALO Order will have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB), provided that if the limit price of the ALO Order to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the Exchange Book priced equal to or below (above) the PBO (PBB), it will be cancelled.

The Exchange also proposes the following conforming changes to Rules 7.31E(e)(2)(B) and 7.31E(e)(2)(C) to reflect the proposed change to how ALO Orders that lock displayed interest would be handled:

- The Exchange proposes to renumber current Rule 7.31E(e)(2)(B)(iv) as 7.31E(e)(2)(B)(iii) to accommodate the proposed combination of current Rules 7.31E(e)(2)(B)(ii) and 7.31E(e)(2)(B)(iii), as described above.
- The Exchange proposes to replace introductory references providing that an ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31E(e)(2)(B), 7.31E(e)(2)(B)(iv)(a) (which would become Rule 7.31E(e)(2)(B)(iii)(a) after renumbering), 7.31E(e)(2)(C), and 7.31E(e)(2)(C)(i). The Exchange proposes to use the term ''processed'' because some ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to renumber current Rule 7.31E(e)(2)(B)(v) as 7.31E(e)(2)(B)(iv) to accommodate the proposed combination of current Rules 7.31E(e)(2)(B)(ii) and 7.31E(e)(2)(B)(iii), as described above.
- The Exchange further proposes to revise Rule 7.31E(e)(2)(C)(i) to delete the reference to orders ranked Priority 2—Display Orders because, as noted above, an ALO Order would no longer be repriced based on contra-side Priority 2—Display Orders and instead would be cancelled. Accordingly, the only time a resting ALO Order would be repriced is if the contra-side PBBO re-prices.

The Exchange proposes to amend Rule 7.31E(e)(3)(D) to align the rules governing Day ISO ALOs with the proposed changes to ALO Orders. Currently, pursuant to Rule 7.31E(e)(3)(D)(ii), if the limit price of an arriving Day ISO ALO locks the display price of a displayed order on the Exchange Book, it will be assigned a working price and display price one MPV below (above) the price of the displayed order. As with ALO Orders, the Exchange proposes to amend this rule to specify that arriving Day ISO ALOs that lock displayed interest would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31E(e)(3)(D)(ii) that provides that a Day ISO ALO that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the Exchange Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31E(e)(3)(D)(ii), as revised, with Rule 7.31E(e)(3)(D)(i). Proposed amended Rule 7.31E(e)(3)(D)(i) would thus provide:

If the limit price of the Day ISO ALO to buy (sell) crosses the working price of any displayed or non-displayed order on the Exchange Book, it will trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO will have a working price and display price equal to its limit price, provided that if the limit price of the Day ISO ALO to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the Exchange Book, it will be cancelled.

The Exchange also proposes the following conforming changes consistent with the proposed change to cancel Day ISO ALOs that lock displayed interest:

- The Exchange proposes to renumber Rule 7.31E(e)(3)(D)(iii) as Rule 7.31E(e)(3)(D)(ii) to accommodate the proposed combination of current Rules 7.31E(e)(3)(D)(i) and 7.31E(e)(3)(D)(ii), as described above.
- The Exchange proposes to replace introductory references providing that a Day ISO ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31E(e)(3)(D) and 7.31E(3)(D)(ii)(a) (as renumbered). The Exchange proposes this change to reflect that certain ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to delete Rule 7.31E(e)(3)(D)(iv), which currently specifies how a Day ISO ALO will be processed after it is displayed. Because a Day ISO ALO would now either display at its limit price (because, by its terms, it can be displayed at a price that locks or crosses the contra-side PBBO)[5] or be cancelled if it locks displayed interest on the Exchange Book, there would no longer be any circumstances where a resting Day ISO ALO would reprice and therefore this rule text would no longer be applicable.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update.

[4] *See* Rule 7.31E(e)(3)(D)(ii).

[5] *See* Rule 7.31E(e)(3)(C).

Subject to approval of this proposed rule change, the Exchange anticipates that the proposed changes will be implemented in January 2021.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by simplifying the treatment of ALO Orders that lock displayed orders. The Exchange believes that cancelling ALO Orders that lock displayed interest, rather than repricing them, would provide ETP Holders with greater determinism with respect to how ALO Orders would be processed on the Exchange and enhance ETP Holders' ability to manage order flow to suit their business needs. In addition, the Exchange believes that cancelling ALO Orders that would otherwise be marketable against displayed interest on the Exchange Book is consistent with the terms of the ALO Order, *i.e.,* that such orders would not take liquidity on the Exchange. The Exchange further believes that the proposed changes would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed behavior to cancel ALO Orders on the Exchange if the limit price would lock contra-side displayed orders would be consistent with functionality available on other exchanges for similar order types when they lock displayed interest.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would reduce the burden on competition because it would simplify the treatment of such orders when they lock displayed interest and promote consistency with functionality offered for similar order types on other exchanges.[9]

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 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–NYSEAMER–2020–77 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–NYSEAMER–2020–77. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–77 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24632 Filed 11–5–20; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See, e.g.,* Cboe BZX Exchange, Inc. (''BZX'') Rules 11.9(c)(6), 11.9(g)(1)(D), 11.9(g)(2)(D), and 11.13(a)(2)(C) (a Post Only Order that locks displayed interest on BZX may be cancelled at the User's option); Nasdaq Stock Exchange LLC (''Nasdaq'') Rule 4702(b)(4)(A) (Nasdaq Participants may opt to have Post-Only Orders cancel if they lock orders displayed on the Nasdaq Book); MEMX LLC (''MEMX'') Rules 11.6(a), 11.6(l), and 11.8(b)(10) (Users have the option to apply Post Only and Cancel Back instructions to orders that would lock displayed interest, and MEMX cancels ISO orders with Post Only and Day instructions if they lock displayed interest).

[9] *See id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90312; File No. SR–NYSECHX–2020–31]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 7.31

November 2, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

(''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 20, 2020, NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') 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 Rule 7.31 to cancel ALO Orders that lock displayed interest. The proposed change is available on the Exchange's website 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 Rule 7.31 (Orders and Modifiers) to provide that ALO Orders that lock displayed interest would be cancelled. Specifically, the Exchange proposes to amend Rules 7.31(e)(2), which describes how the Exchange processes ALO Orders, and 7.31(e)(3)(D), which describes how the Exchange processes Day ISO ALO Orders. Currently, under Rule 7.31(e)(2)(B)(iii), an arriving ALO Order to buy (sell) with a limit price that would lock a displayed order priced equal to or below (above) the PBO (PBB) on the Exchange Book will be assigned a working price and display price one minimum price variation (''MPV'') below (above) the displayed order. Day ISO ALO Orders that would lock displayed interest on the Exchange Book are processed in the same manner.[4] The Exchange proposes to amend these rules to provide that arriving ALO and Day ISO ALO Orders with a limit price that would lock displayed interest on the Exchange Book would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31(e)(2)(B)(iii) providing that an ALO Order that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the Exchange Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31(e)(2)(B)(iii), as revised, into Rule 7.31(e)(2)(B)(ii). Proposed amended Rule 7.31(e)(2)(B)(ii) would thus provide:

> If the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the Exchange Book priced equal to or below (above) the PBO (PBB), it will trade as the liquidity taker with such order(s). Any untraded quantity of the ALO Order will have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB), provided that if the limit price of the ALO Order to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the Exchange Book priced equal to or below (above) the PBO (PBB), it will be cancelled.

The Exchange also proposes the following conforming changes to Rules 7.31(e)(2)(B) and 7.31(e)(2)(C) to reflect the proposed change to how ALO Orders that lock displayed interest would be handled:

- The Exchange proposes to renumber current Rule 7.31(e)(2)(B)(iv) as 7.31(e)(2)(B)(iii) to accommodate the proposed combination of current Rules 7.31(e)(2)(B)(ii) and 7.31(e)(2)(B)(iii), as described above.
- The Exchange proposes to replace introductory references providing that an ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31(e)(2)(B), 7.31(e)(2)(B)(iv)(a) (which would become Rule 7.31(e)(2)(B)(iii)(a) after renumbering), 7.31(e)(2)(C), and 7.31(e)(2)(C)(i). The Exchange proposes to use the term ''processed'' because some ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to renumber current Rule 7.31(e)(2)(B)(v) as 7.31(e)(2)(B)(iv) to accommodate the proposed combination of current Rules 7.31(e)(2)(B)(ii) and 7.31(e)(2)(B)(iii), as described above.
- The Exchange further proposes to revise Rule 7.31(e)(2)(C)(i) to delete the reference to orders ranked Priority 2—Display Orders because, as noted above, an ALO Order would no longer be repriced based on contra-side Priority 2—Display Orders and instead would be cancelled. Accordingly, the only time a resting ALO Order would be repriced is if the contra-side PBBO re-prices.

The Exchange proposes to amend Rule 7.31(e)(3)(D) to align the rules governing Day ISO ALOs with the proposed changes to ALO Orders. Currently, pursuant to Rule 7.31(e)(3)(D)(ii), if the limit price of an arriving Day ISO ALO locks the display price of a displayed order on the Exchange Book, it will be assigned a working price and display price one MPV below (above) the price of the displayed order. As with ALO Orders, the Exchange proposes to amend this rule to specify that arriving Day ISO ALOs that lock displayed interest would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31(e)(3)(D)(ii) that provides that a Day ISO ALO that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the Exchange Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31(e)(3)(D)(ii), as revised, with Rule 7.31(e)(3)(D)(i). Proposed amended Rule 7.31(e)(3)(D)(i) would thus provide:

> If the limit price of the Day ISO ALO to buy (sell) crosses the working price of any displayed or non-displayed order on the Exchange Book, it will trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO will have a working price and display price equal to its limit price, provided that if the limit price of the Day ISO ALO to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the Exchange Book, it will be cancelled.

The Exchange also proposes the following conforming changes consistent with the proposed change to cancel Day ISO ALOs that lock displayed interest:

- The Exchange proposes to renumber Rule 7.31(e)(3)(D)(iii) as Rule 7.31(e)(3)(D)(ii) to accommodate the proposed combination of current Rules 7.31(e)(3)(D)(i) and 7.31(e)(3)(D)(ii), as described above.
- The Exchange proposes to replace introductory references providing that a Day ISO ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31(e)(3)(D) and 7.31(3)(D)(ii)(a) (as

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 7.31(e)(3)(D)(ii).

renumbered). The Exchange proposes this change to reflect that certain ALO Orders would be cancelled (and therefore not priced or traded).

• The Exchange proposes to delete Rule 7.31(e)(3)(D)(iv), which currently specifies how a Day ISO ALO will be processed after it is displayed. Because a Day ISO ALO would now either display at its limit price (because, by its terms, it can be displayed at a price that locks or crosses the contra-side PBBO) [5] or be cancelled if it locks displayed interest on the Exchange Book, there would no longer be any circumstances where a resting Day ISO ALO would reprice and therefore this rule text would no longer be applicable.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that the proposed changes will be implemented in January 2021.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by simplifying the treatment of ALO Orders that lock displayed orders. The Exchange believes that cancelling ALO Orders that lock displayed interest, rather than repricing them, would provide Participants with greater determinism with respect to how ALO Orders would be processed on the Exchange and enhance Participants' ability to manage order flow to suit their business needs. In addition, the Exchange believes that cancelling ALO Orders that would otherwise be marketable against displayed interest on the Exchange Book is consistent with the terms of the ALO Order, *i.e.,* that such orders would not take liquidity on the Exchange. The Exchange further believes that the proposed changes would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed behavior to cancel ALO Orders on the Exchange if the limit price would lock contra-side displayed orders would be consistent with functionality available on other exchanges for similar order types when they lock displayed interest.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would reduce the burden on competition because it would simplify the treatment of such orders when they lock displayed interest and promote consistency with functionality offered for similar order types on other exchanges.[9]

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 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–NYSECHX–2020–31 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–NYSECHX–2020–31. 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 only one method. The Commission will post all comments on the Commission's internet website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2020–31 and should be submitted on or before November 27, 2020.

[5] *See* Rule 7.31(e)(3)(C).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See, e.g.,* Cboe BZX Exchange, Inc. (''BZX'') Rules 11.9(c)(6), 11.9(g)(1)(D), 11.9(g)(2)(D), and 11.13(a)(2)(C) (a Post Only Order that locks displayed interest on BZX may be cancelled at the User's option); Nasdaq Stock Exchange LLC (''Nasdaq'') Rule 4702(b)(4)(A) (Nasdaq Participants may opt to have Post-Only Orders cancel if they lock orders displayed on the Nasdaq Book); MEMX LLC (''MEMX'') Rules 11.6(a), 11.6(l), and 11.8(b)(10) (Users have the option to apply Post Only and Cancel Back instructions to orders that would lock displayed interest, and MEMX cancels ISO orders with Post Only and Day instructions if they lock displayed interest).

[9] *See id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24634 Filed 11–5–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 69370, November 2, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, November 4, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, November 4, 2020 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: November 4, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–24811 Filed 11–4–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90311; File No. SR–NYSEArca–2020–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 7.31–E

November 2, 2020.

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 October 20, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') 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.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31–E to cancel ALO Orders that lock displayed interest. The proposed change is available on the Exchange's website 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 Rule 7.31–E (Orders and Modifiers) to provide that ALO Orders that lock displayed interest would be cancelled. Specifically, the Exchange proposes to amend Rules 7.31–E(e)(2), which describes how the Exchange processes ALO Orders, and 7.31–E(e)(3)(D), which describes how the Exchange processes Day ISO ALO Orders. Currently, under Rule 7.31–E(e)(2)(B)(iii), an arriving ALO Order to buy (sell) with a limit price that would lock a displayed order priced equal to or below (above) the PBO (PBB) on the NYSE Arca Book will be assigned a working price and display price one minimum price variation (''MPV'') below (above) the displayed order. Day ISO ALO Orders that would lock displayed interest on the NYSE Arca Book are processed in the same manner.[4] The Exchange proposes to amend these rules to provide that arriving ALO and Day ISO ALO Orders with a limit price that would lock displayed interest on the NYSE Arca Book would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31–E(e)(2)(B)(iii) providing that an ALO Order that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the NYSE Arca Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31–E(e)(2)(B)(iii), as revised, into Rule 7.31–E(e)(2)(B)(ii). Proposed amended Rule 7.31–E(e)(2)(B)(ii) would thus provide:

> If the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the NYSE Arca Book priced equal to or below (above) the PBO (PBB), it will trade as the liquidity taker with such order(s). Any untraded quantity of the ALO Order will have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB), provided that if the limit price of the ALO Order to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the NYSE Arca Book priced equal to or below (above) the PBO (PBB), it will be cancelled.

The Exchange also proposes the following conforming changes to Rules 7.31–E(e)(2)(B) and 7.31–E(e)(2)(C) to reflect the proposed change to how ALO Orders that lock displayed interest would be handled:

- The Exchange proposes to renumber current Rule 7.31–E(e)(2)(B)(iv) as 7.31–E(e)(2)(B)(iii) to accommodate the proposed combination of current Rules 7.31–E(e)(2)(B)(ii) and 7.31–E(e)(2)(B)(iii), as described above.
- The Exchange proposes to replace introductory references providing that an ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31–E(e)(2)(B), 7.31–E(e)(2)(B)(iv)(a) (which would become Rule 7.31–E(e)(2)(B)(iii)(a) after renumbering), 7.31–E(e)(2)(C), and 7.31–E(e)(2)(C)(i). The Exchange proposes to use the term ''processed'' because some ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to renumber current Rule 7.31–E(e)(2)(B)(v) as 7.31–E(e)(2)(B)(iv) to accommodate the proposed combination of current Rules 7.31–E(e)(2)(B)(ii) and 7.31–E(e)(2)(B)(iii), as described above.
- The Exchange further proposes to revise Rule 7.31–E(e)(2)(C)(i) to delete the reference to orders ranked Priority 2—Display Orders because, as noted above, an ALO Order would no longer be repriced based on contra-side Priority 2—Display Orders and instead would be cancelled. Accordingly, the only time a resting ALO Order would be repriced is if the contra-side PBBO re-prices.

The Exchange proposes to amend Rule 7.31–E(e)(3)(D) to align the rules governing Day ISO ALOs with the proposed changes to ALO Orders.

[4] *See* Rule 7.31–E(e)(3)(D)(ii).

Currently, pursuant to Rule 7.31–E(e)(3)(D)(ii), if the limit price of an arriving Day ISO ALO locks the display price of a displayed order on the NYSE Arca Book, it will be assigned a working price and display price one MPV below (above) the price of the displayed order. As with ALO Orders, the Exchange proposes to amend this rule to specify that arriving Day ISO ALOs that lock displayed interest would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31–E(e)(3)(D)(ii) that provides that a Day ISO ALO that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the NYSE Arca Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31–E(e)(3)(D)(ii), as revised, with Rule 7.31–E(e)(3)(D)(i). Proposed amended Rule 7.31–E(e)(3)(D)(i) would thus provide:

If the limit price of the Day ISO ALO to buy (sell) crosses the working price of any displayed or non-displayed order on the NYSE Arca Book, it will trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO will have a working price and display price equal to its limit price, provided that if the limit price of the Day ISO ALO to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the NYSE Arca Book, it will be cancelled.

The Exchange also proposes the following conforming changes consistent with the proposed change to cancel Day ISO ALOs that lock displayed interest:

- The Exchange proposes to renumber Rule 7.31–E(e)(3)(D)(iii) as Rule 7.31–E(e)(3)(D)(ii) to accommodate the proposed combination of current Rules 7.31–E(e)(3)(D)(i) and 7.31–E(e)(3)(D)(ii), as described above.
- The Exchange proposes to replace introductory references providing that a Day ISO ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31–E(e)(3)(D) and 7.31–E(3)(D)(ii)(a) (as renumbered). The Exchange proposes this change to reflect that certain ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to delete Rule 7.31–E(e)(3)(D)(iv), which currently specifies how a Day ISO ALO will be processed after it is displayed. Because a Day ISO ALO would now either display at its limit price (because, by its terms, it can be displayed at a price that locks or crosses the contra-side PBBO)[5] or be cancelled if it locks displayed interest on the NYSE Arca Book, there would no longer be any circumstances where a resting Day ISO ALO would reprice and therefore this rule text would no longer be applicable.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that the proposed changes will be implemented in January 2021.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by simplifying the treatment of ALO Orders that lock displayed orders. The Exchange believes that cancelling ALO Orders that lock displayed interest, rather than repricing them, would provide ETP Holders with greater determinism with respect to how ALO Orders would be processed on the Exchange and enhance ETP Holders' ability to manage order flow to suit their business needs. In addition, the Exchange believes that cancelling ALO Orders that would otherwise be marketable against displayed interest on the NYSE Arca Book is consistent with the terms of the ALO Order, *i.e.,* that such orders would not take liquidity on the Exchange. The Exchange further believes that the proposed changes would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed behavior to cancel ALO Orders on the Exchange if the limit price would lock contra-side displayed orders would be consistent with functionality available on other exchanges for similar order types when they lock displayed interest.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would reduce the burden on competition because it would simplify the treatment of such orders when they lock displayed interest and promote consistency with functionality offered for similar order types on other exchanges.[9]

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 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:

[5] *See* Rule 7.31–E(e)(3)(C).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See, e.g.,* Cboe BZX Exchange, Inc. (''BZX'') Rules 11.9(c)(6), 11.9(g)(1)(D), 11.9(g)(2)(D), and 11.13(a)(2)(C) (a Post Only Order that locks displayed interest on BZX may be cancelled at the User's option); Nasdaq Stock Exchange LLC (''Nasdaq'') Rule 4702(b)(4)(A) (Nasdaq Participants may opt to have Post-Only Orders cancel if they lock orders displayed on the Nasdaq Book); MEMX LLC (''MEMX'') Rules 11.6(a), 11.6(l), and 11.8(b)(10) (Users have the option to apply Post Only and Cancel Back instructions to orders that would lock displayed interest, and MEMX cancels ISO orders with Post Only and Day instructions if they lock displayed interest).

[9] *See id.*

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–92 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2020–92. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–92 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24633 Filed 11–5–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90302; File No. SR–FINRA–2020–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Amendments to FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) That Would Require Members To File Retail Communications Concerning Private Placement Offerings That Are Subject to Those Rules' Filing Requirements

November 2, 2020.

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 October 28, 2020, the 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. 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

FINRA is proposing to amend FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) that would require members to file retail communications concerning private placement offerings that are subject to those rules' filing requirements.

The text of the proposed rule change is available on FINRA's website 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rules 5122 and 5123

Rule 5122 applies to private placements of unregistered securities issued by a member or a control entity [3] (''member private offerings''). The rule requires the member or control entity to provide prospective investors with a private placement memorandum (''PPM''), term sheet or other offering document that discloses the intended use of the offering proceeds, the offering expenses and the amount of selling compensation that will be paid to the member and its associated persons.

The rule also requires a member to file the PPM, term sheet or other offering document with the FINRA Corporate Financing Department (''Corp Fin'') at or prior to the first time the document is provided to any prospective investor.[4] Many member private offerings are exempt from the rule's requirements, including among others, offerings sold only to institutional accounts, as defined in FINRA Rule 4512(c),[5] qualified purchasers, as defined in the Investment Company Act of 1940,[6] and qualified institutional buyers,[7] as defined in Rule 144A under the Securities Act of 1933 (''Securities Act'').[8]

[3] A ''control entity'' means any entity that controls or is under common control with a member, or that is controlled by a member or its associated persons. *See* FINRA Rule 5122(a)(2). Control means beneficial interest, as defined in FINRA Rule 5130(i)(1), of more than 50 percent of the outstanding voting shares of a corporation, or the right to more than 50 percent of the distributable profits or losses of a partnership or other non-corporate legal entity. Control is determined immediately after the closing of an offering, and in the case of an offering with multiple intended closings, immediately following each closing. *See* FINRA Rule 5122(a)(3).

[4] Rule 5122 also requires the filing of any amendments to such documents within 10 days of being provided to any investor or prospective investor. *See* FINRA Rule 5122(b)(2).

[5] Rule 4512(c) defines ''institutional account'' as the account of:

(1) A bank, savings and loan association, insurance company or registered investment company;

(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or

(3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[6] *See* 15 U.S.C. 80a–2(a)(51).

[7] *See* 17 CFR 230.144A(a)(1).

[8] Rule 5122 exempts the following member private offerings:

(1) Offerings sold solely to:

Rule 5123 requires members to file with FINRA any PPM, term sheet or other offering document, including any material amended versions thereof, used in connection with a private placement of securities within 15 calendar days of the date of first sale. Rule 5123 exempts private placements that are filed under other FINRA Corporate Financing Rules, as well as most of the same categories of private placements that are exempt from filing under Rule 5122.[9] As a result of these exemptions, both rules apply predominately to private placements sold to retail investors.

FINRA received 2,509 unique Rule 5122 and 5123 filings in 2019. FINRA uses analytics to conduct a risk-based review for each filing. This analysis of an offering's risk to investors and its ability to identify potential rule violations and other potential problems begins with the information and documents submitted. Members that sell private placements may use a PPM or term sheet alone, or may use a variety of other offering documents in addition to, or instead of, a PPM or term sheet.

Because members use a wide variety of materials, Rules 5122 and 5123 do not enumerate the types of information that might be considered ''offering documents.'' FINRA has stated previously that an example of ''other offering document'' is ''[a]ny other type of document that sets forth the terms of the offering.'' [10] The terms of an offering include facts such as the amount of proceeds that the issuer intends to raise, the type of security, descriptions or illustrations of the intended use of proceeds, and explanations of tax benefits or other information that would be relevant to an investor when deciding whether to make an investment.

While Rules 5122 and 5123 do not require retail communications governed by Rule 2210 (Communications with the Public) to be filed, many members file these communications with their required documents.[11] Examples of these retail communications can include web pages that promote the offering, slide presentations, pitch decks, one-page ''teasers,'' fact sheets, sales brochures, executive summaries, and investor packets. Corp Fin often forwards these retail communications to FINRA's Advertising Regulation Department (''AdReg'') for review.

Corp Fin staff triages the filings it receives under Rules 5122 and 5123 using a variety of criteria and selects a subset for further analysis and review based on the relative risk of the offering. In some cases, FINRA opens investigations of particular offerings, which may lead to follow-up examinations by Member Supervision staff, and potentially, referrals to the Department of Enforcement.

Advertising Regulation Review of Private Placement Retail Communications

In addition to reviewing private placement retail communications that are filed under Rules 5122 and 5123 and referred by Corp Fin, AdReg reviews private placement retail communications that it receives through one of four other channels: (i) New member and voluntary filings with AdReg; (ii) referrals from the Member Supervision examination program and other surveillance groups; (iii) AdReg spot checks; and (iv) assistance in Enforcement cases.

AdReg has observed that retail communications that have been directly filed by new members [12] or voluntarily with AdReg for private placements raise more compliance issues than those for other products. Between January 1, 2017, and March 31, 2020, AdReg reviewed 1,726 new member and voluntary filings of private placement retail communications. Of these filings, 41% required revisions to comply with applicable standards, and 4% were so noncompliant with the rules that FINRA issued ''do not use'' (DNU) review letters. In comparison, during this same period, only 8% of overall AdReg filings reviewed required revisions, and only 0.1% received a DNU letter.[13]

In 2018, AdReg conducted a spot check of the private placement retail communications provided to Corp Fin in connection with filings under Rules 5122 and 5123 during the second and third quarters of 2018. The review revealed significant and pervasive violations of Rule 2210; overall, 806 of the 1,062 retail communications reviewed (76%) did not comply with Rule 2210.

The most common violation was the inclusion of prohibited projections of performance or unreasonable forecasts, *e.g.,* ''Return 4–6x invested capital net of fees'' and ''Management projects a $100 million revenue stream can be built in 5 years.'' Numerous others contained false or misleading statements, *e.g.,* ''Safety of Principle''

(A) Institutional accounts, as defined in Rule 4512(c);

(B) qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;

(C) qualified institutional buyers, as defined in Securities Act Rule 144A;

(D) investment companies, as defined in Section 3 of the Investment Company Act;

(E) an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A; and

(F) banks, as defined in Section 3(a)(2) of the Securities Act;

(2) offerings of exempted securities, as defined in Section 3(a)(12) of the Exchange Act;

(3) offerings made pursuant to Securities Act Rule 144A or Regulation S;

(4) offerings in which a member acts primarily in a wholesaling capacity (*i.e.,* it intends, as evidenced by a selling agreement, to sell through its affiliate broker-dealers, less than 20% of the securities in the offering);

(5) offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act;

(6) offerings of subordinated loans under Exchange Act Rule 15c3–1, Appendix D (see NASD *Notice to Members* 02–32 (June 2002));

(7) offerings of ''variable contracts'', as defined in FINRA Rule 2320(b);

(8) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in FINRA Rule 5110(h)(2)(D);

(9) offerings of unregistered investment grade rated debt and preferred securities;

(10) offerings to employees and affiliates of the issuer or its control entities;

(11) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;

(12) offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(5) of the Commodity Exchange Act;

(13) offerings of equity and credit derivatives, including OTC options; provided that the derivative is not based principally on the member or any of its control entities; and

(14) offerings filed with Corp Fin under FINRA Rules 2310, 5110 or Rule 5121.

[9] *See* FINRA Rule 5123(b); *see also* note 8, *supra.* In addition to the exemptions contained in Rule 5122, Rule 5123(b) exempts offerings sold by the member or person associated with the member to (a) employees and affiliates, as defined in Rule 5121, of the issuer; (b) knowledgeable employees as defined in Investment Company Act Rule 3c–5; (c) eligible contract participants, as defined in Section 3(a)(65) of the Exchange Act; and (d) accredited investors described in Securities Act Rule 501(a)(1), (2), (3), and (7); and exempts business combination transactions as defined in Securities Act Rule 165(f), and standardized options as defined in Securities Act Rule 238.

[10] *See* ''Frequently Asked Questions (FAQ) About Private Placements,'' Question #10, available on *www.finra.org.*

[11] *See Regulatory Notice* 09–27 (May 2009), which announced SEC approval of Rule 5122, stated that the rule imposes no additional requirements regarding the filing of advertisements or sales materials. However, as noted, many firms do in fact file retail communications concerning private placements under Rules 5122 and 5123.

[12] Rule 2210(c)(1)(A) requires new members to file all widely-distributed retail communications (such as publicly available websites) that promote products or services of the firm during the first year after the member's broker-dealer membership with FINRA is declared effective.

[13] During the same period, AdReg analyzed 1,328 private placement retail communications that were referred from Corp Fin, Member Supervision, or other FINRA departments. Seventy-one percent (71%) of these communications required revisions to comply with applicable standards and 13% resulted in a DNU letter. In contrast, 66% of all communications referred by other FINRA staff were determined to require revisions and 4% resulted in a DNU letter.

[*sic*] and ''UTILIZES AI & MACHINE LEARNING TECHNOLOGY SIMILAR TO THAT USED BY ONLINE GIANTS SUCH AS FACEBOOK, NETFLIX, AMAZON AND STITCH FIX.'' Another common issue was the failure to balance promotional content with the key risks associated with the investment, such as a real estate offering touting the benefit of purchasing properties leased by ''investment grade'' tenants without discussing that such holdings do not assure a profit or protect against loss. Others failed to disclose general risks, such as the speculative nature of the securities and the lack of liquidity of the investment.

Private placement retail communications also feature prominently in FINRA's Enforcement program. Since January 1, 2014, FINRA has initiated 49 disciplinary actions related to non-compliant retail communications concerning private placements. This number represents 21% of all actions involving private placements.

Filing Proposal

Given the comparatively high rate of non-compliance of private placement retail communications, and the increased risk of investor harm associated with those communications, FINRA proposes to amend Rules 5122 and 5123 to require such retail communications to be filed, in addition to the currently required PPMs, term sheets, and other offering documents.

Rules 5122 and 5123 focus on the private placements that raise the greatest concerns—those sold to retail investors, whether or not accredited. FINRA proposes to limit the new filing requirement to the same offerings; it would not apply to any offerings that are currently exempt from filing.[14] A member would be required to file with FINRA such retail communications no later than the date on which a filing is required under Rules 5122 and 5123.[15] The proposal would not require members to file private placement retail communications for offerings that are not subject to the filing requirements in Rules 5122 or 5123, such as sales exclusively to institutional accounts. Moreover, because Rules 5122 and 5123 do not impose any filing fees, members would not be subject to higher fees because of this additional filing requirement.

FINRA anticipates that members would be able to file most retail communications at the same time and in the same manner that they file their PPMs, term sheets, and other offering documents. The rules' requirements that material amendments to offering documents must be filed also would apply to retail communications.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days see publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] 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 that requiring the filing of retail communications under Rules 5122 and 5123 will improve members' compliance and understanding of the application of FINRA's communications with the public rules and reduce the likelihood that retail investors would receive false or misleading sales material for private placements.[17]

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.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

Regulatory Need

As discussed above, FINRA has seen significant problems with the retail communications that have been voluntarily filed under Rules 5122 and 5123. In addition, as noted above, the 2018 spot check revealed that 76% of retail communications filed under Rules 5122 and 5123 during the spot check review period involved significant violations of Rule 2210.[18] It is possible that significant violations may be even more prevalent among retail communications that have not been voluntarily filed or reviewed. Moreover, high-risk retail communications concerning private placements feature prominently in FINRA's Enforcement program.[19] These communications often present false or misleading information regarding the underlying offering, which could result in significant losses to investors and could undermine public trust in the private placement markets. The proposed amendments, therefore, are intended to promote investor protection and market integrity by expanding FINRA's oversight of high-risk retail communications concerning private placements.

Economic Baseline

The economic baseline includes the current regulation of retail communications under Rule 2210 and current regulation of specified private placements under Rules 5122 and 5123. All retail communications are required to comply with the general, fair and balanced standards detailed in Rule 2210; however, Rule 2210 generally does not require members to file with FINRA the materials they use to communicate with retail investors concerning private placements. Under Rules 5122 and 5123, members are required to file with FINRA any PPM,

[14] *See supra* notes 8 and 9.

[15] As discussed above, Rule 5122 requires a member subject to the rule to file the PPM, term sheet or other offering document with FINRA at or no later than the first time the document is provided to a prospective investor. Any amendments or exhibits to such offering documents also must be filed with FINRA within 10 days of being provided to any investor or prospective investor. *See* Rule 5122(b)(2). Rule 5123 requires a member subject to the rule to file with FINRA the PPM, term sheet or other offering document, including any materially amended versions thereof, used in connection with the sale of securities covered by the rule within 15 calendar days of the date of first sale, or notify FINRA that no such offering documents were used. *See* Rule 5123(a).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] FINRA recently issued a *Regulatory Notice* providing guidance under Rule 2210 to firms that distribute retail communications concerning private placements. *See Regulatory Notice* 20–21 (July 1, 2020).

[18] Among the retail communications reviewed, 45% contained prohibited projections or unreasonable forecasts; 44.6% failed to provide a sound basis to evaluate the facts with respect to the offering in that the benefits articulated in the marketing materials were not balanced by key specific risks associated with an investment or the issuer; 39.9% failed to adequately disclose the general risks associated with private placement investments; 21.8% contained readily apparent false or misleading statements or claims; and 7.4% contained misleading references to FINRA, other regulators, or the benefits of regulation generally.

[19] As mentioned earlier, retail communications concerning private placements resulted in 49 FINRA disciplinary actions since January 2014, representing 21% of FINRA's disciplinary actions involving private placements during the period.

term sheet, or other offering document used in connection with specified private placements, although these rules do not currently require retail communications governed by Rule 2210 to be filed. Therefore, firms currently have no regulatory obligation to submit these communications for review by FINRA.

The economic baseline also includes members' existing practices under Rules 2210, 5122 and 5123. Currently, some members submit retail communications as part of their Rules 5122 and 5123 private placement filings with Corp Fin; some members file these communications through AdReg's filings review program under Rule 2210 either voluntarily or as new members; and some members submit these communications to both or neither of these departments.

As discussed above, upon receiving filings under Rules 5122 and 5123, Corp Fin triages the filings to select a subset for further review based on the relative risk of the offering. Corp Fin notifies AdReg when it receives retail communications in connection with the higher-risk offerings it assigns for reviews. AdReg then conducts its own triage program based on the relative risk of these retail communications.

Once high-risk retail communications are identified, AdReg requests Corp Fin to refer them to AdReg and opens a complex review matter to assess whether the communications meet applicable communication standards. If apparent rule violations are identified, AdReg will, as needed, provide an analysis for an existing Corp Fin investigation or contact the member firm to explain the concerns, ask the firm to remediate the communications, and determine the extent of the communications' use. AdReg may resolve the matter with informal disciplinary action or, if severe violations are identified, may refer the matter to FINRA's Department of Enforcement.[20]

The existing regulatory procedure concerning private placement retail communications that are filed with AdReg under Rule 2210 voluntarily or by new members adopts a different approach from the above. AdReg conducts a review in response to each retail communication filing and provides a review letter indicating whether the communication appears to be consistent with the applicable standards, and if not, the bases for this determination.[21]

FINRA has collected information for assessing the specified private placement market under Rules 5122 and 5123. On average, FINRA receives approximately 2,400 new offering filings annually, with approximately 10–15% of the filings representing a duplicate filing by separate firms with respect to the same offering. As a reference, the Regulation D data published by the SEC's Division of Economic and Risk Analysis in August 2018 provided that approximately 20,000 new offering filings on average were submitted via EDGAR each year from 2015 to 2017. Of this total, roughly 4,000 (or 20%) of the new offerings that SEC identified involved ''intermediaries'' such as brokers or finders, some of which may not be FINRA members. Accordingly, FINRA's private placement review program under Rules 5122 and 5123 accounts for approximately half of the new offerings filed with the SEC that involve intermediaries and approximately 10% of all new offering filings annually.

To assess how likely the specified private placements use retail communications, FINRA has analyzed information pertaining to 1,327 offerings filed with Corp Fin under Rules 5122 and 5123 during the second and third quarters of 2018.[22] Approximately 781 (or 59%) of the offerings did not include retail communications as part of the filing. There were 1,062 retail communications submitted by 132 members for the remaining 546 offerings.[23] The average (maximum) number of retail communications submitted per member among these offerings was eight (260), respectively. The average (maximum) number of retail communications per offering was approximately two (23) retail communications.

To further assess the existing regulatory procedure under Rules 5122 and 5123, FINRA collected review information regarding the 708 private placement filings with Corp Fin over the period February 1, 2020 to April 17, 2020.[24] Corp Fin identified 274 (or 38.7%) of filings that contained retail communications during this period. Among these 274 filings, 37 (or 13.5%) were deemed by Corp Fin to be high risk. AdReg triaged the retail communications in these 37 filings and determined that 14 represented likely significant violations of Rule 2210 and opened 14 complex review matters. These 14 matters represented 5% of all filings containing retail communications under Rules 5122 and 5123 during this period.[25]

Economic Impacts

The proposed rule change would directly impact members that distribute retail communications concerning specified private placements by requiring them to submit these communications to Corp Fin at the time they file the PPM, term sheet, or other offering document. Such an impact would be more pronounced for members that have not been voluntarily filing private placement retail communications with Corp Fin or AdReg. FINRA anticipates a considerable increase in the number of retail communications filed under Rules 5122 and 5123 as a result of the proposal. As was found during the 2018 spot check, approximately 41% of the offerings included retail communications voluntarily submitted concerning these offerings. If each offering is associated with an average of two retail communications, then the number of retail communications could be increased by 3,124 retail communications annually, totaling 5,308 retail communications per year.

The estimate of two retail communications per offering may overstate or understate the true amount. Note that the average of two retail communications per offering found during the spot check may understate the true average if members did not voluntarily file all retail communications associated with these offerings. Alternatively, the average retail communications per offering could be lower than two if there were many offerings that did not submit any retail communications because they did not distribute any such communications.

[20] A similar procedure is followed when AdReg receives referrals from the Member Supervision examination program or other surveillance groups.

[21] Unlike Corp Fin's private placement review program under Rules 5122 and 5123, filings through AdReg's filings review program under Rule 2210 are subject to filing fees.

[22] The information was collected by AdReg in the 2018 spot check. There were 2,269 filings inclusive of amendments by 309 member firms related to the 1,327 offerings. Among them, 1,208 had projected proceeds totaling $37.6B while projected proceeds were unknown for other offerings.

[23] Among the 546 offerings that included retail communications, 524 of them had projected proceeds totaling $10.8B with projected proceeds unknown for the remaining offerings.

[24] This sample is different from the previous sample of the 2018 spot check: It is based on the most recent period for which FINRA has reliable data on its triage and review process.

[25] FINRA recognizes that the percentage of retail communications selected for complex review at any point in time (including after the proposed rule change) may deviate from 5%, as the time period used for deriving the estimate might be too short to draw reliable inferences.

In developing the proposal, FINRA staff does not expect it to have a significant impact on AdReg's existing filings review program. Members will continue to have the option (but not the obligation) to file these communications through AdReg's filings review program following the proposal.[26]

The primary benefit of the proposed rule change would arise from FINRA's enhanced insight into and oversight of retail communications concerning high-risk private placements.[27] Specifically, the proposed amendments would enable FINRA to review all retail communications concerning the specified private placements through its triage program and if warranted, open cases for complex review, thereby extending FINRA's ability to potentially uncover significant violations of Rule 2210. In addition, retail communications that have not been filed voluntarily with Corp Fin or AdReg may have contained violations of greater severity or presented novel regulatory issues unknown to FINRA. By allowing access to retail communications concerning private placements from all filing members, the proposal would help FINRA staff understand the scope and severity of existing issues in a more accurate and efficient manner, which would further enhance FINRA's surveillance and enforcement program.[28]

The proposal likely would increase members' incentives to distribute retail communications concerning private placements that are fair and balanced and deter them from presenting false or misleading information that may cause investor harm. The proposed change may also likely increase issuers' incentives to disclose the risks of private placements in a fair and balanced manner in connection with retail communications, thereby enhancing the capabilities of investors and other related parties to assess these risks as part of their investment decisions.

FINRA believes that greater regulatory oversight, together with changes in members' and issuers' incentives, would help promote greater investor protection and public trust in the private placement markets. The benefit from enhanced incentives and regulatory oversight would more likely accrue with respect to members that frequently file private placements that include retail communications. FINRA recognizes that the proposal's investor protection benefits may be limited given that members are required to file private placement offerings within 15 calendar days of the date of first sale under Rule 5123. (Rule 5122 requires member private offerings to be filed at or prior to the date of first sale.) The proposal's investor protection benefits also may vary depending on how long the Corp Fin triage process takes and how quickly AdReg triages and reviews the communications and the available remedying tools.

FINRA believes that the proposal would impose a minimal increase in direct costs to members that have not already been voluntarily filing private placement retail communications with Corp Fin. Specifically, the proposal would require these members to file any additional retail communications that promote the offering at the time they file the PPM or term sheet. Members also would be required to file retail communications subsequent to the initial filing if they distribute new retail communications promoting the offering or make material changes to any previously filed retail communications. FINRA believes such increases in direct costs would be minimal as Rules 5122 and 5123 do not impose filing fees, and most filing members are already familiar with the Corp Fin filing system.[29]

FINRA recognizes that members that distribute high-risk retail communications concerning private placements may be subject to additional regulatory review by FINRA as FINRA anticipates an expansion in its complex review program following the proposal.[30] FINRA believes the overall increase in regulatory costs and uncertainty to members associated with the additional review would likely be low because only a very small percentage of retail communications with the highest risk profile would be subject to the review. FINRA does not expect increases in direct and indirect costs will deter firm entry or private placement offerings or result in any significant burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

Alternative Considered

FINRA considered proposing an amendment to Rule 2210 that would require members to submit private placement retail communications through AdReg's filings review program. AdReg would review all private placement retail communications filed under the alternative proposal. The alternative, therefore, would enhance FINRA's oversight of both high-risk and low-risk private placement retail communications, leading to significant improvement in members' compliance and understanding of applicable rules and greater benefit from market integrity and investor protection.

The alternative, however, would impose higher costs on members for several reasons. First, members would be subject to filing fees under Rule 2210, which would not apply to filings made under Rules 5122 or 5123. Second, members would have to file retail communications and offering documents separately with AdReg and Corp Fin using different filing systems. Third, all filing members would face additional regulatory costs and uncertainty while the review is pending.[31] FINRA is also concerned that the alternative approach may divert limited regulatory resources from high-risk matters. Overall, FINRA believes that the current proposal would build on the risk-based regulatory approach for private placements thereby promoting regulatory consistency and impose lower costs to members than the alternative FINRA has considered.

[26] FINRA believes that some members will continue to have incentives to file voluntarily retail communications through AdReg's filings review program following the proposed amendments. For instance, members and related parties may still benefit from a review letter indicating the material is consistent with applicable standards.

[27] FINRA recognizes that the proposal would not likely impact FINRA's oversight of low-risk offerings or low-risk retail communications as defined by the current triage process.

[28] Although FINRA does not anticipate immediate changes to its existing triage programs, the additional knowledge that FINRA would acquire following the proposal could potentially help FINRA refine its triage programs in the long run.

[29] FINRA believes that increases in direct costs may be even lower for members that have been voluntarily filing private placement retail communications with AdReg because they may already be familiar with the applicable standards under Rule 2210. These members will also have the option to file private placement retail communications only with Corp Fin following the rule proposal. This option could lead to a reduction in the filing fee for these members. However, should firms choose to file only with Corp Fin, there will not be a guaranteed review or review letter from FINRA.

[30] FINRA recognizes that misidentifications of high-risk matters (*i.e.,* subjecting members that are less likely to pose a high risk to investors to the additional complex review) may induce unintended indirect costs on these members.

[31] The filing requirements under Rules 5122 and 5123 are notice filings only and members do not wait for approval from FINRA in connection with a private placement. However, if FINRA asks questions of the member in response to its filing, the member may become concerned that there may be a potential compliance issue with the private placement or related documents. Similarly, the filing requirement under Rule 2210 may not have required the member to be issued a review letter from FINRA before using a retail communication. However, some members may wait until the letter is received before using such communication.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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–FINRA–2020–038 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–2020–038. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2020–038 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24629 Filed 11–5–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90307; File No. SR–NYSE–2020–88]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Price List

November 2, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 20, 2020, New York Stock Exchange LLC (''NYSE'' 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 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 its Price List to reduce the gross FOCUS fee charged to member organizations, effective January 1, 2021. The proposed rule change is available on the Exchange's website 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 its Price List to reduce the gross FOCUS fee from $0.12 per $1,000 Gross FOCUS Revenue to $0.11 per $1,000 Gross FOCUS Revenue, effective January 1, 2021.[4]

Background

Rule 129 provides that the Exchange's Board may, from time to time, impose such charge or charges on members and member organizations as it deems appropriate to reimburse the Exchange, in whole or in part, for regulatory oversight services provided to the membership by the Exchange. Generally, the Exchange may only use regulatory fees ''to fund the legal, regulatory and surveillance operations'' of the Exchange.[5]

Consistent with the foregoing, the Exchange currently charges each member organization a monthly regulatory fee of $0.12 per $1,000 of gross revenue reported on its FOCUS Report (''Gross FOCUS Fee'').[6] Member

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange proposes to immediately reflect the proposed change in its Price List but not implement the proposed rate change until January 1, 2021.

[5] *See* Thirteenth Amended and Restated Operating Agreement of New York Stock Exchange LLC, Art. IV, Sec. 4.05, available at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/Thirteenth_Amended_and_Restated_Operating_Agreement_of_New_York_Stock_Exchange_LLC.pdf.* The Exchange considers surveillance operations of its member organizations part of regulatory operations.

[6] FOCUS is an acronym for Financial and Operational Combined Uniform Single Report.

Continued

organizations are subject to certain minimum annual Gross FOCUS Fees, which are $500 for carrying firms and designated market makers (''DMMs''), $250 for introducing firms, and $45 for member organizations who do not conduct a public business. The revenue collected pursuant to the Gross FOCUS Fee funds the performance of the Exchange's regulatory activities with respect to member organizations, including surveillance operations expenses. More specifically, the revenue generated by the Gross FOCUS Fee funds a material portion, but not all, of the Exchange's expenses related to third-party service providers and technology and other expenses related to market surveillance.

The Exchange has sought to perform its regulatory functions in an effective and efficient manner. For example, beginning January 2021, the Exchange anticipates that it will have fully transitioned from its existing third-party surveillance system to a lower-cost, cloud-based surveillance solution. Consistent with these anticipated cost savings, the Exchange will be decreasing the Gross FOCUS Fee by approximately 8%.

Proposed Rule Change

Consistent with the anticipated reduced regulatory costs, the Exchange proposes to reduce the rate of the Gross FOCUS Fee by approximately 8% from $0.12 per $1,000 of gross revenue to $0.11 per $1,000 of gross revenue, effective January 1, 2021. The Exchange proposes this reduction to reflect cost savings associated with its move to more cost-effective surveillance and regulatory solutions. The Exchange notes that the Gross FOCUS Fee has remained unchanged since April 2013.[7]

The Exchange will continue to monitor the amount of revenue collected from the Gross FOCUS Fee to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange expects to monitor regulatory costs and revenues on an annual basis, at a minimum. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange would adjust the Gross FOCUS Fee downward by submitting a fee change filing to the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[8] of the Act, in general, and Section 6(b)(4) and (5)[9] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal is Reasonable

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the Gross FOCUS Fee does not exceed a material portion of the Exchange's regulatory costs. The Exchange has targeted the Gross FOCUS Fee to generate revenues that would be less than or equal to the Exchange's regulatory costs, which is consistent with both Rule 129 and the Commission's view that regulatory fees be used for regulatory purposes. As noted above, the principle that the Exchange may only use regulatory fees ''to fund the legal, regulatory, and surveillance operations'' of the Exchange is reflected in the Exchange's operating agreement.[10] In this regard, the Gross FOCUS Fee has been calculated to recover a material portion, but not all, of the Exchange's expenses related to third-party service providers and technology and other expenses related to market surveillance. The Exchange accordingly believes reducing the Gross FOCUS Fee is fair and reasonable.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed Gross FOCUS Fee reduction would benefit all member organizations because all member organizations would pay the same rate per $1,000 of gross revenue. For the same reasons, the proposed fee reduction neither targets nor will it have a disparate impact on any particular category of market participant. All similarly-situated member organizations would be eligible to qualify for the lower Gross FOCUS Fee. Thus, the Exchange believes the decreased Gross FOCUS Fee would be equitably allocated in that it is charged to all member organizations equally.

The Proposed Fee is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed reduction of the Gross FOCUS Fee would benefit all similarly-situated market participants on an equal and non-discriminatory basis. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed fee change is designed to pass along regulatory cost savings, which would apply to and benefit all member organizations equally.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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.

Intramarket Competition. The Exchange believes the proposed fee change would not impose an undue burden on competition as it is charged to all member organizations to support the Exchange's regulatory program, including its surveillance program. The Exchange believes that the proposed Gross FOCUS Fee would not place certain market participants at an unfair disadvantage because all member organizations would pay the same rate per $1,000 of gross revenue. For the same reasons, the proposed fee reduction neither targets nor will it have a disparate impact on any particular category of market participant. All similarly-situated member organizations would be eligible to qualify for the lower Gross FOCUS Fee.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory surveillance while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

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.

FOCUS Reports are filed periodically with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') as SEC Form X–17A–5 pursuant to Rule 17a–5 under the Act.

[7] *See* Securities Exchange Act Release No. 69101 (March 11, 2013), 78 FR 16551 (March 15, 2013) (SR–NYSE–2013–19).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* note 5, *supra.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–88 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–2020–88. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–88 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24630 Filed 11–5–20; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90309; File No. SR–NYSE–2020–87]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 7.31

November 2, 2020.

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 October 20, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31 to (1) cancel ALO Orders that lock displayed interest and (2) add two new types of Self Trade Prevention modifiers. The proposed rule change is available on the Exchange's website 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 Rule 7.31 (Orders and Modifiers) to: (1) Provide that ALO Orders that lock displayed interest would be cancelled and (2) provide for two additional types of Self Trade Prevention Modifiers.

ALO Orders

The Exchange proposes to amend Rules 7.31(e)(2), which describes how the Exchange processes ALO Orders, and 7.31(e)(3)(D), which describes how the Exchange processes Day ISO ALO Orders. Currently, under Rule 7.31(e)(2)(B)(iii), an arriving ALO Order to buy (sell) with a limit price that would lock a displayed order priced equal to or below (above) the PBO (PBB) on the Exchange Book will be assigned a working price and display price one minimum price variation (''MPV'') below (above) the displayed order. Day ISO ALO Orders that would lock displayed interest on the Exchange Book are processed in the same manner.[4] The Exchange proposes to amend these rules to provide that arriving ALO and Day ISO ALO Orders with a limit price that would lock displayed interest on the Exchange Book would be cancelled.

[4] *See* Rule 7.31(e)(3)(D)(ii).

To effect this change, the Exchange proposes to delete the portion of Rule 7.31(e)(2)(B)(iii) providing that an ALO Order that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the Exchange Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31(e)(2)(B)(iii), as revised, into Rule 7.31(e)(2)(B)(ii). Proposed amended Rule 7.31(e)(2)(B)(ii) would thus provide:

If the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the Exchange Book priced equal to or below (above) the PBO (PBB), it will trade as the liquidity taker with such order(s). Any untraded quantity of the ALO Order will have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB), provided that if the limit price of the ALO Order to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the Exchange Book priced equal to or below (above) the PBO (PBB), it will be cancelled.

The Exchange also proposes the following conforming changes to Rules 7.31(e)(2)(B) and 7.31(e)(2)(C) to reflect the proposed change to how ALO Orders that lock displayed interest would be handled:

- The Exchange proposes to renumber current Rule 7.31(e)(2)(B)(iv) as 7.31(e)(2)(B)(iii) to accommodate the proposed combination of current Rules 7.31(e)(2)(B)(ii) and 7.31(e)(2)(B)(iii), as described above.
- The Exchange proposes to replace introductory references providing that an ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31(e)(2)(B), 7.31(e)(2)(B)(iv)(a) (which would become Rule 7.31(e)(2)(B)(iii)(a) after renumbering), 7.31(e)(2)(C), and 7.31(e)(2)(C)(i). The Exchange proposes to use the term ''processed'' because some ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to renumber current Rule 7.31(e)(2)(B)(v) as 7.31(e)(2)(B)(iv) to accommodate the proposed combination of current Rules 7.31(e)(2)(B)(ii) and 7.31(e)(2)(B)(iii), as described above.
- The Exchange further proposes to revise Rule 7.31(e)(2)(C)(i) to delete the reference to orders ranked Priority 2—Display Orders because, as noted above, an ALO Order would no longer be repriced based on contra-side Priority 2—Display Orders and instead would be cancelled. Accordingly, the only time a resting ALO Order would be repriced is if the contra-side PBBO re-prices.

The Exchange proposes to amend Rule 7.31(e)(3)(D) to align the rules governing Day ISO ALOs with the proposed changes to ALO Orders. Currently, pursuant to Rule 7.31(e)(3)(D)(ii), if the limit price of an arriving Day ISO ALO locks the display price of a displayed order on the Exchange Book, it will be assigned a working price and display price one MPV below (above) the price of the displayed order. As with ALO Orders, the Exchange proposes to amend this rule to specify that arriving Day ISO ALOs that lock displayed interest would be cancelled.

To effect this change, the Exchange proposes to delete the portion of Rule 7.31(e)(3)(D)(ii) that provides that a Day ISO ALO that locks displayed interest will be ''assigned a working price and display price one MPV below (above) the displayed order on the Exchange Book'' and instead provide that such order would be cancelled. In addition, to simplify the rule text, the Exchange proposes to combine Rule 7.31(e)(3)(D)(ii), as revised, with Rule 7.31(e)(3)(D)(i). Proposed amended Rule 7.31(e)(3)(D)(i) would thus provide:

If the limit price of the Day ISO ALO to buy (sell) crosses the working price of any displayed or non-displayed order on the Exchange Book, it will trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO will have a working price and display price equal to its limit price, provided that if the limit price of the Day ISO ALO to buy (sell) locks the display price of any order ranked Priority 2—Display Orders on the Exchange Book, it will be cancelled.

The Exchange also proposes the following conforming changes consistent with the proposed change to cancel Day ISO ALOs that lock displayed interest:

- The Exchange proposes to renumber Rule 7.31(e)(3)(D)(iii) as Rule 7.31(e)(3)(D)(ii) to accommodate the proposed combination of current Rules 7.31(e)(3)(D)(i) and 7.31(e)(3)(D)(ii), as described above.
- The Exchange proposes to replace introductory references providing that a Day ISO ALO Order will be ''priced'' or ''priced or trade, or both,'' with the phrase ''will be processed'' in Rules 7.31(e)(3)(D) and 7.31(3)(D)(ii)(a) (as renumbered). The Exchange proposes this change to reflect that certain ALO Orders would be cancelled (and therefore not priced or traded).
- The Exchange proposes to delete Rule 7.31(e)(3)(D)(iv), which currently specifies how a Day ISO ALO will be processed after it is displayed. Because a Day ISO ALO would now either display at its limit price (because, by its terms, it can be displayed at a price that locks or crosses the contra-side PBBO) [5] or be cancelled if it locks displayed interest on the Exchange Book, there would no longer be any circumstances where a resting Day ISO ALO would reprice and therefore this rule text would no longer be applicable.

Self Trade Prevention Modifiers

The Exchange proposes to amend Rule 7.31(i)(2), which sets forth the Self Trade Prevention (''STP'') modifiers on the Exchange. As defined in Rule 7.31(i)(2), any incoming order to buy (sell) designated with an STP modifier would be prevented from trading with a resting order to sell (buy) also designated with an STP modifier and from the same Client ID,[6] as designated by the member organization. The STP modifier on the incoming order controls how the Exchange evaluates the interaction between two orders marked with STP modifiers. The Exchange evaluates the interaction between two orders marked with STP modifiers from the same Client ID consistent with the allocation logic applicable to the priority category of the resting order, and if resting orders in a priority category do not have an STP modifier from the same Client ID, the incoming order designated with an STP modifier would trade with resting orders in that priority category before being evaluated for STP with resting orders in the next priority category.

Currently, the Exchange offers two versions of STP: STP Cancel Newest (''STPN'') and STP Cancel Oldest (''STPO''), as described in Rules 7.31(i)(2)(A) and 7.31(i)(2)(B), respectively. The Exchange proposes to expand its STP offerings to establish STP Decrement and Cancel (''STPD'') and STP Cancel Both (''STPC''), which would be set forth in proposed Rules 7.31(i)(2)(C) and 7.31(i)(2)(D), respectively. The proposed STPD and STPC offerings are based in part on the STPD and STPC offerings on the Exchange's affiliates NYSE Arca, Inc. (''NYSE Arca''), NYSE American LLC (''NYSE American''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'') (collectively, the ''Affiliated Exchanges''),[7] with differences to

[5] *See* Rule 7.31(e)(3)(C).

[6] As specified in current Rule 7.31(i)(2)(D), for purposes of STP, references to Client ID mean a Client ID when using Pillar phase I protocols to communicate with the Exchange or an MPID when using Pillar phase II protocols to communicate with the Exchange.

[7] *See* NYSE Arca Rule 7.31–E(i)(2); NYSE American Rule 7.31E(i)(2); NYSE National Rule 7.31(i)(2); and NYSE Chicago Rule 7.31(i)(2).

separately describe order processing for orders that are allocated in price-time priority and how STPD and STPC would function consistent with the Exchange's parity allocation model.

For STPD, proposed Rule 7.31(i)(2)(C) would provide that an incoming order to buy (sell) with an STPD modifier would not trade with resting interest to sell (buy) marked with any of the STP modifiers from the same Client ID, as outlined in proposed Rules 7.31(i)(2)(C)(i) and (ii).

Proposed Rule 7.31(i)(2)(C)(i) would apply to resting orders in a priority category that allocates orders on price-time priority. As proposed, if both orders with an STP modifier are equivalent in size, both orders would be cancelled back to the originating member organization. If the orders are not equivalent in size, the equivalent size would be cancelled back to the originating Client ID and the larger order would be decremented by the size of the smaller order, with the balance remaining on the Exchange Book. This proposed functionality is based on the STPD functionality available on the Affiliated Exchanges.

Proposed Rule 7.31(i)(2)(C)(ii) would address how STPD would function for resting orders in a priority category that allocates orders on parity. As proposed, if a resting order would have been considered for an allocation, both the portion of the resting order that would receive an allocation and the portion of the incoming order marked with the STPD modifier that would be allocated to the resting order would be cancelled back to the originating member organization. Resting orders with an STP modifier from the same Client ID that would not have been eligible for a parity allocation would remain on the Exchange Book. The Exchange believes that if a member organization designates an order with an STPD modifier, that member organization has instructed the Exchange to cancel the equivalent portion of both the incoming order and resting order with an STP modifier from the same Client ID, resulting in the larger order being decremented by the size of the smaller order and remaining on the Exchange Book. In the case of a parity allocation, because resting orders are allocated based on their position on an allocation wheel,[8] it would be consistent with the incoming order's decrementing instruction to provide a parity allocation to an eligible resting order with an STP modifier from the same Client ID and cancel both the portion of the resting order corresponding to the allocation and the portion of the incoming order that would have been allocated to the resting order. This proposed functionality is similar to how the Exchange currently processes STPO modifiers if a resting order with an STP modifier from the same Client ID is in a priority category that allocates orders on parity, as described in Rule 7.31(i)(2)(B)(ii).

For STPC, proposed Rule 7.31(i)(2)(D) would provide that an incoming order to buy (sell) marked with the STPC modifier would not trade with resting interest to sell (buy) marked with any of the STP modifiers from the same Client ID, as outlined in proposed Rules 7.31(i)(2)(D)(i) and (ii).

Proposed Rule 7.31(i)(2)(D)(i) would apply to resting orders in a priority category that allocates orders on price-time priority. As proposed, the entire size of both orders with an STP modifier would be cancelled back to the originating member organization. This proposed functionality is based on the STPC functionality available on the Affiliated Exchanges.

Proposed Rule 7.31(i)(2)(D)(ii) would address how STPC would function for resting orders in a priority category that allocates orders on parity. As proposed, if a resting order is in a priority category that allocates orders on parity and would have been considered for an allocation, none of the resting orders eligible for a parity allocation in that priority category would receive an allocation. The first resting order with an STP modifier eligible for a parity allocation would be cancelled back, as would the incoming order. The Exchange believes that this proposed processing would be consistent with the member organization's instruction that both the incoming order and resting order with an STP modifier from the same Client ID be cancelled if there were a potential for an execution between the two orders. This proposed functionality is similar to how the Exchange currently processes STPN modifiers if a resting order with an STP modifier from the same Client ID is in a priority category that allocates orders on parity, as described in Rule 7.31(i)(2)(A)(ii).

The Exchange also proposes non-substantive changes to renumber current Rules 7.31(i)(2)(C) and 7.31(i)(2)(D) as Rules 7.31(i)(2)(E) and 7.31(i)(2)(F) to accommodate the addition of the proposed rules governing STPD and STPC. The Exchange also proposes a conforming change to current Rules 7.31(d)(4)(F) and 7.31(i)(2)(C) to clarify that D Orders could only be designated with an STPN or STPO modifier (*i.e.,* that the new STPD and STPC modifiers would not be available for use with D Orders). The Exchange also proposes to amend current Rule 7.31(i)(2)(D) to specify that STPD and STPC modifiers would only be available for use with Pillar phase II protocols.

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that the proposed changes will be implemented in January 2021.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because 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.

With respect to the proposed change to ALO Orders, the Exchange believes the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by simplifying the treatment of ALO Orders that lock displayed orders. The Exchange believes that cancelling ALO Orders that lock displayed interest, rather than re-pricing them, would provide member organizations with greater determinism with respect to how ALO Orders would be processed on the Exchange and enhance member organizations' ability to manage order flow to suit their business needs. In addition, the Exchange believes that cancelling ALO Orders that would otherwise be marketable against displayed interest on the Exchange Book is consistent with the terms of the ALO Order, *i.e.,* that such orders would not take liquidity on the Exchange. The Exchange further believes that the proposed changes would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed behavior to cancel ALO Orders on the Exchange if the limit price would lock contra-side displayed orders would be consistent with functionality available on other

[8] *See* Rule 7.37(b)(2).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

exchanges for similar order types when they lock displayed interest.[11]

With respect to the proposed addition of STPD and STPC modifiers, the Exchange believes the proposed change would remove impediments to and perfect the mechanism of a free and open market by allowing member organizations to better manage order flow and prevent executions with themselves. Because orders routed by the same member organization via different connections may, in certain circumstances, be eligible to trade against each other, the Exchange believes that its proposal to establish additional STP modifiers would remove impediments to and perfect the mechanism of a free and open market, and serve to protect investors and the public interest, by enhancing member organizations' ability to prevent potentially undesirable trades and internalize order flow. The Exchange also believes that the proposed rule change 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 the proposed changes are based on the approved rules of its Affiliated Exchanges, with modifications to address functionality specific to the Exchange's parity allocation model, and aligning its STP modifiers with those offered by its Affiliated Exchanges would promote consistency for member organizations that are members of the Exchange and one or more other Affiliated Exchanges. The Exchange further believes that the proposed differences to address how the proposed STPD and STPC modifiers would function for resting orders that are in a priority category that allocates orders on parity would remove impediments to and perfect the mechanism of a free and open market because the proposed rules are designed to honor the STPD and STPC instructions consistent with the Exchange's parity model. These proposed rules are also similar to how the Exchange currently processes STPN and STPO modifiers for resting orders that are in a priority category that allocates orders on parity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed rule change with respect to ALO Orders would reduce the burden on competition because it would simplify the treatment of such orders when they lock displayed interest and promote consistency with functionality offered for similar order types on other exchanges.[12] With respect to the proposed rules governing STPD and STPC, the Exchange has based its proposed rules on those of its Affiliated Exchanges, thereby providing member organizations with consistency between its rules and those of its Affiliated Exchanges and enabling the Exchange to compete with unaffiliated exchange competitors that similarly operate multiple exchanges on the same trading platforms.

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 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–NYSE–2020–87 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–2020–87. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–87 and should be submitted on or before November 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24631 Filed 11–5–20; 8:45 am]

BILLING CODE 8011–01–P

[11] *See, e.g.,* Cboe BZX Exchange, Inc. (''BZX'') Rules 11.9(c)(6), 11.9(g)(1)(D), 11.9(g)(2)(D), and 11.13(a)(2)(C) (a Post Only Order that locks displayed interest on BZX may be cancelled at the User's option); Nasdaq Stock Exchange LLC (''Nasdaq'') Rule 4702(b)(4)(A) (Nasdaq Participants may opt to have Post-Only Orders cancel if they lock orders displayed on the Nasdaq Book); MEMX LLC (''MEMX'') Rules 11.6(a), 11.6(l), and 11.8(b)(10) (Users have the option to apply Post Only and Cancel Back instructions to orders that would lock displayed interest, and MEMX cancels ISO orders with Post Only and Day instructions if they lock displayed interest).

[12] *See id.*

[13] 17 CFR 200.30–3(a)(12).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36431]

R. J. Corman Railroad Company, LLC and R. J. Corman Railroad Group, LLC—Continuance in Control Exemption—R. J. Corman Railroad Company/Lehigh Line, LLC, R. J. Corman Railroad Company/Owego & Harford Line, Inc., and R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC

R. J. Corman Railroad Company, LLC (RJCR) and R. J. Corman Railroad Group, LLC (RJRG) (collectively, Applicants),[1] have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of R. J. Corman Railroad Company/Lehigh Line, LLC (RJLR), R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC (RJLS), and R. J. Corman Railroad Company/Owego & Harford Line, Inc. (RJOH),[2] currently noncarriers, upon RJLR, RJLS, and RJOH becoming Class III rail carriers.

This transaction is related to the following concurrently filed notices: (1) *R. J. Corman Railroad Company/Lehigh Line, LLC—Change in Operators Exemption with Interchange Commitment—Lehigh Railway, LLC and Norfolk Southern Railway Company,* Docket No. FD 36428, in which RJLR seeks authority to assume the lease and operation of 56.0 miles of rail line and related industrial track located in Bradford and Wyoming Counties, Pa.; (2) *R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC—Change in Operators Exemption—Luzerne and Susquehanna Railway Co. and Luzerne County Rail Corporation,* Docket No. FD 36429, in which RJLS seeks authority to assume the lease and operation of approximately 41.19 miles of rail line located in Luzerne and Lackawanna Counties, Pa.; and (3) *R. J. Corman Railroad Company/Owego & Harford Line, Inc.—Modified Certificate of Public Convenience and Necessity,* Docket No. FD 36430, in which RJOH filed a notice for a modified certificate to assume the lease and operation of approximately 27.6 miles of rail line located between milepost 0.0 at Owego, N.Y., and milepost 27.6 at North Harford, N.Y.

The earliest this transaction may be consummated is November 20, 2020, the effective date of the exemption.

Applicants seek to continue in control of RJLR, RJLS, and RJOH upon their becoming Class III rail carriers, while remaining in control of 15 other Class III rail carriers, including two non-operating rail carriers, collectively operating in 11 states. For a complete list of these rail carriers, see the verified notice of exemption filed in this docket. The notice is available at *www.stb.gov.*

The verified notice states that: (1) RJLR, RJLS, and RJOH, and the railroads under RJCR's (and therefore Applicants') ownership and control, would not connect with each other or any other railroad in the corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the carriers with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The proposed transaction is, therefore, exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 13, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36431, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on Applicants' representative, David R. Irvin, Irvin Rigsby PLC, 110 North Main Street, Nicholasville, KY 40356.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2020–24664 Filed 11–5–20; 8:45 am]

BILLING CODE 4915–01–P

[1] The title of this proceeding is being updated to reflect the fact that, in response to a decision served on September 17, 2020, RJCR requested that RJRG be added as an applicant in the proceeding. The verified notice states that RJCR is a noncarrier and wholly owned subsidiary of RJRG.

[2] On August 27, 2020, RJCR and RJOH filed a letter in this and a related docket with additional information relating to a change in RJOH's corporate status from limited liability company to corporation.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36428]

R. J. Corman Railroad Company/Lehigh Line, LLC—Change in Operators, Lease and Operation Exemption With Interchange Commitment—Lehigh Railway, LLC and Norfolk Southern Railway Company

R. J. Corman Railroad Company/Lehigh Line, LLC (RJLR), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to change operators and assume the lease and operation of approximately 56.0 miles of rail line between milepost IS 269.5 at Athens, Pa., and milepost IS 213.5 at Mehoopany, Pa., and related industrial track, located in Bradford and Wyoming Counties, Pa. (the Line). The Line is currently operated by Lehigh Railway, LLC (LR), pursuant to a lease with Norfolk Southern Railway Company (NSR).

According to RJLR, this transaction is part of a larger transaction in which noncarrier holding company R. J. Corman Railroad Company, LLC (RJCR), through RJLR and two other newly formed noncarrier subsidiaries, has entered into an agreement to purchase the material assets of LR and two other carriers under the ownership and control of Stephen C. May and operate those respective rail lines. Accordingly, this transaction is related to a concurrently filed verified notice of exemption in *R. J. Corman Railroad Company, LLC & R. J. Corman Railroad Group, LLC—Continuance in Control Exemption—R. J. Corman Railroad Company/Lehigh Line, LLC, R. J. Corman Railroad Company/Owego & Harford Line, Inc., and R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC,* Docket No. FD 36431,[1] in which RJCR and RJRG seek to continue in control of RJLR and the other two newly formed subsidiaries

[1] In response to a decision served on September 17, 2020 requesting additional information about certain aspects of the larger transaction, RJCR requested that R. J. Corman Railroad Group, LLC (RJRG) be added as an applicant in Docket No. FD 36431.

upon their becoming Class III rail carriers, while remaining in control of 15 other Class III rail carriers.

According to RJLR, it has reached an agreement in principle with NSR regarding a Lease Amendment No. 2 under which RJLR will assume LR and NSR's underlying October 28, 2008 Lease Agreement, as amended by the July 11, 2016 Lease Amendment No. 1, and operate the Line. *See Lehigh Ry.—Lease & Operation Exemption—Norfolk S. Ry.,* FD 35192 (STB served Nov. 14, 2008); *Lehigh Ry.—Lease Exemption Containing Interchange Commitment—Norfolk S. Ry.,* FD 36062 (STB served Sept. 30, 2016). According to RJLR, a final version Lease Amendment No. 2 is expected to be executed shortly.

RJLR certifies that the proposed Lease Amendment No. 2 between RJLR and NSR contains an interchange commitment that affects interchange with carriers other than NSR at the interchange points of Mehoopany and Towanda, Pa.[2] RJLR has provided additional information regarding the interchange commitment as required by 49 CFR 1150.33(h).

RJLR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III carrier but also states that its projected annual revenues will exceed $5 million following the transaction. Pursuant to 49 CFR 1150.32(e), if a carrier's projected annual revenues will exceed $5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. RJLR states that it posted notice consistent with 1150.32(e) at the workplace of employees as of August 19, 2020, that LR employees do not have a collective bargaining agreement and are not represented, and that NSR does not have any employees on the Line.[3]

RJLR states that it provided notice of the proposed transaction and interchange commitment shippers on the Line through service of a copy of the verified notice.

The earliest this transaction may be consummated is November 20, 2020, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 13, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36428, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on RJLR's representative, David R. Irvin, Irvin Rigsby PLC, 110 North Main Street, Nicholasville, KY 40356.

According to RJLR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirement under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–24688 Filed 11–5–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36429]

R. J. Corman Railroad Company/ Luzerne & Susquehanna Line, LLC—Change in Operators, Lease and Operation Exemption—Luzerne and Susquehanna Railway Co. and Luzerne County Rail Corporation

R. J. Corman Railroad Company/ Luzerne & Susquehanna Line, LLC (RJLS), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to change operators and assume the lease and operation of approximately 41.19 miles of rail line in Luzerne and Lackawanna Counties, Pa. (the Line).[1] The Line currently is operated by Luzerne and Susquehanna Railway Company (LSX) pursuant to a lease and operating agreement with the Luzerne County Rail Corporation (LCRC), a political subdivision and non-operating Class III rail carrier.

As amended and supplemented, the verified notice states that the Line consists of: (1) The Dunmore Secondary Track, between milepost 6.5, at Avoca, and milepost 8.6, at Rocky Glen, a distance of 2.1 miles; (2) the Avoca Industrial Track, between milepost 4, at Rock Street, and milepost 6.5, at Avoca, a distance of 2.5 miles, including the connection with the track of Consolidated Rail Corporation between ''LB'' Junction and the switch of the Dunmore Secondary Track, a distance of 0.123 miles, and the Langcliff Connecting Track, between milepost 0.0, at Duryea, and the connection with Delaware & Hudson (D&H) in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles; [2] (3) the Suscon Industrial Track, between milepost 154.5, at Suscon, and milepost 158.7, at Hillside, a distance of 4.2 miles; (4) the Wilkes-Barre Secondary, between milepost 169.2, at Ashley, and milepost 185.5, at Pittston, a distance of 16.3 miles; (5) between milepost 0.0, at Ashley, and milepost 0.5, at Hanover Industrial Track, a distance of 0.5 miles; [3] (6) the Brownsville Industrial Track, between milepost 0.0, at Hillside, and milepost 1.0, at Brownsville, a distance of 1.0 miles; (7) the Wilkes Barre Industrial Track, between milepost 59.9, at Ferry Street, and milepost 62.9, at Wilkes Barre, a distance of 3.0 miles; (8) the Kingston Industrial Track, between milepost

[2] A copy of Lease Amendment No. 2 with the interchange commitment was submitted under seal with the verified notice. *See* 49 CFR 1150.33(h)(1).

[3] RJLR initially requested a waiver of the provisions of 1150.32(e) to allow the exemption to become effective after 30 days. That request is now moot.

[1] In the verified notice, RJLS initially stated that the total mileage at issue was approximately 55.09 miles. In a letter filed on August 26, 2020, RJLS amended its verified notice to remove the assumption of certain trackage rights from its description of the proposed transaction. By decision served on September 17, 2020, the Board requested additional information relating to this transaction and a related transaction, including an explanation of certain apparent discrepancies in the mileage and/or descriptions of the line segments RJLS seeks to operate and clarification of RJLS's description of the agreement. In a reply filed on October 2, 2020, RJLS amended its descriptions of two line segments and removed another altogether, clarified the nature of the agreement in principle that has been reached, and provided additional information. On October 9, 2020, RJLS provided further correction and explanation regarding one of the line segments. Although RJLS did not provide a revised total mileage in any of its supplements, it appears, based on the revised line descriptions submitted, that the total mileage is approximately 41.19 miles.

[2] In the October 2, 2020 filing, RJLS states that, although LSX also has authority to operate on an additional segment of track between milepost 1.7, at Junction 7, and milepost 4, at Rock Street, RJLS is not seeking authority to operate that segment.

[3] In its October 9, 2020 supplement, RJLS explains that LSX also operates over a track segment from milepost 0.5 to the end of the track at approximately milepost 3.82. RJLS states that it has identified no Board authority addressing the track beyond milepost 0.5 and that it believes LSX operates the portion beyond milepost 0.5 as a spur. RJLS states that it seeks approval only for the portion between milepost 0.0 and milepost 0.5, but also indicates that it would operate over some or all of the track from milepost 0.5 to the end of the line at approximately milepost 3.82. This notice does not decide the status of the track segment beyond milepost 0.5. If RJLS believes that the 3.32-mile segment is rail line rather than spur, RJLS should request appropriate authority from the Board.

142.7, at Pittston Junction, and Railroad Station 8594+58, a distance of 8.1 miles; and (9) the D&H Wilkes-Barre Connector, from milepost A–208.08, Hudson Yard, to Conyngham Avenue, City of Wilkes-Barre, a distance of 2.5 miles.

According to RJLS, this transaction is part of a larger transaction in which noncarrier holding company R. J. Corman Railroad Company, LLC (RJCR), through RJLS and two other newly formed noncarrier subsidiaries, has entered into an agreement to purchase the material assets of LSX and two other carriers under the ownership and control of Stephen C. May and operate those respective rail lines. Accordingly, this transaction is related to a concurrently filed verified notice of exemption in *R. J. Corman Railroad Company, LLC & R. J. Corman Railroad Group, LLC—Continuance in Control Exemption—R. J. Corman Railroad Company/Lehigh Line, LLC, R. J. Corman Railroad Company/Owego & Harford Line, Inc., and R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC,* Docket No. FD 36431,[4] in which RJCR and RJRG seek to continue in control of RJLS and the other two newly formed subsidiaries upon their becoming Class III rail carriers, while remaining in control of 15 other Class III rail carriers.

According to RJLS's October 2, 2020 filing, LSX currently operates the Line pursuant to a Lease and Operating Agreement, as amended (Lease and Operating Agreement) with LCRC dated July 16, 2002. RJLS states that it and LCRC have reached an agreement in principle to enter into two agreements: (1) A Consent and Estoppel Agreement and (2) an Amendment to the Lease and Operating Agreement (Amendment). RJLS states that the Consent and Estoppel Agreement provides LCRC's consent to LSX's assignment of the Lease and Operating Agreement to RJLS and that the Amendment clarifies existing terms of the Lease and Operating Agreement. According to RJLS, neither the proposed Consent and Estoppel Agreement nor the Amendment contains any provision or agreement that would limit future interchange on the Line.

Further, RJLS certifies that its projected annual revenues as a result of this transaction will not result in RJLS becoming a Class I or II rail carrier and will not exceed $5 million. Under 49 CFR 1150.32(b), a change in operator requires that notice be given to shippers. RJLS certifies that a copy of its verified notice of exemption was served on all known shippers on the Line on August 19, 2020.

The earliest this transaction may be consummated is November 20, 2020, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 13, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36429, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on RJLS's representative, David R. Irvin, Irvin Rigsby PLC, 110 North Main Street, Nicholasville, KY 40356.

According to RJLS, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–24732 Filed 11–5–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36450]

Alabama Railroad, LLC—Acquisition and Operation Exemption—Line of Alabama Railroad Co., Inc.

Alabama Railroad, LLC (ARR), has filed a verified notice of exemption under 49 CFR 1150.31 [1] to acquire from Alabama Railroad Co., Inc. (ALAB), and operate approximately 47.5 miles of rail line extending from approximately milepost 607.73 at Flomaton to approximately milepost 655.2 near Tunnel Springs, including all sidings and the MR Junction Spur between valuation stations 0+00 and 90+81, in Escambia, Conecuh, and Monroe Counties, Ala. (the Line).

ARR states that it has agreed to purchase all the interest in the Line from ALAB. Upon closing, ARR states that it will assume the common carrier obligation for the Line and be responsible for its operation.[2]

ARR certifies that the proposed acquisition and operation of the Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier. ARR further certifies that its projected annual revenues as a result of this transaction will not exceed the maximum revenue of a Class III rail carrier and will not exceed $5 million.

The transaction may be consummated on or after November 20, 2020, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 13, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36450, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on ARR's representative, Charles H. Montange, 426 NW 162nd St., Seattle, WA 98177.

According to ARR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 3, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–24734 Filed 11–5–20; 8:45 am]

BILLING CODE 4915–01–P

[4] In the October 2, 2020 filing noted above, RJCR requested that R. J. Corman Railroad Group, LLC (RJRG) be added as an applicant in this docket.

[1] ARR's invocation of the class exemption at 1150.31 suggests that it is currently a noncarrier.

[2] ALAB received authority to abandon the Line in 2019 in Docket No. AB 463 (Sub-No. 2X) but has not consummated it. *See Ala. R.R.—Aban. Exemption—in Escambia, Conecuh, & Monroe Cntys., Ala.,* AB 463 (Sub-No. 2X) (STB served Apr. 29, 2020) (extending ALAB's deadline to consummate its abandonment authority for the Line until April 18, 2021). Upon consummation of the sale, ALAB's abandonment authority would no longer be effective.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36430]

R. J. Corman Railroad Company/ Owego & Harford Line, Inc.—Modified Certificate of Public Convenience and Necessity

On August 19, 2020, R. J. Corman Railroad Company/Owego & Harford Line, Inc. (RJOH),[1] a noncarrier subsidiary of R. J. Corman Railroad Company, LLC (RJCR), filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150 subpart C—*Modified Certificate of Public Convenience and Necessity,* to permit RJOH to operate over a rail line owned by the Tioga County Industrial Development Agency (TCIDA), a public agency and political subdivision of the State of New York, located between milepost 0.0 at Owego, N.Y., and milepost 27.6 at North Harford, N.Y. (the Line).[2]

RJOH states that the Line was authorized for abandonment in 1976 and sold to TCIDA in 1981 for continued rail service, and has been operated by the Owego & Harford Railway, Inc. (Owego & Harford), pursuant to a modified rail certificate. (Notice 3, 5.) *See Owego & Harford Ry.—Modified Rail Certificate,* FD 32063 (ICC served May 15, 1992).

According the notice, RJOH will provide rail service pursuant to an Operating Agreement between Owego & Harford and TCIDA, dated February 13, 2013, which is being assigned to and assumed by RJOH as part of its purchase of the material assets of Owego & Harford. (Notice 6.)

The Line qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies & Instrumentalities & Political Subdivisions,* FD 28990F (ICC served July 16, 1981); 49 CFR 1150.22. RJOH states that no subsidy is involved and that there will be no preconditions that shippers must meet to receive service. RJOH's notice also includes a certificate of liability insurance coverage. (Notice Ex. C.)

This notice will be served on the Association of American Railroads (Car Service Division), as agent for all railroads subscribing to the car-service and car-hire agreement, at 425 Third Street SW, Suite 1000, Washington, DC 20024; and on the American Short Line and Regional Railroad Association at 50 F Street NW, Suite 500, Washington, DC 20001.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2020–24663 Filed 11–5–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36446]

DFW & Southern Railway Company—Operation Exemption—Rail Line at MidTexas International Center

DFW & Southern Railway Company (DFW), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate over approximately 18.2 miles of trackage at the MidTexas International Center (Inland Port), located north of State Highway 287 and east of U.S. Highway 67 in Midlothian, Tex. (the Line).

DFW states that it intends to execute an operating agreement with Texas Properties Trust, the owner of the Line, to provide common carrier service over the Line. DFW also states that, prior to commencing operations over the Line, it intends to enter into service agreements with various parties to provide interchange, haulage, and switching services over the Line. DFW states that another rail carrier, Texas Central Business Lines Corporation (TCB), currently provides common carrier service over the Line[1] and that, prior to commencing operations over the Line, DFW will enter into agreements with TCB for joint use and operating protocols over the Line.

DFW certifies that its projected annual revenues as a result of the transaction will not exceed $5 million and will not result in the creation of a Class I or Class II carrier. DFW also certifies that the agreements to be executed will not include any provision limiting DFW's future interchange of traffic with a third-party connecting carrier.

The transaction may be consummated on or after November 22, 2020, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 13, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36446, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on DFW's representative, L. Randall Denton, P.O. Box 80, Midlothian, TX 76065.

According to DFW, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–24733 Filed 11–5–20; 8:45 am]

BILLING CODE 4915–01–P

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[1] On August 27, 2020, RJCR and RJOH filed a letter in this and a related docket with additional information relating to a change in RJOH's corporate status from limited liability company to corporation.

[2] RJCR is a noncarrier and wholly owned subsidiary of R. J. Corman Railroad Group, LLC (RJRG). In a related proceeding, RJCR and RJRG have filed a verified notice of exemption to continue in control of RJOH upon its becoming a Class III rail carrier. *See R. J. Corman R.R.—Continuance in Control Exemption—R. J. Corman R.R./Lehigh Line, et al.,* Docket No. FD 36431. This transaction is also related to the following concurrently filed notices: (1) *R. J. Corman R.R./Lehigh Line—Change in Operators Exemption with Interchange Commitment—Lehigh Ry., et al.,* Docket No. FD 36428, in which R. J. Corman Railroad Company/Lehigh Line, LLC, seeks authority to assume the lease and operation of 56.0 miles of rail line and related industrial track in Bradford and Wyoming Counties, Pa.; and (2) *R. J. Corman R.R./Luzerne & Susquehanna Line—Change in Operators Exemption—Luzerne and Susquehanna Ry. et al.,* Docket No. FD 36429, in which R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC, seeks authority to assume the lease and operation of approximately 41.19 miles of rail line in Luzerne and Lackawanna Counties, Pa. The Board sought additional information relating to certain of these transactions by decision served September 17, 2020.

[1] *See Tex. Cent. Bus. Lines Corp.—Operation Exemption—MidTexas Int'l Ctr.,* FD 33997 (STB served Feb. 9, 2001) (authorizing TCB to operate over five miles of track at Inland Port). In a supplement filed on October 23, 2020, DFW provided additional information regarding the Line, including that additional track was built at Inland Port after the 2001 proceeding.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36449]

Cleveland-Cliffs Inc.—Acquisition of Control Exemption—Brandywine Valley Railroad Company, Steelton & Highspire Railroad Company, Lake Michigan & Indiana Railroad Company, Upper Merion & Plymouth Railroad Company, Cleveland Works Railway Inc., and South Chicago & Indiana Harbor Railway Company

Cleveland-Cliffs Inc. (Cleveland-Cliffs), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of six Class III rail carriers: Brandywine Valley Railroad Company (Brandywine); Steelton & Highspire Railroad Company (S&H); Lake Michigan & Indiana Railroad Company (LMIC); Upper Merion & Plymouth Railroad Company (UMPR); Cleveland Works Railway Inc. (CWR); and South Chicago & Indiana Harbor Railway Company (SCIH) (collectively, the Acquired Railroads).[1] According to the verified notice, the Acquired Railroads are currently owned and controlled by ArcelorMittal USA LLC (ArcelorMittal USA) and are all shortline or terminal railroads that primarily service steel production facilities currently owned by ArcelorMittal USA.

According to the verified notice, Cleveland-Cliffs has entered into an agreement to purchase all of the equity of ArcelorMittal USA, as a result of which Cleveland-Cliffs will become the indirect owner of the Acquired Railroads.[2] The verified notice states that Cleveland-Cliffs currently owns one Class III railroad, the Lake Superior & Ishpeming Railroad (LS&I), which operates in Michigan.

The verified notice states that: (1) The Acquired Railroads do not connect with each other or with LS&I; (2) the proposed transaction is not a part of a series of anticipated transactions that would connect any of these rail carriers with each other; and (3) the proposed transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The earliest the transaction may be consummated is November 22, 2020, the effective date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 13, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36449, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on Cleveland-Cliffs' representative, Don Munro, Jones Day, 51 Louisiana Avenue NW, Washington, DC 20001.

According to Cleveland-Cliffs, this action is categorically excluded from environmental review under 49 1105.6(c) and from historic review under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–24735 Filed 11–5–20; 8:45 am]

BILLING CODE 4915–01–P

[1] Cleveland-Cliffs states that Brandywine, S&H, and UMPR operate in Pennsylvania; LMIC operates in Indiana; CWR operates in Ohio; and SCIH operates in Illinois and Indiana.

[2] Cleveland-Cliffs states that it is a vertically integrated producer of differentiated iron ore and steel and that it is acquiring ArcelorMittal USA to become a more efficient fully integrated steel producer. Cleveland-Cliffs states that, because its acquisition of the Acquired Railroads is incidental to its acquisition of ArcelorMittal USA, it does not anticipate that this transaction will alter the operations or service of the Acquired Railroads in any material respect.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–1052]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reporting of Information Using Special Airworthiness Information Bulletin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves a voluntary request for information on a specific safety concern. The information to be collected will be used to help the FAA in an ongoing investigation to determine the cause of a specific condition, or whether the condition is likely to exist or develop on other aircraft, aircraft engines, propellers, or appliances of the same type design.

DATES: Written comments should be submitted by January 5, 2021.

ADDRESSES: Please send written comments:

By Electronic Docket: *https://www.regulations.gov* (Enter docket number into search field)

By mail: Stephen Kocmoud, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524

By fax: 817–222–5961

FOR FURTHER INFORMATION CONTACT: Stephen Kocmoud by email at: *stephen.m.kocmoud@faa.gov;* phone: 817–222–5350.

SUPPLEMENTARY INFORMATION:

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 FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA 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.

OMB Control Number: 2120–0731.

Title: Reporting of Information Using Special Airworthiness Information Bulletin.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: A special airworthiness information bulletin (SAIB) is an important tool that helps the FAA to gather information to determine whether an airworthiness directive is necessary. An SAIB alerts, educates, and make recommendations to the aviation community and individual aircraft owners and operators about ways to improve the safety of a product. It contains non-regulatory information and

guidance that is advisory and may include recommended actions or inspections with a request for voluntary reporting of inspection results.

Respondents: Respondents may include mechanics, type clubs, owners and operators of aircraft.

Frequency: Information is collected as needed to acquire additional information on a specific condition.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 447 hours.

Issued in Washington, DC.

Joy Wolf,

Management & Program Analyst for Regulatory and Guidance Processing.

[FR Doc. 2020–24716 Filed 11–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on I–5 Rose Quarter Improvement Project in City of Portland, Multnomah County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final. The actions relate to a proposed highway project, I–5 Rose Quarter Improvement Project, in the City of Portland, Multnomah County, Oregon. Those actions grant approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 5, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Emily Cline, Environmental Program Manager, FHWA Oregon Division Office, 530 Center St. NE, Salem, OR 97301, Office Hours: 7:30 a.m. to 4:00 p.m., Office Phone: 503–316–2547, Email: *Emily.cline@dot.gov.* You may also contact Megan Channell, Rose Quarter Project Director, ODOT Region 1, 123 NW Flanders St., Portland, OR 97209, Office Phone: (971) 233–6510, Office Hours: 8:00 a.m.–5:00 p.m., Email: *Megan.CHANNELL@odot.state.or.us.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency action subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project in the State of Oregon. The I–5 Rose Quarter Improvement Project proposed to construct auxiliary lanes on Interstate 5 for 1.5 miles in Portland, Oregon, along with associated surface street improvements. The purpose of the Project is to improve the safety and operations on Interstate 5 (I–5) between Interstate 405 (I–405) and Interstate 84 (I–84), of the Broadway/Weidler interchange, and on adjacent surface streets in the vicinity of the Broadway/Weidler interchange, and to enhance multimodal facilities in the Project Area [Federal ID No. S001(483)]. The actions by the agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and Revised Environmental Assessment (REA) and Finding of No Significant Impact (FONSI) for the project, approved on October 30, 2020. The I–5 Rose Quarter Improvement Project REA/FONSI and other project records are available by contacting FHWA or Oregon DOT at the addresses provided above. The REA/FONSI can be viewed and downloaded from the project website at *https://www.i5rosequarter.org/* or obtained from any contact listed above. This notice applies to all Federal agency decisions that are final as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671q].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

7. *Social and Economic:* American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1387]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3901, 3921]; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)]; Flood Disaster Protection Act, 42 U.S.C. 4012a, 4106.

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139*(l)*(1).

Issued on: November 2, 2020.

Phillip A. Ditzler,

Division Administrator, Salem, Oregon.

[FR Doc. 2020–24596 Filed 11–5–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Revision; Submission for OMB Review; Licensing Manual

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a revision to a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to its information collection titled ''Licensing Manual.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received on or before December 7, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0014, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''1557–0014'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by the following method:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0014'' or ''Licensing Manual.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC is asking OMB for approval of the following information collection.

Title: Licensing Manual.

OMB Control No.: 1557–0014.

Description: The Licensing Manual sets forth the OCC's policies and procedures for the formation of a national bank, Federal savings association, or Federal branch or agency as well as entry into the Federal banking system by other institutions and corporate expansion and structural changes by existing banks. The Licensing Manual includes sample documents to assist the applicant in understanding the types of information the OCC needs in order to process a filing. An applicant may use the format of the sample documents or any other format that provides for the submission of information sufficient for the OCC to act on a particular filing, such as the OCC's electronic filing system, the Central Application Tracking System.

The OCC is seeking approval of Form AC, which is used when a Federal savings association seeks to convert from a mutual to stock form of ownership. The OCC must give prior approval for a Federal savings association to convert from a mutual to stock form. Applicants may seek a waiver of certain requirements as well as the extension of certain timeframes. Given that the process for waiver or extension is minimal, the associated burden is de minimis in nature. Form AC requires submission of the following information:

- Application;
- Plan of conversion;
- Proxy statement and offering circular;
- Form of proxy;
- Additional information required for conversion with a charitable contribution;
- Sequence and timing of the plan;
- Record dates;
- Expenses incident to the conversion; and
- Indemnification.

The OCC is also seeking to renew approval of the following requirements: [2]

- FSAs must amend their bylaws and file their amendments with the OCC if they wish to utilize remote means of participation for member or shareholder meetings.
- National banks and FSAs must elect procedures for remote participation at member or shareholder meetings.
- Depending on which State or law the FSA elects to follow for procedures for remote means of communication, the FSA may have to amend its bylaws and file the amendment with the OCC.
- National banks must indicate in their bylaws the procedures they will use for telephonic or electronic participation at shareholder meetings.
- The OCC is considering allowing National banks and FSAs to use alternative/electronic means to notify members/shareholders of meetings.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents for Licensing Manual: 3,717.

Estimated Total Annual Burden for Licensing Manual: 13,038 hours.

On August 13 and 19, 2020, the OCC published 60-day notices for this

[1] On August 13 and 19, 2020, the OCC published 60-day notices for this combined information collection, at 85 FR 49417 and 51155, respectively.

[2] The requirements were added through the interim final rule titled ''Director, Shareholder, and Member Meetings,'' 85 FR 31943 (May 28, 2020).

combined information collection, at 85 FR 49417 and 51155, respectively. No comments were received. Comments continue to be invited on:

(a) Whether the information collection is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–24625 Filed 11–5–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Fiduciary Activities

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, ''Fiduciary Activities.''

DATES: Comments must be submitted by January 5, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0140, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0140'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by the following method:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0140'' or ''Fiduciary Activities.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to 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, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Fiduciary Activities.

OMB Control No.: 1557–0140.

Affected Public: Businesses or other for-profit.

Type of Review: Regular.

Abstract: The OCC is seeking to renew the emergency approval granted for the information collection requirements contained in the interim final rule titled ''Collective Investment Funds: Prior Notice Period for Withdrawals.'' [2] The rule provides that, with the OCC's approval, and if certain conditions are satisfied, a bank administering a collective investment fund that is invested primarily in real estate or other assets that are not readily marketable may withdraw an account from a collective investment fund up to one year after the end of the standard withdrawal period. In addition, a bank may request that the OCC approve an extension beyond the one-year extension period, if certain conditions are satisfied. Extensions past the initial one-year extension must be requested and approved annually, for a maximum of two years after the initial one-year extension period.

Title of Information Collection: Fiduciary Activities.

OMB Control No.: 1557–0140.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 4.

Total estimated annual burden: 220 burden hours.

Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

[2] 85 FR 49229 (August 13, 2020).

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–24623 Filed 11–5–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index

AGENCY: Department of Veterans Affairs.

ACTION: Notice; withdrawal and reissuance.

SUMMARY: The Department of Veterans Affairs (VA) published a document in the **Federal Register** of October 22, 2020, concerning increases in aggregate amounts for Specially Adapted Housing grants. This notice withdraws the October 22, 2020, notice in its entirety and reissues the notice to include additional explanatory information and correct the aggregate amounts for Temporary Residence Adaptation grants and grants authorized in connection with rehabilitation programs.

DATES: The increases in aggregate amounts are effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Terry Rouch, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is withdrawing the notice VA published in the **Federal Register** of October 22, 2020, FR Doc. No. 2020–23381, on pages 67425–67426, and is reissuing the notice in its entirety.

In accordance with 38 U.S.C. 2102(e), 38 U.S.C. 2102A(b)(2), 38 U.S.C. 2102B(b)(2), and 38 CFR 36.4411, the Secretary of Veterans Affairs announces for FY 2021 the aggregate amounts of assistance available to veterans and service members eligible for SAH program grants.

Section 2102(e)(2) authorizes the Secretary to increase the aggregate amounts of SAH assistance annually based on a residential home cost-of-construction index. Per 38 CFR 36.4411(a), the Secretary uses the Turner Building Cost Index for this purpose.

In the most recent quarter for which the Turner Building Cost Index is available, 2nd Quarter 2020, the index showed an increase of 2.44 percent over the index value listed for 2nd Quarter 2019. Turner Construction Company—Cost Index, *http://www.turnerconstruction.com/cost-index* (last visited August 7, 2020). Pursuant to 38 CFR 36.4411(a), therefore, the aggregate amounts of assistance for SAH grants made pursuant to 38 U.S.C. 2101(a) and 2101(b) will increase by 2.44 percent for FY 2021.

Sections 2102A(b)(2) and 2102B(b)(2) require the Secretary to apply the same percentage calculated pursuant to section 2102(e) to grants authorized pursuant to sections 2102A and 2102B. As such, the maximum amount of assistance available under these grants will also increase by 2.44 percent for FY 2021.

The increases are effective as of October 1, 2020. 38 U.S.C. 2102(e), 2102A(b)(2), and 38 U.S.C. 2102B(b)(2).

Specially Adapted Housing: Aggregate Amounts of Assistance Available During Fiscal Year 2021

Section 2101(a) Grants and Temporary Residence Adaptation (TRA) Grants

The Ryan Kules and Paul Benne Specially Adaptive Housing Improvement Act of 2019 (the Act) increased the aggregate amount of SAH assistance to be provided under section 2101(a). Public Law 116–154, 134 Stat. 690, 691 (2020). The increase was made effective October 1, 2020. Thus, for section 2101(a) grants, VA is applying the 2.44 percent increase to the new amount provided under the Act, $98,492. Effective October 1, 2020, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(a) will be $100,896 during FY 2021.

The maximum TRA grant made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(a) and 2102A will be $40,637 during FY 2021.

Section 2101(b) Grants and TRA Grants

The Act also increased the aggregate amount of assistance to be provided under section 2101(b). Public Law 116–154, 134 Stat. 690, 691 (2020). The increase was made effective October 1, 2020. Thus, for section 2101(b) grants, VA is applying the 2.44 percent increase to the new amount provided under the Act, $19,733. Effective as of October 1, 2020, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(b) will be $20,215 during FY 2021.

The maximum TRA grant made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(b) and 2102A will be $7,256 during FY 2021.

Section 2102B Grants

Effective as of October 1, 2020, the amount of assistance available for grants made pursuant to 38 U.S.C. 2102B will be $92,569 during FY 2021; however, the Secretary may waive this limitation for a veteran if the Secretary determines a waiver is necessary for the rehabilitation program of the veteran.

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. Brooks D. Tucker, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on October 15, 2020, for publication.

Jeffrey M. Martin,

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

[FR Doc. 2020–24745 Filed 11–5–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0659]

Agency Information Collection Activity: Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) and Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 5, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0659'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 5103(a), 38 U.S.C. 5107(a).

Title: Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) (VA Form 21–0781) and Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault (VA Form 21–0781a).

OMB Control Number: 2900–0659.

Type of Review: Reinstatement of a collection.

Abstract: VA Forms 21–0781 and 21–0781a are used to gather information about stressful incidents in service from veterans claiming compensation for Post-Traumatic Stress Disorder (PTSD). The forms request the information that is necessary for VA to conduct meaningful research of records in order to assist claimants in obtaining credible supporting evidence that the incidents occurred. Without this collection of information, VA would not be able to fulfill its statutory duty to assist for claimants and would be unable to properly authorize benefits.

No changes have been made to these forms. The increase in respondent burden is due to the estimated number of receivables from the previous year.

Affected Public: Individuals and households.

Estimated Annual Burden: 23,770 hours.

Estimated Average Burden per Respondent: 70 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,374.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–24647 Filed 11–5–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Friday,
No. 216 November 6, 2020

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 54
Office of the Secretary

31 Part 33

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 414, et al.
Office of the Secretary

45 CFR Parts 147, 155 and 182
Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency; Interim Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9931]

Office of the Secretary

31 CFR Part 33

RIN 1545–BP97

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB98

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 414, 417, 433, and 510

Office of the Secretary

45 CFR Parts 147, 155, and 182

[CMS–9912–IFC]

RIN 0938–AU35

Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS); Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule with request for comments (IFC) discusses CMS's implementation of section 3713 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which established Medicare Part B coverage and payment for Coronavirus Disease 2019 (COVID–19) vaccine and its administration. This IFC implements requirements in the CARES Act that providers of COVID–19 diagnostic tests make public their cash prices for those tests and establishes an enforcement scheme to enforce those requirements. This rule also establishes an add-on payment for cases involving the use of new COVID–19 treatments under the Medicare Inpatient Prospective Payment System (IPPS). This IFC provides for separate payment for new COVID–19 treatments under the Outpatient Prospective Payment System (OPPS) for the remainder of the PHE for COVID–19 when these treatments are provided at the same time as a Comprehensive Ambulatory Payment Classification (C–APC) service. This rule also interprets and implements the requirement to maintain Medicaid beneficiary enrollment in order to receive the temporary increase in Federal funding in the Families First Coronavirus Response Act (FFCRA). This IFC modifies policies of the Comprehensive Care for Joint Replacement (CJR) model and adds technical changes to accommodate these policy changes. Specifically, we are extending Performance Year (PY) 5 by adding 6 months, creating an episode-based extreme and uncontrollable circumstances COVID–19 policy, providing two reconciliation periods for PY 5, and adding DRGs 521 and 522 for hip and knee procedures. This rule also amends regulations regarding coverage of preventive health services to implement section 3203 of the CARES Act, which shortens the timeframe within which non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage must begin to cover without cost sharing qualifying coronavirus preventive services, including recommended COVID–19 immunizations. This IFC also revises regulations to set forth flexibilities in the public notice requirements and post award public participation requirements for State Innovation Waivers under section 1332 of the Patient Protection and Affordable Care Act (PPACA) during the public health emergency for COVID–19.

DATES: *Effective date:* These regulations are effective on November 2, 2020, except for amendatory instructions 36 and 37, which are effective on January 1, 2021.

Applicability date: Except as otherwise specified in this paragraph, these regulations are applicable from November 2, 2020, until the end of the public health emergency for COVID–19 as determined by the HHS Secretary. The regulations at 42 CFR 410.57, 410.152, 410.160, 411.15, 414.701, 414.707, 414.900, and 414.904 and at 42 CFR part 510 (other than 42 CFR 510.300(a)(1)(i) and (iii)) are applicable November 2, 2020. Because the requirement at section 6008(b)(3) of the Families First Coronavirus Response Act (FFCRA) is not limited to the duration of the public health emergency for COVID–19, regulations at 42 CFR part 433, subpart G, apply from November 2, 2020, through the end of the last month of the public health emergency for COVID–19 in accordance with section 6008(b)(3) of the Families First Coronavirus Response Act. Regulations at 42 CFR 510.300(a)(1)(i) and (a)(1)(iii) are applicable October 1, 2020.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 4, 2021.

ADDRESSES: In commenting, please refer to file code CMS–9912–IFC.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9912–IFC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9912–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Laura Kennedy, (410) 786–3377, for discussion related to COVID–19 vaccine and administration payment provided under Medicare Part B.

Lina Rashid, (443) 902–2823, or Michelle Koltov, (301) 492–4225, Centers for Medicare & Medicaid Services, Department of Health and Human Services, Services, Kimberly Koch, (202) 622–0854, Department of the Treasury, for issues related to State Innovation Waivers Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency.

Dr. Terri Postma or Rhonda Sheppard, (410) 786–8465, or via email at *COVID19CashPrice@cms.hhs.gov,* for provisions related to Price Transparency for COVID–19 Diagnostic Testing.

Cristina Nigro, (410) 786–7763, for issues related to the Medicare Inpatient Prospective Payment System (IPPS) New COVID–19 Treatments Add-on Payment (NCTAP) for the remainder of the public health emergency.

David Mlawsky, (410) 786–1565, Centers for Medicare & Medicaid Services, Department of Health and Human Services, Elizabeth Schumacher, (202) 693–8335, Employee Benefits Security Administration, Department of Labor, Dara Alderman, (202) 317–5500, Internal Revenue Service, Department of the Treasury, for issues related to Rapid Coverage of Preventive Services for Coronavirus.

Stephanie Bell, (410) 786–0617, for issues related to the temporary increase in Federal Medicaid funding.

Bobbie Knickman, (410) 786–4161; Heather Holsey, (410) 786–0028; Sarah Mioduski, (410) 786–2014 or email *CJR@cms.hhs.gov* for the Comprehensive Care for Joint Replacement Model.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that website to view public comments.

Background

The United States is responding to an outbreak of respiratory disease caused by a novel coronavirus that was first detected in China and has now been detected in more than 190 countries internationally, and all 50 States, the District of Columbia, and U.S. territories. The virus has been named ''severe acute respiratory syndrome coronavirus 2'' (''SARS-CoV–2'') and the disease it causes has been named ''coronavirus disease 2019'' (''COVID–19'').

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization (WHO) declared the outbreak a ''Public Health Emergency of International Concern.'' On January 31, 2020, pursuant to section 319 of the Public Health Service (PHS) Act (42 U.S.C. 247d), the Health and Human Services Secretary (the Secretary) determined that a public health emergency (PHE) exists for the United States to aid the nation's health care community in responding to COVID–19 (hereafter referred to as the PHE for COVID–19). On March 11, 2020, the WHO publicly declared COVID–19 a pandemic. On March 13, 2020, President Donald J. Trump (the President) declared the COVID–19 pandemic a national emergency. Effective October 23, 2020, the Secretary renewed the January 31, 2020 determination that was previously renewed on April 21, 2020 and July 23, 2020 that a PHE exists and has existed since January 27, 2020.

The Administration is committed to ensuring that Americans have access to a COVID–19 vaccine through Operation Warp Speed, a partnership among components of the HHS, including the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the National Institutes of Health (NIH), and the Biomedical Advanced Research and Development Authority (BARDA). Operation Warp Speed engages with private firms and other Federal agencies, including the Department of Defense (DoD), Department of Agriculture, the Department of Energy, and the Department of Veterans Affairs. Through the work of the Federal Government and the private sector, Operation Warp Speed seeks to accelerate the development, manufacture, and distribution of a COVID–19 vaccine to the American people.

The CDC has reported that some people are at higher risk of severe illness from COVID–19.[1] These higher-risk categories include:

- Older adults, with risk increasing by age.
- People who have serious chronic medical conditions such as:
  - ++ Obesity.
  - ++ Cardiovascular disease.
  - ++ Diabetes mellitus.
  - ++ Hypertension.
  - ++ Chronic lung disease.
  - ++ Neurologic/Neurodevelopmental disability.[2]
  - ++ Immunocompromised individuals.
- Residents of Long Term Care (LTC) facilities, including nursing homes, Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities (ICF/IIDs), inpatient psychiatric and substance abuse treatment facilities including Institutions for Mental Disease (IMDs) & Psychiatric Residential Treatment Facilities (PRTFs), assisted living facilities, group homes for individuals with developmental disabilities and board-and-care facilities.[3]

As the health care community implements and updates recommended prevention and control practices, regulatory agencies operating under appropriate waiver authority granted by the PHE for COVID–19 are also working to revise and implement regulations that support these health care community infection prevention and treatment practices. Based on the current and projected increases in the incidence rate of COVID–19 in the US, observed fatalities in the older adult population, and the impact on health care workers at increased risk due to treating special populations, CMS[4] is reviewing and revising regulations, as appropriate, to offer states, providers, suppliers, and group health plans and health insurance issuers additional flexibilities in furnishing and providing services to combat the PHE for COVID–19 and to address and minimize the unique impact of the PHE for COVID–19 on other regulatory provisions.

CMS addressed additional policies in three previous interim final rules with comment period (IFCs). The ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency'' IFC appeared in the April 6, 2020 **Federal Register** (85 FR 19230) with an effective date of March 31, 2020, and the ''Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program'' IFC appeared in the May 8, 2020 **Federal Register** (85 FR 27550) with an effective date of May 8, 2020. The ''Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments, and Patient Protection and Affordable Care Act: Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency'' IFC appeared in the September 2, 2020 **Federal Register** (85 FR 54820) with an effective date of September 2, 2020.

This IFC implements a number of measures intended to further the Administration's commitment to ensure every American has timely access to a COVID–19 vaccine without any out-of-pocket expenses, no matter their source of coverage, or whether they are covered at all.

[1] *https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm.*

[2] *https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm?s_cid=mm6924e2_w.*

[3] *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html.*

[4] Throughout this IFC, unless otherwise specified, ''we'' and ''our'' refer to CMS only.

In this IFC, CMS discusses Section 3713 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act which added the COVID–19 vaccine and its administration to section 1861(s)(10)(A) of the Social Security Act (the Act) in the same subparagraph as the flu and pneumococcal vaccines and their administration. It also specified that under Medicare Part B, beneficiaries can receive a COVID–19 vaccination (vaccine and administration) with no cost sharing (deductible or copayment).

In this IFC, HHS and the Departments of Labor and the Treasury (referred to collectively as ''the Departments'') clarify certain aspects of coverage of preventive services without cost sharing under the current regulations implementing section 2713 of the Public Health Service (PHS) Act, as added by PPACA and incorporated into the Employee Retirement Income Security Act of 1974 (ERISA) by section 715 of ERISA and into the Internal Revenue Code (the Code) by section 9815 of the Code. The Departments also amend those regulations to implement the unique requirements related to rapid coverage of qualifying coronavirus preventive services under section 3203 of the CARES Act. Specifically, this IFC clarifies that plans and issuers subject to section 2713 of the PHS Act must cover without cost sharing recommended immunizations as well as the administration of such immunizations, regardless of how the administration is billed. This IFC also defines qualifying coronavirus preventive services consistent with the definition provided in section 3203 of the CARES Act and clarifies that plans and issuers subject to section 2713 of the PHS Act must cover recommended immunizations for COVID–19 that are qualifying coronavirus preventive services, even if not listed for routine use on the Immunization Schedules of the CDC. Due to the urgent need to ensure coverage of and access to qualifying coronavirus preventive services, and to ensure that participants, beneficiaries, and enrollees can access qualifying coronavirus preventive services on the expedited basis specified by statute, this IFC also provides that during the PHE for COVID–19, plans and issuers must cover, without cost sharing, qualifying coronavirus preventive services, regardless of whether such services are delivered by an in-network or out-of-network provider. This coverage is required to be provided within 15 business days after the date the United States Preventive Services Task Force (USPSTF) or the Advisory Committee on Immunization Practices of the CDC (ACIP) makes an applicable recommendation relating to a qualifying coronavirus preventive service.

Section 3202(b) of the CARES Act establishes a requirement to publicize cash prices for COVID–19 diagnostic testing during the PHE. For purposes of implementing section 3202(b) of the CARES Act, this IFC adds a new 45 CFR part 182, including (1) definitions of ''provider of a diagnostic test for COVID–19'' (or ''provider''), ''COVID–19 diagnostic test,'' and ''cash price,'' and (2) requirements for posting cash price information on the internet, or upon request and through signage (if applicable) if the provider does not have its own website. This IFC gives CMS discretion to take any of the following actions, which generally, but not necessarily, will occur in the following order if CMS determines the provider is noncompliant with section 3202(b)(1) of the CARES Act and the requirements of § 182.40:

- Provide a written warning notice to the provider of the specific violation(s).
- Request that a provider submit and comply with a corrective action plan (CAP) under § 182.60 if its noncompliance is not corrected after a warning notice.
- Impose a civil monetary penalty (CMP) on the provider if the provider fails to respond to CMS' request to submit a CAP or to comply with the requirements of a CAP approved by CMS.

This IFC creates a New COVID–19 Treatments Add-on Payment (NCTAP) under the Inpatient Prospective Payment System (IPPS) for COVID–19 cases that meet certain criteria. We believe that as drugs and biological products become available and are authorized or approved by FDA for the treatment of COVID–19 in the inpatient setting, it is appropriate to increase the current IPPS payment amounts to mitigate any potential financial disincentives for hospitals to provide new COVID–19 treatments during the PHE. Therefore, effective for discharges occurring on or after the effective date of this rule and until the end of the PHE for COVID–19, this IFC establishes the NCTAP to pay hospitals the lesser of (1) 65 percent of the operating outlier threshold for the claim or (2) 65 percent of the amount by which the costs of the case exceed the standard DRG payment, including the adjustment to the relative weight under section 3710 of the CARES Act, for certain cases that include the use of a drug or biological product currently authorized or approved for treating COVID–19. The NCTAP will not be included as part of the calculation of the operating outlier payments.

This IFC provides for separate payment for New COVID–19 Treatments under the Outpatient Prospective Payment System (OPPS) for the remainder of the PHE for COVID–19 when these treatments are provided at the same time as a Comprehensive Ambulatory Payment Classification (C–APC) service. Although we do not expect that many beneficiaries would both receive a primary C–APC service and a drug or biological for treating COVID–19 on the same claim, we nonetheless believe that as drugs or biologicals become available and are authorized or approved for the treatment of COVID–19 in the outpatient setting, it would be appropriate to mitigate any potential financial disincentives for hospitals to provide these new treatments during the PHE for COVID–19. Therefore, effective for services furnished on or after the effective date of this rule and until the end of the PHE, CMS is creating an exception to its OPPS C–APC policy to ensure separate payment for new COVID–19 treatments that meet certain criteria.

This IFC adds a new subpart G, Temporary FMAP Increase During the Public Health Emergency for COVID–19, to 42 CFR part 433, including a new § 433.400. This new provision interprets and implements section 6008(b)(3) of the FFCRA to require states, as a condition for receiving the temporary FMAP increase described at section 6008(a) of the FFCRA, to maintain beneficiary enrollment with specified protections. The terms of new § 433.400 are effective immediately upon display of this rule. CMS' previous interpretation, described in this preamble and in the FAQs cited therein, continues to apply up to the date this rule is effective.

This IFC modifies policies of the Comprehensive Care for Joint Replacement (CJR) model and adds technical changes to accommodate these policy changes. Specifically, we are extending Performance Year (PY) 5 an additional 6 months, creating an episode-based extreme and uncontrollable circumstances COVID–19 policy, providing two reconciliation periods for PY 5, and adding DRGs 521 and 522 for hip and knee procedures.

This IFC provides for flexibilities in the public notice requirements for a State Innovation Waiver (also referred to as a section 1332 waiver) described in section 1332 of PPACA that apply during the PHE for COVID–19. Specifically, this IFC gives the Secretary of HHS and the Secretary of the Treasury the authority to modify, in part, the public notice procedures to

expedite a decision on a proposed waiver request that is submitted or would otherwise become due during the PHE for COVID–19. This IFC also gives these Secretaries the authority to modify, in part, the post-award public notice requirements for an approved waiver request that would otherwise take place or become due during the PHE for COVID–19.

II. Provisions of the Interim Final Rule—Department of Health and Human Services

A. Medicare Coding and Payment for COVID–19 Vaccine

1. Summary

This section of this IFC discusses CMS's implementation of section 3713 of the CARES Act, which established Medicare Part B coverage and payment for a COVID–19 vaccine and its administration. While section 3713(e) of the CARES Act authorizes CMS to implement section 3713 via ''program instruction or otherwise,'' we believe it is important to clarify in this IFC our interpretation of Section 3713 and ensure the public is aware of our plans to ensure timely Medicare Part B coverage and payment for COVID–19 vaccine and its administration.

2. Background on Medicare Part B Coverage, Payment, Coding and Billing for Vaccines

As required under section 1842(o)(1)(A)(iv) of the Act, the Medicare Part B payment allowance limits for influenza, pneumococcal, and hepatitis B virus (HBV) vaccines are 95 percent of the Average Wholesale Price (AWP) as reflected in the published compendia except where the vaccine is furnished in a hospital outpatient department, Rural Health Clinic (RHC), or Federally Qualified Health Center (FQHC), skilled nursing facility, and home health. Where the vaccine is furnished in these settings, payment for the vaccine is based on reasonable cost.

For preventive vaccines described in section 1861(s)(10) of the Act, Medicare pays for both the vaccine and its administration. Under sections 1833(a)(1)(B), annual Part B deductible and coinsurance amounts do not apply for these vaccinations. In 2020, payment for vaccines is based on the 95 percent of the AWP for a particular vaccine product except where furnished in the settings for which payment is based on reasonable cost. For example, for the 2020–2021 influenza season, payment limits for adult flu vaccines range from about $19 to $61 per adult dose.[5]

We note that in the Calendar Year 2021 Physician Fee Schedule Proposed Rule (85 FR 50162–50163), CMS proposed to increase the Medicare payment rate for administration of the flu, pneumococcal or HBV vaccine furnished by a physician, non-physician practitioner, or other supplier. CMS will address public comments on the proposal and establish payment rates for administration of these vaccines by a physician, non-physician practitioner, or other supplier in the Calendar Year 2021 Physician Fee Schedule Final Rule, which will be issued later this year. Note that the payment rates for administration of these preventive vaccines established in the CY 2021 Physician Fee Schedule final rule do not apply when the vaccine is furnished by the providers and suppliers paid for administration under reasonable cost. Under the CY 2021 OPPS proposed rule, CMS proposed to assign the HCPCS codes for administration of the influenza, pneumococcal, and hepatitis B vaccines to APC 5691, Level 1 Drug Administration. See Addendum C to the CY 2021 OPPS/ASC proposed rule. Payment amounts for these preventive vaccines and their administration are not adjusted based on product-specific factors.

Generally, providers and suppliers bill for the vaccine and the vaccine administration separately using different codes. For example, many vaccine products are identified by AMA CPT codes in the 90000 series, while others are identified by Level II HCPCS codes, usually beginning with the letter Q. Vaccine administration services are described by the types of codes used to describe professional and/or hospital outpatient services, and are typically identified by a G code for Medicare billing, or by a different AMA CPT code in the 90000 series.

Many providers, professionals, and other suppliers can bill Medicare for the preventive vaccines and vaccine administration they furnish using claims rules similar to those that apply to the other Medicare covered items and services. Additionally, certain entities can enroll under Medicare as mass immunizers to offer and bill Medicare for flu vaccinations, pneumococcal vaccinations, or both to large groups of Medicare beneficiaries under roster billing. A mass immunizer may be enrolled in Medicare as another type of provider or supplier such as a physician, non-physician practitioner, hospital outpatient department, home health agency or skilled nursing facility. An entity or individual that does not otherwise qualify as a Medicare provider or supplier but wishes to furnish mass immunization services may be eligible to enroll in Medicare as a ''Mass Immunization Roster Biller'' via the Form CMS–855 enrollment application (Medicare Enrollment Application: Clinics/Group Practices and Certain Other Suppliers; OMB Control No.: 0938–0685; Expires 12/21). Aside from meeting all applicable enrollment requirements in 42 CFR part 424, subpart P (and as outlined in CMS Pub. 100–08 (Program Integrity Manual), chapter 10, section 10.2.4), a party enrolled only as a mass immunization roster biller must comply with the following: (1) May not bill Medicare for any services other than pneumococcal pneumonia vaccines (PPVs), influenza virus vaccines, and their administration; (2) must submit claims through the roster biller or centralized biller process; and (3) the enrolled entity or individual must meet all applicable state and local licensure or certification requirements. In other words, an enrolled mass immunizer roster biller may only roster bill Medicare for the services described in the previous sentence. (For more information on the enrollment process for mass immunization roster billers, see *https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/Become-a-Medicare-Provider-or-Supplier* and/or contact your local Part A/B Medicare Administrative Contractor.)

For entities that are already enrolled Medicare providers and suppliers, these entities would contact their MAC if they plan to submit claims as a mass immunizer. Mass immunizers may submit claims for immunizations (vaccine and administration) on roster bills that include a limited set of information on each beneficiary and the vaccine(s) they were given. We note that HBV vaccinations require an assessment of a patient's risk of contracting hepatitis B; they require a physician's order and cannot be roster billed by mass immunizers.

3. Provisions of the CARES Act

Section 3713 of the CARES Act provides for coverage of the COVID–19 vaccine under Part B of the Medicare program without any beneficiary cost sharing. Specifically, section 3713 amended section 1861(s)(10)(A) of the Act to include COVID–19 vaccine and its administration. The amendments made are effective on the date of

[5] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/VaccinesPricing,* accessed September 29, 2020.

enactment and apply to a COVID–19 vaccine beginning on the date that such vaccine is licensed under section 351 of the PHS Act (42 U.S.C. 262). Section 3713(e) of the CARES Act further states that the Secretary may implement the provisions of, and the amendments made by, this section by program instruction or otherwise.

Under section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), the Commissioner of Food and Drugs, as delegated authority by the Secretary, may authorize, during the effective period of a declaration of emergency or threat justifying emergency authorized use, the introduction into interstate commerce of unapproved medical products or unapproved uses of approved medical products to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by chemical, biological, radiological and nuclear defense (CBRN) threat agents when there are no adequate, approved, and available alternatives. On March 27, 2020, on the basis of his determination of a PHE that has a significant potential to affect national security or the health and security of United States citizens living abroad involving COVID–19, the Secretary declared that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic (85 FR 18250). Pursuant to this declaration, the Commissioner of Food and Drugs, as delegated authority by the Secretary, may issue an emergency use authorization (EUA) for a drug or biological product if, after consultation with officials such as the Director of the CDC and the Director of the NIH, to the extent feasible and appropriate, the Commissioner reasonably concludes that, among other criteria, based on the totality of available scientific evidence, the product may be effective in diagnosing, treating or preventing such disease or condition, and the product's known and potential benefits when used to diagnose, prevent, or treat such disease or condition, outweigh its known and potential risks.

FDA's June 2020 guidance to industry titled ''Development and Licensure of Vaccines to Prevent COVID–19'' [6] and October 2020 guidance to industry titled ''Emergency Use Authorization for Vaccines to Prevent COVID–19'' [7] state that issuance of an EUA may be appropriate for a COVID–19 vaccine, for which there is adequate manufacturing information, once studies have demonstrated the safety and effectiveness of the vaccine in a clear and compelling manner, but before the submission and/or formal review of the biologics license application for the vaccine. These guidance documents state that in the case of vaccines being developed for the prevention of COVID–19, any assessment regarding an EUA would be made on a case by case basis considering the target population, the characteristics of the product, the preclinical and human clinical study data on the product, and the totality of the relevant available scientific evidence. The FDA has made clear in its October 2020 guidance to industry that for a COVID–19 vaccine for which there is adequate information to ensure its quality and consistency, issuance of an EUA would require a determination by FDA that the vaccine's benefits outweigh its risks based on data from at least one well-designed Phase 3 clinical trial that demonstrates the vaccine's safety and efficacy in a clear and compelling manner. Because the vaccine would be intended for administration to healthy people as a prophylactic measure, there must be a higher degree of certainty about the risks and benefits of the product than needed for EUAs for medical products intended for treatment of sick patients.

There are no historical examples in which Medicare has covered vaccines for which an EUA was issued by FDA. We recall that during the PHE involving the 2009 H1N1 flu outbreak,[8] Influenza A (H1N1) 2009 Monovalent Vaccine was approved by the FDA on September 15, 2009 on the basis of a supplement to the applicant's biologics license application (BLA) for influenza virus vaccine.[9] In our review of PHEs, there are no circumstances in which a vaccine product authorized for emergency use has been covered or paid for by Medicare.

As discussed previously, the CDC recognizes that the categories of people at higher risk of severe illness from COVID–19 include older adults (with risk increasing by age), people with chronic conditions such as cardiovascular disease or diabetes, and residents of long-term care facilities.[10] The Medicare population includes many beneficiaries who are in these higher-risk categories, primarily because most, (over 85 percent) [11] Medicare beneficiaries are over 65 years old. Given the high risk nature of the Medicare population, the circumstances of this nationwide pandemic, and FDA's guidance that an EUA may be appropriate for a COVID–19 vaccine prior to its licensure if there is a demonstration of safety and efficacy in a clear and compelling manner from at least one Phase 3 clinical trial, we believe it is appropriate for Medicare to consider any EUA under section 564 of the FD&C Act issued for a COVID–19 vaccine during the PHE to be tantamount to a license under section 351 of the PHS Act for the sole purpose of considering such a vaccine to be described in section 1861(s)(10)(A) of the Act. That is, even though section 3713 of the CARES Act refers to a COVID–19 vaccine ''licensed under section 351 of the PHS Act,'' CMS could consider any vaccine for which FDA issued an EUA during the PHE, when furnished consistent with terms of the EUA, to be eligible for Medicare coverage and payment. We consider our interpretation of section 3713(d) of the CARES Act to be consistent with Congress' intent to provide for Medicare coverage without deductible or coinsurance of any COVID–19 vaccine (and its administration) that FDA has authorized to be introduced into interstate commerce, which would be the case both for a vaccine for which emergency use is authorized under section 564 of the FD&C Act and for a vaccine that is licensed under section 351 of the PHS Act. Our interpretation also would be consistent with Congress' general intent in the CARES Act and other recent legislation to provide for rapid coverage of COVID–19 vaccines.

We note that section 3713(e) of the CARES Act permits CMS to implement the changes made by that section through ''program instruction or otherwise,'' and we intend to issue any necessary instructions for Medicare providers and suppliers expediently in order to ensure beneficiary access to COVID–19 vaccines as quickly as possible.

[6] Available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/development-and-licensure-vaccines-prevent-covid-19,* accessed September 30, 2020.

[7] Available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-vaccines-prevent-covid-19,* accessed October 9, 2020.

[8] Available at *https://www.phe.gov/emergency/news/healthactions/phe/Pages/h1n1.aspx,* accessed on October 14, 2020.

[9] Available at *https://www.fda.gov/vaccines-blood-biologics/vaccines/influenza-h1n1-2009-monovalent-vaccine-novartis-vaccines-and-diagnostics-limited,* accessed October 14, 2020.

[10] *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fpeople-at-increased-risk.html.*

[11] *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Beneficiary-Snapshot/Downloads/Bene_Snaphot.pdf.*

4. Implementation and Methods of Coding and Payment for COVID–19 Vaccine and Administration

Section 3713 of the CARES Act added the COVID–19 vaccine and its administration to section 1861(s)(10)(A) of the Act in the same subparagraph as the flu and pneumococcal vaccines and their administration. As such, the Medicare allowed amount for the COVID–19 vaccine will also be 95 percent of the average wholesale price (or reasonable cost, for example under OPPS).

Because COVID–19 vaccines are being developed rapidly and systems to operationalize payment of administration will need to be implemented quickly to ensure beneficiary access, we also recognize the need to establish coding and payment for COVID–19 vaccine and administration under Medicare Part B. Because there are many product-specific factors that are still unknown, including the possibility of differential costs associated with each COVID–19 vaccine product and storage and administration requirements, we anticipate establishing a unique administration code for each COVID–19 vaccine product. We believe it is imperative that coding and payment be in place as soon as possible after COVID–19 vaccines become available. We anticipate establishing specific coding and payment rates through technical direction to the MACs, including instructions to make this information available to the public. We also anticipate posting information on coding, payment, and billing for COVID–19 vaccines and vaccine administration on the CMS website. This approach will maintain public transparency while allowing CMS to pay appropriately for particular vaccines and vaccine administration as quickly as practicable once they are authorized or licensed for use by FDA. We anticipate that payment rates for the administration of other Part B preventive vaccines and related services, such as the flu and pneumococcal vaccines, would serve to inform the payment rates for administration of COVID–19 vaccines.

CMS ordinarily establishes Medicare payment rates for particular items and services, through notice-and-comment rulemaking. Because of the unique circumstances of the PHE for COVID–19 pandemic and the anticipated, specific conditions for the entry of COVID–19 vaccine products into the marketplace, we believe it is necessary to initially dispense with the rulemaking process in order to make Medicare payment available in a timely manner to ensure widespread access to the new vaccines. Therefore, as soon as practicable after the authorization or licensure of each COVID–19 vaccine product by FDA, we will announce the interim coding and a payment rate for its administration (or, in the case of the OPPS, an APC assignment for each vaccine product's administration code), taking into consideration any product-specific costs or considerations involved in furnishing the service. Such consideration may be necessary, specifically for COVID–19 vaccines in the context of the pandemic, in order to ensure that health care providers can offer prompt access to vaccination for a large number of people as quickly as possible. We then anticipate addressing coding and payment rates for administration of the COVID–19 vaccine products through future notice-and-comment rulemaking. In other words, the approach to payment and coding described in this IFC will ensure efficient and timely beneficiary access to COVID–19 vaccine products, that for public health purposes may need to be administered to a large number of people during a compressed period of time, until further rulemaking, such as annual rulemaking under the Medicare Physician Fee Schedule, is possible.

Given that the COVID–19 vaccine and administration was added to the same subparagraph as the flu and pneumococcal vaccines and administration under section 1861(s)(10)(A) of the Act, we believe it would be appropriate to use billing processes for COVID–19 vaccinations that are similar to those in place for flu and pneumococcal vaccinations. With the pressing need to ensure broad access to a COVID–19 vaccine, it would be appropriate to allow COVID–19 vaccinations to be provided through the mass immunization and roster billing process that is in place for flu and pneumococcal vaccinations. We recognize that, at this time, there is very limited detailed information on COVID–19 vaccines and their administration and that information on these vaccines is likely to evolve as they reach the market and then experience with them is gained. At this time, we believe that the COVID–19 vaccines will be administered as one or two parenteral doses, thus we believe that using the Part B influenza vaccination approach that permits certain providers and mass immunization to bill for the product strikes a balance between the need to vaccinate many millions of Medicare patients promptly and the lack of detailed information about particular COVID–19 vaccine products. Although influenza vaccination is generally only given once each flu season, CMS has contemplated how to respond to pandemics where payment for additional doses of an influenza vaccine during a season may be required. Thus, a two dose initial COVID–19 vaccination schedule can be accommodated under this general approach. Also, the CARES Act permits the Secretary to implement the provisions of, and the amendments made by, section 3713 by program instruction or otherwise. As information about vaccine products becomes available, we anticipate that updated information, for example information concerning additional doses after initial vaccination, applicability of specific vaccine products to subsets of our beneficiary population, or updates about billing would be disseminated primarily by program instruction.

As part of this IFC, we are updating the following regulations:

- At § 410.57, Pneumococcal vaccine and flu vaccine, we are amending the section heading and adding a new paragraph to reference COVID–19 vaccine.
- At § 410.152, Amounts of payment, we are amending § 410.152(l)(1) to include the COVID–19 vaccine in the list of vaccines for which Medicare Part B pays 100 percent of the Medicare payment amount.
- At § 410.160, Part B annual deductible, we are amending § 410.160(b)(2) to include the COVID–19 vaccine in the list of vaccines that are not subject to the Part B annual deductible and do not count toward meeting that deductible.
- At § 411.15, Particular services excluded from coverage, we are amending § 411.15(e) to add an exception for COVID–19 vaccinations to the general exclusion of coverage for immunizations.
- At § 414.701, Purpose, we are amending the list of statutorily covered drugs to include the COVID–19 vaccine.
- At § 414.707, Basis of Payment, we are amending § 414.707(a)(2)(iii) to include the COVID–19 vaccine in the list of vaccines with a payment limit calculated using 95 percent of the average wholesale price.
- At § 414.900, Basis and scope, we are amending § 414.900(b)(3) to include the COVID–19 vaccine in the list of statutorily covered drugs.
- At § 414.904, Average sales price as the basis for payment, we are amending § 414.904(e)(1) to include the COVID–19 vaccine in the list of vaccines with payment limits calculated using 95 percent of the average wholesale price.

5. Medicare Advantage and Cost Plans

Under sections 1852(a)(1) and 1876(c)(2) of the Act, Medicare Advantage (MA) plans and cost plan organizations must cover all benefits covered under Part A and Part B of Original Medicare, subject to limited exclusions. Therefore, all MA plans and cost plans must cover a COVID–19 vaccine and its administration described in section 1861(s)(10)(A) of the Act. As described previously, the interpretation of section 3713 of the CARES Act adopted in this rule will result in Part B coverage of a COVID–19 vaccine for which FDA issues an EUA during the PHE, and administration of that vaccine when furnished consistent with terms of such EUA. As amended by section 3713 of the CARES Act, section 1852(a)(1)(B)(iv)(VI) of the Act prohibits MA plans from using cost sharing that exceeds the cost sharing imposed under original Medicare for a COVID–19 vaccine and its administration when MA coverage is provided because they are covered under Part B under section 1861(s)(10)(A) of the Act.

Section 1852(a)(5) of the Act and 42 CFR 422.109 provide that when a National Coverage Determination (NCD) or legislative change in benefits, such as the addition of Part B coverage of a COVID–19 vaccine and its administration, results in significant costs that have not been included in the capitation payments made to MA plans, coverage of the new benefit will be provided through the Medicare FFS program until the capitation payments take the new significant costs into account. The payment rates for MA organizations for contract years 2020 and 2021 have been set without including the costs for a COVID–19 vaccine and its administration. Therefore, if coverage of a COVID–19 vaccine and its administration during that period results in significant costs, section 1852(a)(5) of the Act and § 422.109 will apply to require Medicare FFS coverage of the vaccine and its administration.

The cost projection used for the determination whether the legislative change results in significant costs is based on an analysis by the Chief Actuary of CMS of the actuarial costs associated with a NCD or the legislative change in benefits and compared to the thresholds specified in the regulation at § 422.109. This analysis is generally performed once a Medicare FFS payment rate is determined for the service. If the estimated cost of an NCD or legislative change represents at least 0.1 percent of the national average per capita costs or the average cost of furnishing a single service exceeds the cost threshold established in using the formula in § 422.109(a), it is considered a significant cost and the FFS Medicare program provides coverage for the service until the costs are factored into Medicare Advantage payments. Therefore, this legislative change would be subject to an analysis whether the new benefit results in significant costs. The significant cost threshold will be met assuming that the projected cost per-beneficiary-per-year is greater than approximately $13, which is 0.1 percent of the national average per capita costs. If the threshold is reached, Medicare beneficiaries enrolled in MA plans will receive coverage of the COVID–19 vaccine and its administration through the Medicare FFS program and would be able to access the COVID–19 vaccine, without cost sharing, at any FFS provider or supplier that participates in Medicare and is eligible to bill under Part B for vaccine administration, including those enrolled in Medicare as a mass immunizer or a physician, non-physician practitioner, hospital, clinic, or group practice.

Section 3713 of the CARES Act added Medicare Part B coverage for a COVID–19 vaccine and its administration and provides that MA plans must cover the new benefit without cost sharing. While section 1876(c)(2) of the Act ensures that enrollees in Medicare cost plans will have coverage of a COVID–19 vaccine and its administration, section 3713 of the CARES Act did not amend section 1876 of the Act to provide similar cost-sharing protections for enrollees in cost plans who receive the vaccine from an in-network provider. Nor is there a provision affirmatively relieving cost plans of the obligation to cover the new Part B benefit. Because the Medicare FFS program covers Part A and Part B items and services furnished to cost plan enrollees by out-of-network health care providers that participate in the Medicare FFS program, cost plan enrollees will receive the COVID–19 vaccine and its administration without cost sharing when they go to a health care provider that is out of the cost plan's network. *See* 42 CFR 417.436(a)(5) and 417.448. However, there is no requirement for cost plans to cover the COVID–19 vaccine and its administration without cost sharing (that is, with cost sharing that is the same as original Medicare) when the vaccine is furnished by an in-network health care provider. Many enrollees may seek the COVID–19 vaccine from the health care provider they usually see or from whom they receive most of their health care; that provider is likely to be in-network with the cost plan. CMS believes that it is necessary and appropriate to ensure that cost plan enrollees, like other Medicare beneficiaries, are provided access to the COVID–19 vaccine and its administration without cost sharing. Section 1876(i)(3)(D) of the Act authorizes us to impose ''other terms and conditions not inconsistent with [section 1876]'' that are deemed ''necessary and appropriate.'' Requiring cost plans to comply with the same cost sharing protections available to Medicare beneficiaries in the FFS program and enrolled in Medicare Advantage plans is necessary and appropriate, so that cost is not a barrier for beneficiaries to get the vaccine, particularly during the public health emergency when ensuring access is of paramount importance. To ensure that cost plan enrollees also do not pay cost sharing for the COVID–19 vaccine and its administration when received from an in-network provider at least until the end of the public health emergency for COVID–19, we are adding a new paragraph (e)(4) to § 417.454 to require section 1876 cost plans to cover without cost sharing the COVID–19 vaccine and its administration described in section 1861(s)(10)(A) of the Act without cost sharing for the duration of the PHE for the COVID–19 pandemic, specifically the end of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Act, which is the PHE declared by the Secretary on January 31, 2020 and any renewals thereof.

B. COVID–19 Vaccine Coverage for Medicaid, CHIP, and BHP Beneficiaries

Under section 6008 of the FFCRA, states' and territories' Medicaid programs may receive a temporary 6.2 percentage point increase in the Federal Medical Assistance Percentage (FMAP). Under section 6008(b)(4) of the FFCRA, to receive that increase, a state or territory must cover COVID–19 testing services and treatments, including vaccines and the administration of such vaccines, for Medicaid enrollees without cost sharing. That coverage is required during any quarter for which the state or territory claims the temporary FMAP increase under FFCRA section 6008, and the FMAP increase is available through the end of the quarter in which the PHE for COVID–19 ends. CMS is not aware of any states or territories not currently claiming this temporary FMAP increase, or of any state or territory that intends to cease claiming it. Accordingly, Medicaid coverage of a COVID–19 vaccine and its administration, without cost-sharing, is expected to be available for most

Medicaid beneficiaries through the end of the quarter in which the PHE for COVID–19 ends. For the remainder of this section of preamble, references to ''state'' or ''states'' in discussions of Medicaid policy also include the territories.

To meet the requirement in FFCRA section 6008(b)(4) to cover a COVID–19 vaccine and its administration without cost sharing, states must compensate Medicaid providers with a vaccine administration fee or reimbursement for a provider visit during which a vaccine dose is administered, even if the vaccine dose is furnished to the provider at no cost.

There are some very limited circumstances in which the FFCRA section 6008(b)(4) coverage requirements would not apply. CMS has not interpreted section 6008(b)(4) of the FFCRA to require that state Medicaid programs cover the services described in that provision for individuals whose Medicaid eligibility is limited by statute to only a narrow range of benefits that would not otherwise include these services. FFCRA section 6008(b)(4) did not amend the varying benefits packages that are required for different Medicaid eligibility groups under section 1902(a)(10) of the Act. In some cases, beneficiaries' coverage is limited by statute to a very narrow range of benefits and services that typically would not include services described in FFCRA section 6008(b)(4), such as COVID–19 vaccines or their administration (see, *e.g.,* the limitations described in the matter following section 1902(a)(10)(G) of the Act for some Medicaid eligibility groups). Nor did FFCRA section 6008(b)(4) direct states to amend existing demonstration projects under section 1115(a) of the Act, through which states may offer eligibility to groups not otherwise eligible under title XIX of the Act, and can opt to provide these groups with limited benefits. Moreover, after FFCRA was enacted, in section 3716 of the CARES Act (Pub. L. 116–136), Congress defined eligibility for the COVID–19 testing-only optional Medicaid eligibility group described in section 1902(a)(10)(A)(ii)(XXIII) of the Act in a manner that recognized that certain limited-benefit Medicaid eligibility groups are ''uninsured,'' and therefore eligible to receive coverage for COVID–19 testing under that provision, without referring to or acknowledging the FFCRA section 6008(b)(4) COVID–19 testing coverage requirement. See section 1902(ss) of the Act. Accordingly, CMS does not interpret FFCRA section 6008(b)(4) to require states to provide COVID–19 testing and treatment services without cost-sharing, including vaccines and their administration, to eligibility groups whose coverage is limited by statute or under an existing section 1115 demonstration to a narrow range of benefits that would not ordinarily include this coverage, such as groups that receive Medicaid coverage only for COVID–19 testing, family planning services and supplies, or tuberculosis-related services. The COVID–19 Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured Program (COVID–19 Claims Reimbursement program) administered by the Health Resources and Services Administration (HRSA) is available for reimbursement of a COVID–19 vaccine and vaccine administration costs for individuals who would not receive Medicaid coverage for a COVID–19 vaccine or its administration because their Medicaid coverage is for limited benefit packages only.

After the requirements in section 6008(b)(4) of FFCRA are no longer in effect in a state, the state must cover COVID–19 vaccines recommended by the ACIP, and their administration, for several populations under existing statutory and regulatory authority. All Medicaid-enrolled children under the age of 21 eligible for the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit must receive ACIP-recommended vaccines pursuant to section 1905(r)(1)(A)(i) and (B)(iii) of the Act.[12] Coverage of ACIP-recommended vaccines without cost-sharing is required for any adult populations who receive coverage through Alternative Benefit Plans (ABPs), including the adult expansion population described at section 1902(a)(10)(A)(i)(VIII) of the Act, pursuant to section 1937(b)(5) of the Act, 42 CFR 440.347(a), and 45 CFR 156.115(a)(4) and 147.130. Some states may also elect to receive a 1 percentage point FMAP increase for their expenditures on certain services, in return for covering ACIP-recommended vaccines and their administration without cost-sharing for adults under section 1905(a)(13) of the Act, pursuant to section 4106 of PPACA (as codified in section 1905(b) of the Act). Children through age 18 who are eligible for Medicaid (funded through both titles XIX and XXI), as well as children who are uninsured, who are not insured with respect to the vaccine and who are administered pediatric vaccines by a federally qualified health center (FQHC) or rural health clinic, or who are Indians (as defined in section 4 of the Indian Health Care Improvement Act) receive ACIP-recommended vaccinations through the Vaccines for Children (VFC) program, described at section 1928 of the Act. The Centers for Disease Control and Prevention (CDC) will determine if COVID–19 vaccines will be included in the VFC program. Coverage of the administration of a VFC-covered vaccine for Medicaid-eligible children would be provided by the state Medicaid program.

After the FFCRA section 6008(b)(4) requirements are no longer in effect in a state, the state also has the option to cover a COVID–19 vaccine and its administration for other eligibility groups. Such groups include the parent/caretaker relative eligibility group at 42 CFR 435.110, eligibility groups for individuals who are age 65 or older or who are eligible on the basis of blindness or a disability, and pregnant women enrolled under 42 CFR 435.116 who are eligible for full state plan benefits. If a state elects to cover a COVID–19 vaccine and its administration for any one of these groups, it must do so for all of them, except that with respect to the pregnant women group described in 42 CFR 435.116, per 42 CFR 440.250(p) states can cover a vaccine and its administration as a pregnancy-related service while not providing the same coverage for the other eligibility groups. Outside of the period in which FFCRA section 6008(b)(4) applies to a state, the state has the option to apply cost sharing to coverage of a COVID–19 vaccine or its administration unless the beneficiary is in an eligibility group that is exempt from cost-sharing under section 1916 or section 1916A of the Act and regulations at 42 CFR 447.56 (for example, most children under age 18, most pregnant women, most children in foster care, individuals receiving services in an institution that already had their medical assistance reduced by their income, individuals receiving hospice care, and Indians who are currently receiving or have ever received an item or service furnished by an Indian health care provider or through referral under contract health services).

After the FFCRA section 6008(b)(4) requirements are no longer in effect in a state, a COVID–19 vaccine and its administration could also be a covered service for many Medicaid eligibility groups when furnished by a participating provider under certain Medicaid benefits that are mandatory for many Medicaid eligibility groups,

[12] Medicaid enrolled children up to the age of 18 are generally exempt from cost sharing. For children age 19 or 20 cost sharing for an ACIP-recommended vaccine may apply, outside of an Alternative Benefit Plan.

depending on how the state has defined the amount, duration, and scope parameters of the benefit. Because inpatient and outpatient hospital services, physician services, and Federally Qualified Health Center and Rural Health Clinic services are mandatory Medicaid benefits for the categorically needy populations, COVID–19 vaccine administration could be a covered service for many Medicaid beneficiaries when provided by these participating providers, at state option. States might also cover COVID–19 vaccine administration for beneficiaries under various optional state plan benefits, such as the ''other licensed practitioner'' benefit described in section 1905(a)(6) of the Act and 42 CFR 440.60, or the ''preventive services'' benefit described in section 1905(a)(13) of the Act and 42 CFR 440.130(c). However, states would generally not have the option to cover a COVID–19 vaccine or its administration for any group whose coverage is limited by statute or under a current section 1115 demonstration to a narrow range of benefits that would not ordinarily include vaccine coverage. As described above, the COVID–19 Claims Reimbursement program administered by HRSA may be used to cover COVID–19 treatment, including the administration of vaccines, for such limited-benefit beneficiaries. In addition, a state might have the option, subject to Federal approval, to propose or amend a section 1115 demonstration to include this coverage for a group that would not otherwise be entitled to receive it under the statute or under current section 1115 authority.

The FFCRA section 6008(b)(4) requirement does not apply to separate CHIPs.[13] In separate CHIPs, states must cover ACIP-recommended vaccines and their administration for all children under age 19 with no cost sharing. See section 2103(c)(1)(D) and (e)(2) of the Act, and 42 CFR 457.410(b)(2) and 457.520(b)(4). Coverage of uninsured pregnant women in a separate CHIP is optional. Currently, the states that cover pregnant women in a separate CHIP include all ACIP-recommended vaccines with no cost sharing in this coverage. However, current CMS interpretation is that this vaccine coverage is not required.

The FFCRA section 6008(b)(4) requirement also does not apply to the Basic Health Program (BHP). Minnesota and New York are the only states that currently operate a BHP. BHP coverage must include benefits in at least the ten essential health benefits described in section 1302(b) of the PPACA and must comply with the Exchange's cost-sharing protections,[14] which includes providing all ACIP recommended vaccines without cost sharing. See sections 1331(a)(1), (a)(2)(B) and (b)(2) of PPACA, and 42 CFR 600.405(a) and 600.510(b).

Section 600.510(b) cross-references 45 CFR 147.130, which establishes requirements related to the coverage of preventive health services for BHP. For ABPs, 42 CFR 440.347 cross-references 45 CFR part 156, which incorporates 45 CFR 147.130, which establishes requirements related to the coverage of preventive health services. Consistent with the changes to 45 CFR 147.130 made through this rulemaking, during the COVID–19 public health emergency BHP plans and Medicaid ABPs must provide coverage for and must not impose any cost-sharing for ''qualifying coronavirus preventive services,'' including a COVID vaccine, regardless of whether the vaccine is delivered by an in-network or out-of-network provider. For details on the coverage requirements for ''qualifying coronavirus preventive services'' and the updates to 45 CFR 147.130 see section III of this IFC.

Lastly, we note that CMS intends this section only to be a description of current policy and existing law, with the exception noted directly above for BHP and Medicaid ABPs, and that CMS is not making any changes to its current policy or regulatory requirements in this rule.

C. Price Transparency for COVID–19 Diagnostic Tests

1. Introduction

Robust COVID–19 diagnostic testing is fundamental to the Federal Government's strategy for controlling the spread of COVID–19.[15] In recognition of the importance of COVID–19 diagnostic testing, the Federal Government has taken several steps to reduce financial barriers to testing for both insured and uninsured individuals, including the following:

- The FFCRA was enacted on March 18, 2020. Section 6001 of the FFCRA generally requires group health plans and health insurance issuers offering group or individual health insurance coverage to provide coverage for certain items and services, including *in vitro* diagnostic testing products for the detection of SARS–CoV–2, the virus that causes COVID–19, or the diagnosis of COVID–19 (referred to herein collectively as COVID–19 diagnostic tests) when those items or services are furnished on or after March 18, 2020, and during the PHE for COVID–19. Plans and issuers must provide this coverage without imposing any cost-sharing requirements (including deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements. Related items and services include those provided during urgent care center visits, in-person and telehealth office visits, and emergency room visits that result in an order for or administration of an *in vitro* diagnostic product, to the extent that such items and services relate to the furnishing or administration of a COVID–19 diagnostic test, or to the evaluation of an individual for purposes of determining the need of the individual for a COVID–19 diagnostic test. Section 3201 of the CARES Act, enacted on March 27, 2020, amended section 6001 of the FFCRA to include a broader range of diagnostic tests that plans and issuers must cover without any cost-sharing requirements or prior authorization or other medical management requirements.
- The COVID–19 Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured Program provides reimbursements on a rolling basis directly to eligible providers for claims that are attributed to the testing and treatment of COVID–19 for certain uninsured individuals. The program is funded via (1) the FFCRA Relief Fund, which includes funds received from the Public Health and Social Services Emergency Fund, as appropriated in the FFCRA and the Paycheck Protection Program and Health Care Enhancement Act (PPPHCEA) (Pub. L. 116–139), which each appropriated funding to reimburse providers for conducting COVID–19 testing for the uninsured, and (2) the Provider Relief Fund, as appropriated in the CARES Act and the PPPHCEA.[16]

[13] In states that use title XXI funding to expand Medicaid eligibility for children, the FFCRA section 6008(b)(4) requirements apply to these title XXI funded Medicaid beneficiaries in the same way that they do to all other Medicaid beneficiaries.

[14] As explained in rulemaking, this includes the prohibition on cost sharing for preventive health services. See the Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity; Final Rule. 79 FR 14111 at 14128 (March 12, 2014).

[15] The White House, CDC and FDA document: Testing Overview, Opening Up America Again. Available at: *https://www.whitehouse.gov/wp-content/uploads/2020/04/Testing-Overview-Final.pdf.*

[16] FAQs for COVID–19 Claims Reimbursement to Health Care Providers and Facilities for Testing and

• HHS has partnered with pharmacies, retail companies, and health centers nationwide to make no-cost COVID–19 diagnostic testing available to Americans in communities across the country.[17]

Congress has also taken steps to facilitate the reimbursement for COVID–19 diagnostic testing and to ensure that pricing for performance of such testing is publicly available. Specifically, section 3202(a) of the CARES Act requires group health plans and issuers providing coverage for items and services described in section 6001(a) of the FFCRA to reimburse any provider of a COVID–19 diagnostic test an amount that equals the negotiated rate, or, if the plan or issuer does not have a negotiated rate with the provider, the cash price for such service that is listed by the provider on a public website. The plan or issuer may also negotiate a rate with the provider that is lower than the cash price. More information related to health insurance issuer and group health plan coverage and reimbursement for COVID–19 diagnostic testing is available at *https://www.cms.gov/files/document/FFCRA-Part-42-FAQs.pdf* and *https://www.cms.gov/files/document/FFCRA-Part-43-FAQs.pdf.* Specifically, the Departments note that the reimbursement requirements under CARES Act 3202(a) will apply to COVID–19 diagnostic testing, as defined in this IFC.

Section 3202(b) of the CARES Act establishes a requirement for each provider of a diagnostic test for COVID–19 to publicize cash prices for such COVID–19 diagnostic testing. Specifically, section 3202(b)(1) of the CARES Act requires each provider of a diagnostic test for COVID–19 to make public the cash price for such test on a public internet website of such provider during the emergency period declared under section 319 of the PHS Act. Section 3202(b)(2) of the CARES Act authorizes the Secretary to impose a civil monetary penalty (CMP) on any provider of a diagnostic test for COVID–19 that does not make public its cash price for such test in compliance with section 3202(b)(1) of the CARES Act and that has not completed a corrective action plan (CAP) to comply with that section. The statute states that the amount of the CMP must not exceed $300 per day that the violation is ongoing.

We believe that cash price posting by providers of diagnostic tests for COVID–19 is important for not only for plans and issuers that must comply under section 3202(a) of the CARES Act but also for individuals who seek COVID–19 diagnostic testing.

Therefore, we are adopting in this IFC policies that implement the requirement in section 3202(b) of the CARES Act that providers of diagnostic tests for COVID–19 make public their cash price for such tests on the internet. Specifically, we are finalizing the following: (1) Definitions of ''provider of a diagnostic test for COVID–19'' (herein referred to as ''provider''), ''diagnostic test for COVID–19'' (herein referred to as ''COVID–19 diagnostic test''), and ''cash price''; (2) requirements for making public cash prices; and (3) penalties for non-compliance with the cash price posting requirements.

2. Requirement That Providers of COVID–19 Diagnostic Tests Make Public Cash Prices for COVID–19 Diagnostic Tests

The rapid expansion of COVID–19 related diagnostic testing capacity is a top priority in HHS' strategy to combat the pandemic. COVID–19 diagnostic testing is generally performed by laboratories located in a variety of sites, including for example: Government labs; hospital-run labs; clinician offices; stand-alone labs; urgent care centers; and pharmacies. There are several types of COVID–19 tests designed to detect SARS–CoV–2 or to diagnose a possible case of COVID–19, including molecular (RT–PCR) tests, which are used to detect the virus's genetic material, and antigen tests, which are used to detect specific proteins on the surface of the virus and serology testing, which is used to look for the presence of antibodies produced by the body in response to infections.

For purposes of implementing section 3202(b) of the CARES Act, we are adopting a new 45 CFR part 182, ''Price Transparency for COVID–19 Diagnostic Tests,'' that will implement price transparency requirements for making public cash prices for performance of a COVID–19 diagnostic test. Section 182.10 states that part 182 implements section 3202(b) of the CARES Act.

For purposes of section 6001(a)(1) of the FFCRA, as amended by section 3201 of the CARES Act, and as explained in guidance issued by the Departments, COVID–19 diagnostic tests include all *in vitro* diagnostic tests, which include molecular, antigen, and serological tests. Specifically, section 6001(a) of the FFCRA, as amended by section 3201 of the CARES Act, requires plans and issuers to provide coverage for an *in vitro* diagnostic test, as defined in 21 CFR 809.3(a) (or its successor regulations), for the detection of SARS–CoV–2 or diagnosis of COVID–19, and the administration of such a test that: (1) Is approved, cleared, or authorized under section 510(k), 513, 515, or 564 of the FD&C Act (21 U.S.C. 360(k), 360c, 360e, 360bbb–3); (2) the developer has requested, or intends to request, emergency use authorization under section 564 of the FD&C Act (21 U.S.C. 360bbb–3), unless and until the emergency use authorization request under such section 564 has been denied or the developer of such test does not submit a request under such section within a reasonable timeframe; (3) is developed in and authorized by a state that has notified the Secretary of HHS of its intention to review tests intended to diagnose COVID–19; or (4) other tests that the Secretary of HHS determines appropriate in guidance.[18] We are therefore at § 182.20 defining a ''diagnostic test for COVID–19'' (also referred to as a ''COVID–19 diagnostic test'') as a COVID–19 *in vitro* diagnostic test described in section 6001 of the FFCRA, as amended by section 3201 of the CARES Act. Such COVID–19 diagnostic tests are currently billed by providers using HCPCS and CPT codes including, but not limited to: CPT codes 86408, 86409, 87635, 87426, 86328, and 86769 and HCPCS codes U0001 through U0004. We intend this list of billing codes to be illustrative, however, not exhaustive. Therefore, as noted previously, a ''COVID–19 diagnostic test'' is defined as a COVID–19 *in vitro* diagnostic test described in section 6001 of the FFCRA, as amended by section 3201 of the CARES Act, even if a particular COVID–19 diagnostic test or its billing code is not included on this list. Codes continue to be created to address new and proprietary tests as they are developed. We therefore anticipate updating this list in guidance as new tests and codes are developed.

Obtaining a diagnostic test for COVID–19 generally can involve up to three separate health care services for an individual including evaluation by a practitioner of the need for such testing, and, once the provider determines the need for a COVID–19 diagnostic test, specimen collection and laboratory analysis of the specimen, that is, actual performance of a COVID–19 diagnostic

Treatment of the Uninsured. Available at *https://www.hrsa.gov/coviduninsuredclaim/frequently-asked-questions.*

[17] Information on Community-Based Testing Sites for COVID–19 can be found at *https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html.*

[18] See Q3 of FAQs About Families First Coronavirus Response Act and Coronavirus Aid, Relief, And Economic Security Act Implementation Part 42 available at: *https://www.cms.gov/files/document/FFCRA-Part-42-FAQs.pdf.*

test. For purposes of implementing section 3202(b), we are defining ''provider of a diagnostic test for COVID–19'' (herein referred to as ''provider'') as any facility that performs one or more COVID–19 diagnostic tests. CMS regulates all laboratory testing performed on humans for the purposes of diagnosis, prevention, or treatment in the U.S. through the Clinical Laboratory Improvement Amendments CLIA program (42 U.S.C. 263a). In order to perform COVID–19 testing, a facility (whether that be a primary care provider's office, urgent care center, outpatient hospital site or stand-alone laboratory) is required to hold a CLIA certificate based on the complexity of the testing performed by the facility. Therefore, we expect that any ''provider of a diagnostic test for COVID–19'' would either hold or have submitted a CLIA application necessary to obtain a CLIA certificate (including a certificate of waiver, as applicable) and that such testing would occur in facilities ranging from primary care provider offices to urgent care centers to stand-alone national laboratories.

At § 182.20, we are defining ''cash price'' as the charge that applies to an individual who pays in cash (or cash equivalent) for a COVID–19 diagnostic test. We believe this definition will provide a clear point of reference not only for individuals who seek such tests, but also for payers who wish to negotiate reimbursement rates with providers of diagnostic tests for COVID–19, or who wish to help direct their members to providers of diagnostic tests for COVID–19 who charge cash prices that payers believe to be reasonable. The ''cash price'' is generally analogous to the ''discounted cash price'' as defined at 45 CFR 180.20 for purposes of the Hospital Price Transparency final rule. As we explained in that rule, providers often offer discounts off their gross charges or make other concessions to individuals who pay for their own care (referred to as self-pay individuals) (84 FR 65524). We also stated that the discounted cash price may be generally analogous to the ''walk-in'' rate that would apply to all self-pay individuals, regardless of insurance status, who pay in cash at the time of the service, and that such charges are often lower than the rate the hospital negotiates with third party payers because billing self-pay individuals would not require many of the administrative functions that exist for hospitals to seek payment from third party payers (for example, prior authorization and billing functions).[19] [20] [21] [22] It is therefore our expectation that the ''cash price'' established by the provider will be generally similar to, or lower than, rates negotiated with in-network plans and insurers. If a provider has not established a ''cash price'' for a COVID–19 diagnostic test that is lower than its gross charge or retail rate, the provider must make public the undiscounted gross or retail rate found in its master price list (which is analogous to the hospital's chargemaster). We do not believe that posting a ''cash price'' should prevent a provider of a diagnostic test for COVID–19 from offering testing for free to individuals as charity care or in an effort to combat the public health crisis, rather, the ''cash price'' would be the maximum charge that may apply to a self-pay individual paying out-of-pocket. We solicit comment on this approach and whether any additional standards should be implemented to address any potential abuse.

Under new § 182.30(a) and (b), these requirements apply to a ''provider of a diagnostic test for COVID–19'' as defined at § 182.20 and are applicable during the PHE for COVID–19 determined to exist nationwide as of January 27, 2020, by the HHS Secretary under section 319 of the PHS on January 31, 2020, as a result of confirmed cases of COVID–19, including any subsequent renewals.

Finally, section 3202(b)(1) of the CARES Act states that each provider of a diagnostic test for COVID–19 shall make public the cash price for such test on a public internet website of such provider. We interpret this to mean that providers must make public the cash prices for performing COVID–19 diagnostic tests on the provider's internet website. Specifically, as discussed below, § 182.40(a)(1) and (2) require that each provider of a COVID–19 diagnostic test that has a website make public the cash price information described in § 182.40(c) electronically, and that the information itself, or a link to a web page that contains such information, must appear in a conspicuous location on a searchable homepage on the provider's website. We recognize that some providers of a COVID–19 diagnostic test, for example, small or rural providers, may not have websites. Therefore, in the event that a provider does not have a website on which to post this cash price information, we are finalizing a policy at § 182.40(b) to require the provider to make public its cash price information in writing upon request within two business days and by posting signage prominently at the location where the provider offers a COVID–19 diagnostic test in a place likely to be viewed by members of the public seeking to obtain and pay for such testing. If the provider does not have its own website or a publicly accessible location then, upon request and within two business days, the provider will be required to make public its cash price information in writing to the requestor but will not be required to post signage at the location where it performs the COVID–19 diagnostic test. For purposes of complying with the requirement that the cash price information be made public in writing, we will consider email correspondence to the requester to be an acceptable written format. We believe these policies will help ensure that the public (including individuals, issuers, health plans, and others) has access to every provider's COVID–19 diagnostic test cash prices, including those providers who do not perform COVID–19 diagnostic tests at publicly accessible locations. We seek comment on these issues, including the frequency by which providers may not have websites.

Furthermore, at § 182.40(a)(3), we are requiring that providers of a COVID–19 diagnostic test display their cash price information in an easily accessible manner, without barriers, including, but not limited to, ensuring the information is accessible: Free of charge; without having to establish a user account or password; and without having to submit personal identifiable information (PII). In addition, we are requiring at § 182.40(a)(4) that the provider's homepage contain certain keywords that we believe will increase the likelihood that the public will be able to locate the information using a search engine. Specifically, § 182.40(a)(4) requires that all of the following terms be included on the provider's homepage: The provider's name; ''price''; ''cost''; ''test''; ''COVID''; and ''coronavirus.'' We seek

[19] Rosato D. How Paying Your Doctor in Cash Could Save You Money. Consumer Reports. May 4, 2018. Available at: *https://www.consumerreports.org/healthcare-costs/how-paying-your-doctor-in-cash-could-save-you-money/.*

[20] David Lazarus. Insured price: $2,758. Cash price: $521. Could our Healthcare System by any Dumber? Los Angeles Times. July 30, 2019. Available at: *https://www.latimes.com/business/story/2019-07-29/column-could-our-healthcare-system-be-any-dumber.*

[21] Beck M. How to Cut Your Health-Care Bill: Pay Cash. The Wall Street Journal. February 15, 2016. Available at: *https://www.wsj.com/articles/how-to-cut-your-health-care-bill-pay-cash-1455592277.*

[22] Dr. Steven Goldstein. Patients Can Save Money When They Pay Their Doctor In Cash. Houston Healthcare Initiative. August 10, 2020. Available at: *https://houstonhealthcareinitiative.org/patients-can-save-money-when-they-pay-their-doctor-in-cash/.*

comment on whether providers should have flexibility to select between using ''COVID'' or ''coronavirus'' and between ''cost'' and ''price'' if the provider is linking to the information from its homepage.

Finally, we believe that it is important for the provider to include certain standardized information so that the public can understand the relationship between the posted cash price and the COVID–19 diagnostic test(s) offered by the provider. Therefore, at § 182.40(c)(1) through (4), we are requiring all providers to make public, along with the cash price for each COVID–19 diagnostic test(s) that they offer, information that, at minimum, includes a plain language description of each COVID–19 diagnostic test, the corresponding cash price, the billing code(s) for each such test(s), and any additional information as may be necessary for the public to be certain of the cash price for a particular COVID–19 diagnostic test. For example, if the provider offers the same test at a different cash price that is dependent on location or some other factor, then on its website listing of cash prices, the provider must indicate all the cash prices that apply to the test and relevant distinguishing information as to when each different cash price applies. We believe that this information is necessary for the public, including group health plans and health insurance issuers offering group or individual health insurance coverage that must provide reimbursement for COVID–19 diagnostic testing pursuant to the requirements of section 3202(a) of the CARES Act. This requirement applies to cash price information posted on the provider's website, made available upon request and, where applicable, on signage.

These requirements are applicable immediately; however, we seek comment on these requirements and may, as a result of public comment, revise these requirements or finalize additional requirements. We also specifically seek comment on the definition of ''diagnostic test for COVID–19'' as solely a COVID–19 *in vitro* diagnostic test described in section 6001 of FFCRA.

We seek comment on the definition of ''provider of a COVID–19 diagnostic test''. We seek comment on whether consumers may benefit from knowing the total cost of care for receiving a COVID–19 test, including the doctor's visit and specimen collection, in order to protect themselves against potential unexpected health care costs and make a more informed health care purchasing decision and therefore whether we should adopt a more inclusive definition of a provider of a diagnostic test for purposes of this requirement. Specifically, we seek comment on whether a ''provider of a diagnostic test for COVID–19'' should be expanded to include providers that perform additional services related to the performance of a COVID–19 diagnostic test, such as for specimen collection or mileage fees that may be billed as part of or in conjunction with the specimen collection, if applicable. We are particularly interested in submissions from stakeholders that include data, both anecdotal and claims-based, on the ways in which consumers request and receive COVID–19 diagnostic testing, including the site of care, frequency, and type of provider.

We seek comment on the definition of ''cash price''. We have heard concerns from stakeholders that certain providers may use the posting of a ''cash price'' as an opportunity to ''price gouge''.[23] [24] [25] We therefore specifically seek comment on whether this definition or some other definition would help to mitigate concerns for price gouging by out-of-network providers. We seek comment on whether there are additional authorities and safeguards that could be used to mitigate concerns for price gouging both for group health plans and issuers and for consumers receiving a COVID–19 diagnostic test.

We seek comment regarding whether these requirements are sufficient to inform consumers of the cash price for a COVID–19 diagnostic test in advance of receiving one and what, if any, additional requirements or safeguards should be considered to avoid consumer confusion or prevent unintended consequences (for example, balance billing). Specifically, we seek comment regarding how providers should post cash prices so that they do not inadvertently deter consumers from seeking a test that would normally result in no out-of-pocket cost to the consumer.

Finally, we seek comment on an approach that balances priorities to further price transparency for consumers and other stakeholders and reduce barriers to COVID–19 testing. We recognize that these final policies become effective as of the date of display of this IFC and are applicable only until the end of the PHE. Even so, we seek comment whether and to what extent these final policies and the alternatives about which we are seeking comment (for instance, expansion of the definition of ''provider'') may lead to:

- Potential cost shifting from providers or participants, beneficiaries, and enrollees to group health plans or issuers, if the group health plan and issuer reimbursement obligation for COVID–19 diagnostic testing is expanded to cover such testing without cost-sharing (including deductibles, co-pays, and co-insurance) and as payment in full for items and services that were not previously covered in such a manner by group health plans or issuers.
- Potential for group health plans or issuers to negotiate rates that are lower than the cash price with out-of-network providers with whom they do not have established negotiated rates.
- Price gouging or other anti-competitive behavior (under both the policies and the alternatives for which we seek comment) by providers as well as any potential negative impact on premiums in the future that have not already been accounted for in 2021 rates. Please provide empirical evidence, if any, including based on claims data during the PHE for COVID–19.
- Potential savings to issuers and plans from insured consumers seeking out COVID–19 diagnostic testing from in-network providers, as opposed to the provider of their choice, as a result of these increased price transparency requirements.
- Price sensitivity by consumers covered by group health plans or issuers in their choice of provider, and awareness of any potential cost-shifting to group health plans or issuers, or to consumers themselves through balance billing, as a result of these increased price transparency requirements.
- Transparency benefits for the uninsured, who may already have an incentive to find the lowest price.
- Group health plans or issuers taking on new consumer education or other potential costs, for example, costs associated with incentivizing consumers covered by group health plans or issuers to stay in network or seek care from lower cost providers.

[23] Morgan Haefner. Out-of-network Providers Price Gouging COVID–19 tests, AHIP says. Becker's Hospital Review Newsletter. August 28, 2020. Available at: *https://www.beckershospitalreview.com/payer-issues/out-of-network-providers-price-gouging-covid-19-tests-ahip-says.html.*

[24] Susannah Luthi. The $7,000 COVID Test: Why States are Stepping in to Shield Consumers. POLITICO. June 8, 2020. Available at: *https://www.politico.com/news/2020/06/08/coronavirus-test-costs-304058.*

[25] Ken Alltucker. 'I was floored': Coronavirus test prices charged by some hospitals and labs stun consumers, spur questions. USA Today. September 15, 2020. Available at: *https://www.usatoday.com/story/news/health/2020/09/15/covid-test-prices-hospitals-scrutiny-congress-insurers-consumers/3472304001/.*

3. Monitoring and Enforcement of Requirements To Publicize Cash Prices for COVID–19 Diagnostic Tests

Section 3202(b)(2) of the CARES Act authorizes and provides the Secretary discretion to impose a CMP on any provider of a diagnostic test for COVID–19 that is not in compliance with section 3202(b)(1) of the CARES Act and has not completed a CAP to comply with the requirements of such paragraph, in an amount not to exceed $300 per day that the violation is ongoing. In this IFC, we are adopting mechanisms to monitor the requirement that a provider of a diagnostic test for COVID–19 publicize the cash price for diagnostic testing and enforce these requirements, as necessary.

a. Monitoring for Noncompliance and Pre-Penalty Actions

Section 3202(b)(1) of the CARES Act does not prescribe monitoring procedures or the factors we should consider in imposing penalties on providers for noncompliance. We anticipate relying predominantly on complaints made to CMS by the public, including individuals, as well as issuers and plans, regarding providers' potential noncompliance. Specifically, in response to such complaints, we may investigate and evaluate whether a provider has complied with the requirements discussed above. The monitoring methods for determining a provider's compliance with the requirements for publicizing the cash price for a COVID–19 diagnostic test may include, but are not limited to, the following, as appropriate:

- CMS' evaluation of complaints made to CMS.
- CMS' review of an individual's or entity's analysis of noncompliance as stated in the complaint.
- CMS' review of providers' websites or, where a provider does not have a website, its written notice and signage.

The IFC includes these monitoring methods in the regulations at § 182.50(a).

Additionally, at § 182.50(b), we are finalizing discretion for CMS to take any of the following actions if CMS determines the provider is noncompliant with the requirements of § 182.40:

- Provide a written warning notice to the provider of the specific violation(s).
- Request that a provider submit and comply with a CAP under § 182.60.
- Impose a CMP on the provider if the provider fails to respond to CMS' request to submit a CAP or to comply with the requirements of a CAP approved by CMS.

A provider that CMS identifies as noncompliant and to which it offers an opportunity to take corrective action to come into compliance may be notified via a warning notice of its deficiencies. In response to the warning letter, a provider may choose, but is not required, to submit documentation for CMS to review to determine compliance. CMS will review any documentation a provider may submit and, where applicable, a provider's website or other form of written notice, to determine if the provider's noncompliance has been corrected. In the event that a provider does not have its own website on which to post the cash price, CMS will require documentation that the provider has the cash price in written form timely upon request and, where applicable, has posted signage at the provider's facility.

At § 182.60, we specify the requirements for CAPs. Specifically, § 182.60(a) states that a provider may be required to submit a CAP if CMS determines a provider is noncompliant or the provider's noncompliance continues after a warning notice. A violation may include, but is not limited to, a provider's failure to make public its cash price information for COVID–19 diagnostic testing required by § 182.40 and a provider's failure to make public its cash price information in the form and manner required under § 180.40.

Section 182.60(b) states that CMS may request that a provider submit and comply with a CAP, specified in a notice of violation issued by CMS to a provider. Additionally, in § 182.60(c), we specify the following provisions related to CAPs:

- A provider required to submit a CAP must do so, in the form and manner, and by the deadline, specified in the notice of violation issued by CMS to the provider, and must comply with the requirements of the CAP approved by CMS.
- A provider's CAP must specify elements including, but not limited to, the corrective actions or processes the provider will take to address the deficiency or deficiencies identified by CMS, and the timeframe by which the provider will complete the corrective action.
- A CAP is subject to CMS review and approval. After CMS' review and approval of a provider's CAP, CMS may monitor and evaluate the provider's compliance with the corrective actions specified in the CAP.

Section 182.60(d) outlines the following provisions for identifying a provider's noncompliance with CAP requests and requirements:

- A provider's failure to respond to CMS' request to submit a CAP includes failure to submit a CAP in the form, manner, or by the deadline, specified in a notice of violation issued by CMS to the provider.
- A provider's failure to comply with the requirements of a CAP includes failure to correct violation(s) within the specified timeframes.

We seek comment on this approach for monitoring providers of COVID–19 diagnostic testing for compliance with these requirements. Specifically, we seek comments on relying predominantly on complaints to determine a provider's potential noncompliance. We further seek comments on issuing warning letters and requesting CAPs for violations related to making public cash prices for COVID–19 diagnostic testing. Additionally, we seek comments on the length of time we should specify in warning notices to allow corrections of violations before issuance of a request for CAP, and the length of time we should specify for providers to complete and return a CAP to CMS.

b. Civil Monetary Penalties

Under section 3202(b)(2) of the CARES Act, CMS may impose a CMP on a provider that we identify as noncompliant. At § 182.70, we are finalizing requirements related to imposition of CMPs. At § 182.70(a), we finalize a policy that CMS may impose a CMP on a provider that we identify as noncompliant with any of the requirements of § 182.40, and that fails to respond to CMS' request to submit a CAP or to comply with the requirements of a CAP approved by CMS described in § 182.60(d).

Under the statute, the maximum daily dollar amount for a CMP to which a provider may be subject is $300, even if the provider is in violation of multiple discrete requirements of § 182.40. The maximum daily amount of the CMP will be adjusted annually using the multiplier determined by the Office of Management and Budget (OMB) for annually adjusting CMP amounts under 45 CFR part 102. CMS will provide a written notice of imposition of a CMP to the provider via certified mail or another form of traceable carrier. The elements of this notice to the provider will include but are not limited to the following:

- The basis for the provider's noncompliance, including, but not limited to, the following: CMS' determination as to which requirement(s) the provider has violated; and the provider's failure to respond to CMS' request to submit a

CAP or comply with the requirements of a CAP.

- CMS' determination as to the effective date for the violation(s).
- The amount of the penalty as of the date of the notice.
- A statement that a CMP may continue to be imposed for continuing violation(s).
- Payment instructions.
- A statement of the provider's right to a hearing according to § 182.90 of subpart D.
- A statement that the provider's failure to request a hearing within 30 calendar days of the issuance of the notice permits the imposition of the penalty, and any subsequent penalties pursuant to continuing violations, without right of appeal.

CMS may issue subsequent notice(s) of imposition of a CMP, according to the aforementioned requirements (in short, where investigation reveals there is continuing justification), that result from the same instance(s) of noncompliance. A provider must pay the CMP in full within 60 calendar days after the date of the notice of imposition of a CMP from CMS. In the event a provider requests a hearing, under subpart D of 45 CFR part 182, the provider must pay the amount in full within 60 calendar days after the date of a final and binding decision to uphold, in whole or in part, the CMP. If the 60th calendar day is a weekend or a Federal holiday, then the timeframe is extended until the end of the next business day. Should a provider elect to appeal the CMP, and where the CMP is upheld only in part by a final and binding decision, CMS will issue a modified notice of imposition of a CMP, to conform to the adjudicated finding as specified in § 182.70.

In the event a CMP is not paid in full within 60 days, CMS will follow the collections activities set forth in 45 CFR part 30. Generally, CMS will issue a written demand for payment no later than 30 days after a debt is delinquent. For debts not paid by the date specified in the written demand, interest, charged at a rate established by the Secretary of the Treasury, shall accrue from the date of delinquency. CMS will transfer debts 180 days or more delinquent to the Department of Treasury for collection.

We seek comment on the approach we are establishing for imposing a CMP on a provider noncompliant with the regulations set forth in § 182.40. Specifically, we seek comments on the length of time allowed between issuance of the request for CAP and the imposition of a CMP. In addition, we seek comments on the amount of the CMP imposed per day up to the statutory maximum daily amount that would be applicable to all noncompliant providers.

c. Appeals Process

We believe it is important to establish a fair administrative process by which providers may appeal CMS' decisions to impose penalties under the requirements established by § 182.40. Through various programs, we have gained experience with administrative hearings and other processes to review CMS' determinations. That experience includes the processes we recently finalized in the CY 2020 Hospital Outpatient Prospective Payment System (OPPS) Price Transparency Final Rule (84 FR 65524) and corresponding regulations at 45 CFR part 180, which requires price transparency for hospitals, and we are aligning the procedures for the appeals process here with those procedures. Therefore, a provider upon which CMS has imposed a penalty under § 182.70 may appeal that penalty in accordance with §§ 180.100 and 180.110, subpart D, with conforming edits.

Generally, under this approach, a provider upon which CMS has imposed a penalty may request a hearing of that penalty before an Administrative Law Judge (ALJ). The CMS Administrator, at his or her discretion, may review in whole or in part the ALJ's decision. A provider against which a final order imposing a CMP is entered may obtain judicial review.

We specify at § 182.80 the procedures for a provider to appeal the CMP imposed by CMS for its noncompliance with the requirements of § 182.40 to an ALJ, and for the CMS Administrator, at his or her discretion, to review in whole or in part the ALJ's decision. In so doing, we apply the following conforming modifications to the text:

- References to ''hospital'' are replaced by the term ''provider.'' We note that the term ''provider,'' as defined at new 45 CFR 182.20 in this rule, may also include hospitals.
- References to ''standard charge'' are replaced by the term ''cash price.''

We seek comment on the approach we are establishing for appeals.

We also set forth in § 182.90 the consequences for failure of a provider to request a hearing. If a provider does not request a hearing within 30 calendar days of the issuance of the notice of imposition of a CMP described in § 182.70(b), CMS may impose the CMP indicated in such notice and may impose additional penalties under continuing violations according to § 182.70(e) without right of appeal. If the 30th calendar day is a weekend or a Federal holiday, then the timeframe is extended until the end of the next business day. The provider has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with 45 CFR 150.405, unless the provider can show good cause, as determined at § 150.405(b), for failing to timely exercise its right to a hearing.

D. Medicare Inpatient Prospective Payment System (IPPS) New COVID–19 Treatments Add-On Payment (NCTAP) for the Remainder of the Public Health Emergency (PHE)

1. Section 3710 of the CARES Act IPPS Add-On Payment for COVID–19 Patients During the PHE

Section 3710 of the CARES Act amended section 1886(d)(4)(C) of the Act to provide for an increase in the weighting factor of the assigned Diagnosis-Related Group (DRG) by 20 percent for an individual diagnosed with COVID–19 discharged during the period of the PHE for COVID–19. To implement this temporary adjustment, Medicare's claims processing systems apply an adjustment factor to increase the Medicare Severity-DRG (MS–DRG) relative weight that would otherwise be applied by 20 percent when determining IPPS operating payments. For additional information regarding this add-on payment, including which claims are eligible for the 20 percent increase in the MS–DRG weighting factor, please see the Medicare Learning Network (MLN) Matters article ''New COVID–19 Policies for Inpatient Prospective Payment System (IPPS) Hospitals, Long-Term Care Hospitals (LTCHs), and Inpatient Rehabilitation Facilities (IRFs) due to Provisions of the CARES Act'' available on the CMS website at *https://www.cms.gov/files/document/se20015.pdf.*

2. Overview of IPPS New Technology Add-On Payment

The new medical service or technology add-on payment policy under the IPPS provides additional payments for cases with relatively high costs involving eligible new medical services or technologies, while preserving some of the incentives inherent under an average-based prospective payment system. The payment mechanism is based on the cost to hospitals for the new medical service or technology. Sections 1886(d)(5)(K) and (L) of the Act establish a process of identifying and ensuring adequate payment for new medical services and technologies (sometimes collectively referred to in this section as ''new technologies'')

under the IPPS. The regulations at 42 CFR 412.87 and 412.88 implement these provisions.

As set forth in § 412.88(b)(2), for a new technology other than certain antimicrobial products (for which the maximum add-on payment is 75 percent), if the costs of a discharge involving a new technology exceed the full DRG payment (including payments for Indirect Medical Education (IME) and Disproportionate Share Hospital (DSH), but excluding outlier payments)), Medicare will make a new technology add-on payment equal to the lesser of: (1) 65 percent of the costs of the new technology; or (2) 65 percent of the amount by which the costs of the case exceed the standard DRG payment.

For additional information regarding IPPS new technology add-on payments please see the FY 2021 IPPS/LTCH PPS final rule (85 FR 58602 through 58608).

3. Overview of the Food and Drug Administration (FDA) Coronavirus Treatment Acceleration Program

The FDA has created a special emergency program for possible coronavirus therapies, the Coronavirus Treatment Acceleration Program. The program uses every available method to move new treatments to patients as quickly as possible, while at the same time finding out whether they are helpful or harmful. The FDA continues to support clinical trials that are testing new treatments for COVID–19 so that valuable knowledge about their safety and effectiveness can be gained. Additional information regarding this program is available on the FDA website at *https://www.fda.gov/drugs/coronavirus-covid-19-drugs/coronavirus-treatment-acceleration-program-ctap.*

One aspect of the program is the issuance by the FDA of EUAs during the PHE for COVID–19. On February 4, 2020, pursuant to Section 564(b)(1)(C) of the FD&C Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a PHE that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes COVID–19.[26] On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to section 564 of the FD&C Act, subject to terms of any authorization issued under that section.[27]

There are currently five drug and biological products with EUAs issued during the PHE for COVID–19. In section ''I. Criteria for Issuance of Authorization'' of the current letters of authorization for these drug and biological products, the letters for two of the products state that based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in treating COVID–19, and that, when used under the conditions described in the authorization, the known and potential benefits of the product when used to treat COVID–19 outweigh the known and potential risks of such products.[28][1] Those two drug and biological products are COVID–19 convalescent plasma and Veklury (remdesivir).

The current letters of authorization for the other three products used in patients with suspected or confirmed COVID–19 do not indicate that those products are treating COVID–19 and instead treat a disease or condition caused or exacerbated by COVID–19.[29] Specifically, the letter of authorization for REGIOCIT indicates its use as a replacement solution in adult patients in a critical care setting who are being treated with Continuous Renal Replacement Therapy (CRRT) and for whom regional citrate anticoagulation (RCA) is appropriate; the letter of authorization for Fresenius Propoven 2 percent Emulsion indicates its use to maintain sedation via continuous infusion in patients greater than 16 years old who require mechanical ventilation in an ICU setting; and the letter of authorization for multiFiltrate PRO System and multiBic/multiPlus Solutions indicates its use in delivering CRRT in an acute care environment.

While COVID–19 convalescent plasma has received an EUA for treating COVID–19 in hospitalized patients, Veklury (remdesivir), as of October 22, 2020, is the only drug or biological product approved by FDA for treating COVID–19.[30] In order for an item or service to be considered for coverage under Medicare Part A or Part B, the item or service must fall within at least one benefit category established in the Act. Drugs and biologicals are included within several such benefit categories. In general, section 1861(t)(1) of the Act defines drugs and biologicals to include drugs or biologicals approved for inclusion in certain compendia (except for any drugs and biologicals unfavorably evaluated therein) or that are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of a hospital furnishing that drug or biological for use in that hospital. CMS has determined that it is appropriate for CMS to consider drug and biological products which are authorized for emergency use for COVID–19, with letters of authorization, and are used to treat COVID–19 disease, to fall within the drugs and biologicals definition in section 1861(t)(1) of the Act for Medicare purposes if they are included or approved for inclusion in the applicable compendia, or when furnished by a specific hospital if approved for use in that hospital by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of that hospital.

More information regarding EUAs for drug and biological products during the PHE for COVID–19 is available on the FDA website at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#coviddrugs.*

4. Overview of IPPS Outlier Payments

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for ''outlier'' cases involving extraordinarily high costs. To qualify for outlier payments, one criterion is that a case must have costs greater than the sum of the prospective payment rate for the MS–DRG, any IME and DSH payments, uncompensated care payments, any new technology add-on payments, and the ''outlier threshold'' or ''fixed-loss'' amount (a dollar amount by which the costs of a case must exceed payments in order to qualify for an outlier payment). We refer to the sum of the prospective payment rate for the MS–DRG (including the Section 3710 of the CARES Act add-on payment if applicable), any IME and DSH payments, uncompensated care

[26] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3. February 4, 2020.*

[27] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3,* 85 FR 18250 (April 1, 2020).

[28] EUA for COVID–19 convalescent plasma: *https://www.fda.gov/media/141477/download;* EUA for remdesivir: *https://www.fda.gov/media/137564/download.*

[29] EUA for REGIOCIT: *https://www.fda.gov/media/141168/download;* EUA for Fresenius Propoven 2 percent Emulsion *https://www.fda.gov/media/137888/download;* EUA for multiFiltrate PRO System and multiBic/multiPlus Solutions: *https://www.fda.gov/media/137520/download.*

[30] FDA approval for remdesivir: *https://www.accessdata.fda.gov/drugsatfda_docs/appletter/2020/214787Orig1s000ltr.pdf.*

payments, any new technology add-on payments, and the outlier threshold as the outlier ''fixed-loss cost threshold.'' Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the estimated costs above the fixed-loss cost threshold. The marginal cost factor is 80 percent for all MS–DRGs except the burn MS–DRGs, where the marginal cost factor is 90 percent. For the complete formula for how an outlier payment is computed, we refer the reader to the FY 2021 IPPS/LTCH PPS final rule (85 FR 59043 through 59044). We note, for each claim, per the formula in the FY 2021 IPPS/LTCH PPS final rule, in determining whether the claim is eligible for an operating outlier payment and/or a capital outlier payment, an ''operating outlier threshold'' and a ''capital outlier threshold'' are computed, including application of a geographic adjustment to account for local cost variation. If the case is eligible, an ''operating outlier payment'' and/or ''capital outlier payment'' will be made for an individual claim. For additional information regarding IPPS outlier payments please see the FY 2021 IPPS/LTCH PPS final rule (85 FR 59034 through 59041).

5. Eligibility Criteria for an IPPS New COVID–19 Treatments Add-on Payment (NCTAP) for the Remainder of the PHE

We believe that as drugs or biological products become available and are authorized or approved by FDA for the treatment of COVID–19 in the inpatient setting, it would be appropriate to increase the current IPPS payment amounts to mitigate any potential financial disincentives for hospitals to provide these new treatments during the PHE. Therefore, effective for discharges occurring on or after the effective date of this rule and until the end of the public health emergency, CMS is using the exceptions and adjustment authority under section 1886(d)(5)(I) of the Act to create a New COVID–19 Treatments Add-on Payment (NCTAP) under the IPPS for COVID–19 cases that meet certain criteria.

First, the case must include the use of a drug or biological product authorized to treat COVID–19 as indicated in section ''I. Criteria for Issuance of Authorization'' of the current letter of authorization for the drug or biological product, or the drug or biological product must be approved by the FDA for treating COVID–19. Because the purpose of the NCTAP is to mitigate potential financial disincentives for hospitals to provide new COVID–19 treatments, this criterion expeditiously provides assurance in the context of the urgency of the PHE that a treatment is new and is used to treat COVID–19 during the PHE. Currently, there are only two drug or biological products that meet this criterion: Veklury (remdesivir) and COVID–19 convalescent plasma. However, as additional drug and biological products become available that meet this criterion, cases that use those products would become eligible for the NCTAP if the remaining criteria are met.

Second, the case must also be eligible for the 20 percent increase in the weighting factor for the assigned MS–DRG for an individual diagnosed with COVID–19 discharged during the period of the PHE for COVID–19 under section 3710 of the CARES Act. The primary purposes of this criterion are to help appropriately identify COVID–19 cases to potentially receive the NCTAP, and ensure for program integrity reasons that there is a positive COVID–19 laboratory test documented in the patient's medical record. CMS may conduct post-payment medical review to confirm the presence of a positive COVID–19 laboratory test and, if no such test is contained in the medical record, the NCTAP will be recouped.

Third, the operating cost of the case must exceed the operating Federal payment under the IPPS, including the add-on payment under section 3710 of the CARES Act. The primary purpose of this criterion is to ensure that the NCTAP is made only when needed. The cost of the case is determined by multiplying the covered charges by the operating cost-to-charge ratio, the same way it is determined for new technology add-on payments and operating outlier payments.

We note that all generally applicable statutory and regulatory requirements during the PHE for Medicare payment for a particular case must continue to be met, and that the NCTAP will only be available to the extent that the new COVID–19 treatment meets all coverage requirements under Medicare, including that the use of a drug or biological product is medically reasonable and necessary for that case. No applicable Medicare requirements during the PHE are being waived by the creation of the NCTAP policy.

6. Determination of the IPPS NCTAP Amount for the Remainder of the PHE

As indicated earlier, the goal of the NCTAP is to mitigate potential financial disincentives for hospitals to provide new COVID–19 treatments. These potential financial disincentives are already mitigated in part by the IPPS outlier payment, but we recognize that the costs of a case must exceed payments by the ''outlier threshold'' or ''fixed-loss'' amount before outlier payments are made. For FY 2021, the outlier threshold is approximately $30,000. As discussed previously, the outlier threshold is adjusted to account for local cost variation in determining whether an individual claim is eligible for outlier payments. As a simplified example for purposes of illustration, if the operating costs of a case using a new COVID–19 treatment exceed the operating IPPS payment by $10,000, there are no Medicare outlier payments made for this case because the costs are less than the outlier threshold.

We believe that in order to further mitigate any potential financial disincentives for hospitals to provide new COVID–19 treatments, the NCTAP, when needed, should function to partially offset costs that exceed the Medicare payment, but are less than the outlier threshold. By partially rather than fully offsetting these costs, we believe that the NCTAP, similar to the new technology add-on payment policy under the IPPS, preserves some of the incentives inherent under an average-based prospective payment system. One way in which the new technology add-on payment policy accomplishes this goal is by making the new technology add-on payment equal to the lesser of: (1) 65 percent of the costs of the new technology; or (2) 65 percent of the amount by which the costs of the case exceed the standard DRG payment.

We believe that the new technology add-on payment calculation provides an appropriate conceptual framework for the NCTAP calculation. In the context of the urgency of the PHE for COVID–19, however, and the practical and operational challenges of individually tailoring the payment calculation to each new treatment, we believe the NCTAP calculation should take into account 65 percent of the amount by which the costs of the case exceed the standard DRG payment, without comparison to 65 percent of the costs of the new treatment itself. As part of the approval process for the new technology add-on payment for a given new technology, the claims processing system is modified and tailored to apply the new technology add-on payment for that technology using cost and coding information according to the ''lesser of'' policy described above. In order to more expeditiously provide payment for cases meeting the previously described criteria in the context of the urgency of the PHE, we believe the NCTAP calculation should take into account 65 percent of the amount by which the costs of the case exceed the standard DRG payment for all cases that qualify

for the NCTAP, without comparison to the costs of the new treatment as under the ''lesser of'' policy applicable for the new technology add-on payment.

We note that a hospital should not seek additional payment on the claim for drugs or biologicals procured or provided by a governmental entity to a provider at no cost to the provider to diagnose or treat patients with known or suspected COVID–19, as described in the CMS Medicare Claims Processing Manual, Pub. 100–04, Chapter 32, Section 67.

CMS will use ICD–10–PCS procedure codes XW033E5 (Introduction of Remdesivir Anti-infective into Peripheral Vein, Percutaneous Approach, New Technology Group 5) and XW043E5 (Introduction of Remdesivir Anti-infective into Central Vein, Percutaneous Approach, New Technology Group 5) to identify cases using remdesivir and ICD–10–PCS procedure codes XW13325 (Transfusion of Convalescent Plasma (Nonautologous) into Peripheral Vein, Percutaneous Approach, New Technology Group 5) and XW14325 (Transfusion of Convalescent Plasma (Nonautologous) into Central Vein, Percutaneous Approach, New Technology Group 5) to identify cases using convalescent plasma. More information on the new procedure codes implemented into the International Classification of Diseases, Tenth Revision, Procedure Coding System (ICD–10–PCS) in response to the PHE for COVID–19 is available on the CMS website at *https://www.cms.gov/files/document/icd-10-ms-drgs-version-372-effective-august-01-2020.pdf.* CMS will issue additional operational instructions on how eligible cases will be identified, including any new treatments that may become available.

We also considered in the determination of the NCTAP amount that we did not want to inadvertently reduce the IPPS operating outlier payments that the hospital would have otherwise received for a costly COVID–19 case given that these outlier payments already help to mitigate potential financial disincentives for hospitals to provide new COVID–19 treatments. Therefore, we do not believe the calculation of the operating outlier payments should be impacted by the NCTAP.

Taking these factors into account, CMS is setting the NCTAP amount for a case that meets the NCTAP eligibility criteria equal to the lesser of: (1) 65 percent of the operating outlier threshold for the claim or (2) 65 percent of the amount by which the costs of the case exceed the standard DRG payment, including the adjustment to the relative weight under section 3710 of the CARES Act. As with the new technology add-on payment and outlier payments, the costs of the case are determined by multiplying the covered charges by the operating cost-to-charge ratio. In addition, the NCTAP will not be included as part of the calculation of the operating outlier payments.

Returning to our simplified example, if the cost of a case using a new COVID–19 treatment exceeds the operating IPPS payment by $10,000 and the operating outlier threshold for the case is for purposes of illustration $30,000, the NCTAP would be $6,500 (= $10,000 excess cost × 0.65). There would be no outlier payments because the excess cost of the case ($10,000) does not exceed the operating outlier threshold for the case ($30,000).

As a simplified example of a case that qualifies for an operating outlier payment, if the cost of a case using a new COVID–19 treatment exceeds the operating IPPS payment by $100,000, the NCTAP would be equal to the maximum NCTAP amount of 65 percent of the operating outlier threshold for the case. In this illustrative example, if the applicable operating outlier threshold for the claim is $30,000, that amount is $19,500 (equals first $30,000 of the excess cost before the operating outlier threshold for the claim is reached × 0.65). In addition, the case would receive an outlier payment that is calculated the same way it is currently calculated in the absence of the $19,500 NCTAP, that is, $56,000 (= ($100,000 excess cost − $30,000 outlier threshold for the case) * the 0.80 outlier marginal cost factor). The combined NCTAP and outlier payment would be $75,500 (equals the $19,500 enhanced payment + the $56,000 outlier payment).

E. Medicare Outpatient Prospective Payment System (OPPS) Separate Payment for New COVID–19 Treatments Policy for the Remainder of the Public Health Emergency (PHE)

1. FDA Coronavirus Treatment Acceleration Program

The FDA has created a special emergency program to facilitate the development of coronavirus therapies, the Coronavirus Treatment Acceleration Program. One aspect of the program is the issuance by the FDA of EUAs during the PHE for COVID–19. On February 4, 2020, pursuant to Section 564(b)(1)(C) of the FD&C Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a PHE that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes COVID–19.[31] On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biologics during the COVID–19 public health emergency, pursuant to section 564 of the FD&C Act, subject to terms of any authorization issued under that section.[32] Readers should refer to Section D.3 of this interim final rule with comment period for a full discussion of the Coronavirus Treatment Acceleration Program.

There are currently five drug and biological products with EUAs issued during the PHE for COVID–19. In section ''I. Criteria for Issuance of Authorization'' of the current letters of authorization for these drug and biological products, the letters for two of the products state that based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in treating COVID–19, and that, when used under the conditions described in the authorization, the known and potential benefits of the product when used to treat COVID–19 outweigh the known and potential risks of such products.[33] Those drug and biological products are COVID–19 convalescent plasma and Veklury (remdesivir).

While COVID–19 convalescent plasma has received an EUA for treating COVID–19 in hospitalized patients, Veklury (remdesivir), as of October 22, 2020, is the only drug or biological product approved by FDA for treating COVID–19. As discussed in Section II.D.3 of this interim final rule with comment period, in order for an item or service to be considered for coverage under Medicare Part A or Part B, the item or service must fall within at least one benefit category established in the Act. Drugs and biologicals are included within several such benefit categories. In general, section 1861(t)(1) of the Act defines drugs and biologicals to include drugs or biologicals approved for inclusion in certain compendia (except

[31] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3. February 4, 2020.*

[32] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3,* 85 FR 18250 (April 1, 2020).

[33] EUA for remdesivir: *https://www.fda.gov/media/137564/download;* EUA for COVID–19 convalescent plasma: *https://www.fda.gov/media/141477/download.*

for any drugs and biologicals unfavorably evaluated therein) or that are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of a hospital furnishing that drug or biological for use in that hospital. CMS has determined that it is appropriate for CMS to consider drug and biological products which are authorized for emergency use for COVID–19, with letters of authorization, and are used to treat COVID–19 disease, to fall within the drugs and biologicals definition in 1861(t)(1) of the Act for Medicare purposes if they are included or approved for inclusion in the applicable compendia, or when furnished by a specific hospital if approved for use in that hospital by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of that hospital.

2. OPPS Comprehensive-Ambulatory Payment Classification (C–APC) Policy

To date, no drug or biological product has an EUA for the treatment of patients with COVID–19 in the outpatient setting. However, because treatment of COVID–19 is rapidly evolving, we believe it is important to ensure that separate payment is available under the OPPS for new drug and biological products (including blood products) that receive an EUA for treating COVID–19 in the outpatient setting or are approved by the FDA for treating COVID–19 in the outpatient setting, or where a drug or biological product approved under an existing EUA is authorized for use in settings other than the inpatient setting. As part of that process, we expect to include the addition of new codes describing those treatments as soon as practicable, after their availability, to ensure efficient and timely beneficiary access to those treatments. We anticipate that most drugs and biological products authorized for use in treating COVID–19 in the outpatient setting would be separately paid under our standard OPPS payment policy because drugs and biological products are typically assigned separate Ambulatory Payment Classification payment status indicators in the OPPS unless they meet one of the criteria for packaging, which, with the exception of drug or biological products billed with a Comprehensive Ambulatory Payment Classification (C–APC) service, we do not anticipate that drugs or biological products approved or authorized to treat COVID–19 would meet. However, these products could be packaged into a C–APC when provided on the same claim as a C–APC service, in which case separate payment would not be made for these products.

Under our C–APC policy, which we adopted beginning in CY 2015, we designate a service described by a HCPCS code assigned to a C–APC as the primary service when the service is identified by OPPS status indicator ''J1''. When such a primary service is reported on a hospital outpatient claim, with certain exceptions, we make payment for all other items and services reported on the hospital outpatient claim as being integral, ancillary, supportive, dependent, and adjunctive to the primary service (hereinafter collectively referred to as ''adjunctive services'') and representing components of a complete comprehensive service (78 FR 74865 and 79 FR 66799). Payments for adjunctive services are packaged into the payments for the primary services. This results in a single prospective payment for each of the primary, comprehensive services based on the costs of all reported services at the claim level. Items included in the packaged payment provided in conjunction with the primary service also include all drugs, biologicals, and radiopharmaceuticals, regardless of cost, except those drugs with pass-through payment status and self-administered drugs, unless they function as packaged supplies (78 FR 74868 through 74869 and 74909 and 79 FR 66800). Thus, under our current policy, payment for drugs or biological products with an emergency authorization or approved to treat COVID–19 in the outpatient setting would be packaged into payment for a primary C–APC service when billed on the same claim as that service.

Currently, there are 67 C–APCs in the CY 2020 OPPS, with payments ranging from approximately $1,000 to $37,000. Most C–APCs are for surgical or other intensive procedures, which we would expect most hospital outpatient departments would not perform on a patient that has an active case of COVID–19. However, observation services can also be paid through the ''Comprehensive Observation Services'' C–APC (C–APC 8011), which packages payment for qualifying extended assessment and management encounters. It is possible that future COVID treatments that are authorized or approved for use in the outpatient setting might be administered to patients under observation while the provider determines if the patient needs to be admitted to the hospital for COVID–19.

3. Separate Payment Under the OPPS for New COVID–19 Treatments for the Remainder of the PHE for COVID–19

Although we do not expect that many beneficiaries would both receive a primary C–APC service and a drug or biological for treating COVID–19, we nonetheless believe that as drugs or biologicals become available and are authorized or approved for the treatment of COVID–19 in the outpatient setting, it would be appropriate to mitigate any potential financial disincentives for hospitals to provide these new treatments during the PHE for COVID–19. Therefore, effective for services furnished on or after the effective date of this rule and until the end of the PHE for COVID–19, CMS is creating an exception to its OPPS C–APC policy to ensure separate payment for new COVID–19 treatments that meet certain criteria. Under this exception, any new COVID–19 treatment that meets the two criteria below will, for the remainder of the PHE for COVID–19, always be separately paid and will not be packaged into a C–APC when it is provided on the same claim as the primary C–APC service. Note that this separate payment will result in an additional copayment of 20 percent of the cost of the new COVID–19 treatment, up to the amount of the inpatient deductible.

CMS has identified two criteria for COVID–19 treatments to receive this exception. First, the treatment must be a drug or biological product (which could include a blood product) authorized to treat COVID–19, as indicated in section ''I. Criteria for Issuance of Authorization'' of the letter of authorization for the drug or biological product, or the drug or biological product must be approved by the FDA for treating COVID–19. Because the purpose of this exception is to mitigate potential financial disincentives for hospitals to provide new COVID–19 treatments, this criterion expeditiously provides assurance in the context of the urgency of the PHE for COVID–19 that a treatment is new and is used to treat COVID–19 disease during the PHE for COVID–19.

Second, the EUA for the drug or biological product (which could include a blood product) must authorize the use of the product in the outpatient setting or not limit its use to the inpatient setting, or the product must be approved by the FDA to treat COVID–19 disease and not limit its use to the inpatient setting.

We note that during the PHE for COVID–19 this new exception to the C–

APC packaging policy would apply to all drug and biological products that meet both of these criteria. As of the date of issuance of this interim final rule there are two drug or biological products that meet the first criterion (Veklury (remdesivir) and COVID–19 convalescent plasma), but neither of these products is authorized or approved for use in the outpatient setting and, as a result, no product meets the second criterion.

We also note that all generally applicable statutory and regulatory requirements for Medicare payment under the OPPS must continue to be met, and that OPPS payment will only be available to the extent that the new COVID–19 treatment meets all coverage requirements under Medicare, including that the use of a drug or biological product is medically reasonable and necessary for the patient. No applicable Medicare requirements during the PHE are being waived by the creation of this C–APC exception.

4. Effects of This Exception on the OPPS Budget Neutrality Calculation

As we noted in Section II.E.2, we believe it would be a fairly rare occurrence that an outpatient department would perform a C–APC procedure on a beneficiary being treated for COVID–19 because most C–APCs are for surgical or other intensive procedures and we would expect most hospital outpatients departments would not perform outpatient surgery on a patient that has an active case of COVID–19. While it is possible that future COVID–19 treatments that are authorized or approved for use in the outpatient setting might be administered to patients under observation while the provider determines if the patient needs to be admitted to the hospital for COVID–19, it is our expectation that this hypothetical situation would not happen frequently. Because we believe a new COVID–19 treatment will rarely be provided on the same claim as a primary C–APC service, we believe new COVID–19 treatments used in the outpatient setting will be separately paid under current policy the vast majority of the time. As a result, we do not believe it is necessary that we make an adjustment to OPPS budget neutrality calculations at this time to account for this new exception, as any budgetary effect of this new exception is likely to be de minimis. If, once new COVID–19 treatments are being provided in the outpatient setting, the claims data indicates that these treatments are being provided on the same claim as a C–APC more frequently than we expected, we can make a prospective adjustment to the OPPS budget neutrality calculations through future rulemaking.

F. Temporary Increase in Federal Medicaid Funding

1. Background

Section 6008 of the FFCRA, as amended by section 3720 of the CARES Act, provides a temporary 6.2 percentage point increase to each qualifying state and territory's Federal Medical Assistance Percentage (FMAP) under section 1905(b) of the Act (''temporary FMAP increase''). This temporary FMAP increase is effective beginning January 1, 2020 and could extend through the last day of the calendar quarter in which the PHE for COVID–19, including any extensions, terminates, if the state claims the FMAP increase in that quarter (we refer herein to the entire period where the FMAP increase is potentially applicable as the ''increased FMAP period'').

To qualify for the temporary FMAP increase in a given quarter, states must meet the four conditions described in subsection (b) of section 6008 of the FFCRA during that quarter. Three of these conditions (described at section 6008(b)(1), (2), and (4) of the FFCRA) could extend through the end of the increased FMAP period, if the state claims the increased FMAP through the end of the quarter in which the PHE for COVID–19 ends. They are: (a) The state must maintain eligibility standards, methodologies, or procedures that are no more restrictive than what the state had in place as of January 1, 2020; (b) the state may not charge premiums that exceed those that were in place as of January 1, 2020;[34] and (c) the state must cover, without the imposition of cost sharing, testing services and treatments for COVID–19, including vaccines, specialized equipment, and therapies.

The fourth condition, which is described at section 6008(b)(3) of the FFCRA, extends through the last day of the month in which the PHE for COVID–19 ends. This condition provides that a state may not receive the temporary FMAP increase if ''the [s]tate fails to provide that an individual who is enrolled for benefits under [the Medicaid state] plan (or waiver) as of the date of enactment of this section [March 18, 2020] or enrolls for benefits under such plan (or waiver) during the period beginning on such date of enactment [March 18, 2020] and ending the last day of the month in which the [PHE for COVID–19] ends shall be treated as eligible for such benefits through the end of the month in which such emergency period ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State[.]''

The language in section 6008(b)(3) of the FFCRA is somewhat ambiguous. CMS issued guidance on this condition through frequently asked questions (FAQs) posted on Medicaid.gov on April 13, 2020, May 5, 2020, and June 30, 2020.[35] However, our existing interpretation (discussed in section II.F.2 of this preamble) is not the only possible interpretation that could be made. As the PHE for COVID–19 continued, and states requested increased flexibility for managing their programs, we revisited our existing interpretation. Seeking to balance the beneficiary protections in our existing interpretation with the state flexibility that could be afforded through an alternative interpretation, this IFC establishes a blended approach as discussed below.

2. CMS's Existing Interpretation of Section 6008(b)(3) of the FFCRA

CMS first provided an interpretation of section 6008(b)(3) for implementation by states through FAQs issued in April 2020. Our most recent interpretation provided that to receive the increased FMAP under the FFCRA, a state must keep beneficiaries enrolled in Medicaid, if they were enrolled on or after March 18, 2020, with the same amount, duration, and scope of benefits. It also provided that states could not subject such beneficiaries to any increase in cost sharing or beneficiary liability for institutional services or other long-term services and supports (LTSS) during this time period. This interpretation

[34] Section 3720 of the CARES Act added a new subsection (d) to section 6008 of the FFCRA in order to provide states which have increased premiums for any Medicaid beneficiaries above the amounts in effect on January 1, 2020, with a 30-day grace period to restore premiums to amounts no greater than those in effect as of January 1 without jeopardizing the state's eligibility for the temporary 6.2 percentage point FMAP increase.

[35] See:

- COVID–19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies, available at *https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf* (Updated June 30, 2020)
- Families First Coronavirus Response Act—Increased FMAP FAQs available at *https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf* (Updated April 13, 2020)
- Families First Coronavirus Response Act (FFCRA), Public Law 116–127 Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136 Frequently Asked Questions (FAQs) available at *https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-CARES-faqs.pdf* (Posted April 13, 2020)

protects both beneficiary eligibility and access to medically necessary services.

Under this interpretation, if a state receives information about a beneficiary's change in circumstances that would make the beneficiary ineligible for Medicaid, the state may not terminate that beneficiary's eligibility until the end of the month in which the PHE for COVID–19 ends, except in cases where the beneficiary voluntarily disenrolls or is no longer a resident of the state. Further, if the state receives information that would make a beneficiary eligible for a different eligibility group with lesser benefits, greater cost sharing, or increased beneficiary liability, the state may not transition that beneficiary to the new eligibility group but must maintain the beneficiary's enrollment in the current eligibility group until the end of the month in which the PHE for COVID–19 ends.[36]

In protecting access to medically necessary services pursuant to this interpretation, states must maintain current coverage in the state plan, including alternative benefit plans (ABPs), and must also maintain current coverage under any waivers and section 1115 demonstrations. For example, states may not implement any new restrictions such as a reduction in the number of covered visits or a prior authorization requirement. Beneficiary coverage may not be reduced on an individual basis either. For example, if a beneficiary has reached age 21 and would no longer be eligible for the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit, the state must continue to provide EPSDT services to the beneficiary when medically necessary, through the end of the month in which the PHE for COVID–19 ends. Further, if a beneficiary is enrolled in a home and community-based services (HCBS) waiver program authorized under section 1915(c) of the Act, and the individual is determined to no longer meet the level-of-care requirements or other requirements for that waiver, the state must maintain the beneficiary's enrollment in the HCBS waiver. Under this interpretation, states are not required to provide services that do not meet the state plan amount, duration, and scope criteria for a benefit (such as medical necessity). However, as a condition for receiving the temporary FMAP increase, the state must ensure that a beneficiary can continue to access the benefits package that was available to that beneficiary as of March 18, 2020 (or a later date within the PHE) through the end of the month in which the PHE for COVID–19 ends.

States have expressed concern that our existing interpretation of section 6008(b)(3) of the FFCRA makes it challenging for them to manage their programs effectively and still qualify for the increased Federal financial participation, in frustration of one purpose of section 6008 of the FFCRA to provide additional support to state Medicaid programs in their response to the COVID–19 pandemic. States made clear to CMS that this interpretation, coupled with the prohibition on adopting more restrictive eligibility standards, methodologies, or procedures under section 6008(b)(1) of the FFCRA, would impede the routine, orderly transition of beneficiaries between eligibility groups, and could lead to significant backlogs in redeterminations and appeals after the PHE for COVID–19 ends.

States also noted that our existing interpretation severely limits state flexibility to control program costs in the face of growing budgetary constraints and developing fiscal challenges during the emergency period. For example, it freezes post-eligibility treatment-of-income (PETI) calculations for institutionalized beneficiaries regardless of changes in circumstances. States have pointed out that a beneficiary receiving HCBS through a waiver approved under section 1915(c) of the Act who is subject to the PETI rules and who subsequently moves into an institution would be entitled to retain the higher personal needs allowance allowed for individuals participating in the relevant waiver, even though the beneficiary's personal needs would be far lower once in the institution. The aggregate effects of this interpretation could result in a substantial increase in the state Medicaid program's cost for the needed institutional services as beneficiaries are not contributing as much toward the cost of their care as they would be in the absence of the FFCRA 6008(b)(3) requirement.

In practice, the only cost-controlling measure available to states under our existing interpretation is reducing provider rates to the minimum level permitted under section 1902(a)(30)(A) of the Act. Such rate cuts, combined with a substantially lower volume of visits since the beginning of the pandemic,[37] could put some providers out of business. This could undermine the solvency of critical provider networks and their ability to serve beneficiaries in the future, particularly in rural areas where health care workforce shortages may already exist.

3. Alternative Interpretation of Section 6008(b)(3) of the FFCRA

CMS's existing interpretation of section 6008(b)(3) of the FFCRA is not the only possible, reasonable interpretation of that provision. The language in this section could also reasonably be interpreted to mean only that states must maintain the enrollment of beneficiaries who enrolled in the state's Medicaid program as of or after March 18, 2020, through the end of the month in which the PHE ends, but not the specific benefits package they were receiving at that time. In other words, under this alternative interpretation, to fulfill the requirement in section 6008(b)(3) of the FFCRA with respect to a beneficiary who becomes ineligible for enrollment in his current Medicaid eligibility group, states would either (a) transition the beneficiary to another group for which he is eligible and enroll him for the benefits provided to that eligibility group, or (b) retain the beneficiary's enrollment in the original eligibility group, if he did not meet the eligibility criteria for any other group, and maintain the benefits provided to that group. Under this alternative interpretation, a state would be required to move a beneficiary who becomes eligible for another Medicaid eligibility group during the period in which section 6008(b)(3) of the FFCRA applies into that new group, no matter how limited the benefits package is for the new group. We refer to this alternative interpretation as the ''enrollment interpretation.''

Under the enrollment interpretation, states claiming the 6.2 percentage point temporary FMAP increase would be permitted to make programmatic changes, such as changes to the medical necessity criteria or utilization control procedures in determining coverage for benefits; elimination of optional benefits

[36] See Question B.12 of the Families First Coronavirus Response Act—Increased FMAP FAQs available at *https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf;* Question F.27 of the Families First Coronavirus Response Act (FFCRA), Public Law 116–127 Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136 Frequently Asked Questions posted on April 13, 2020, available at *https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-CARES-faqs.pdf;* and Questions relating to Continuing Coverage under Section 6008 of the Families First Coronavirus Response Act in the COVID–19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies available at *https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf*

[37] Source: Ateev Mehrotra et al., *The Impact of the COVID–19 Pandemic on Outpatient Visits: Practices Are Adapting to the New Normal* (Commonwealth Fund, June 2020). *https://doi.org/10.26099/2v5t-9y63*

coverage; increases in cost-sharing responsibilities (except with respect to testing services and treatments for COVID–19 per section 6008(b)(4) of the FFCRA); or changes to the PETI methodology. For example, states would be permitted to establish a limit on the number of visits permitted for a given service and to require a copayment for a service in accordance with Medicaid statute and regulations. These programmatic changes would not jeopardize the state's receipt of the temporary FMAP increase.

In considering this interpretation, we note that Congress expressly conditioned receipt of the temporary FMAP increase on a state's temporarily not implementing ''more restrictive'' ''eligibility standards, methodologies, or procedures'' in section 6008(b)(1), on temporarily not imposing higher premiums in section 6008(b)(2), and on covering COVID–19 testing and treatment services without cost-sharing in section 6008(b)(4). However, Congress did not legislate with the same express clarity in section 6008(b)(3) with respect to states' ability or inability to reduce the amount, duration, and scope of benefits other than COVID–19 testing and treatment services or to eliminate optional benefits. Further, while Congress expressly prohibited states from imposing cost sharing on testing services and treatments for COVID–19 in section 6008(b)(4) of the FFCRA, Congress did not expressly provide in section 6008(b)(3) for any limitation on cost sharing, or on states' ability to modify cost sharing or beneficiaries' liability for the cost of other services (*e.g.,* in accordance with the PETI rules set forth in 42 CFR part 435, subpart H, and 42 CFR 435.832 for beneficiaries receiving institutional services or other long-term services and supports who are subject to the PETI rules).

Under the enrollment interpretation, states would be required to make individual beneficiary eligibility changes short of disenrollment from Medicaid entirely. For example, states would be required to make changes to a beneficiary's eligibility to reflect a change in income, or a change related to age, pregnancy status, need for LTSS or other eligibility factors. A change of service, such as moving from participation in an HCBS waiver authorized under section 1915(c) of the Act into an institution or vice versa, would also require a change in eligibility for a beneficiary enrolled in an eligibility group specific to HCBS recipients, such as the group described at 42 CFR 435.217, or an eligibility group for individuals living in an institution like the special income level group described at 42 CFR 435.236.

The enrollment interpretation would require states to move a beneficiary who loses eligibility under one Medicaid eligibility group and becomes eligible in a second Medicaid eligibility group into the second eligibility group, even if the second eligibility group confers lesser benefits or results in increased financial liability for the beneficiary. However, as with our existing interpretation, under the enrollment interpretation states would not be permitted to terminate a beneficiary's eligibility unless the individual requested such termination or was no longer a state resident. If a beneficiary loses eligibility under one Medicaid eligibility group and is not eligible for another group, in order to claim the temporary FMAP increase, the state must maintain the beneficiary's enrollment in the current group until the end of the month in which the PHE for COVID–19 ends. Like the programmatic changes discussed previously, individual beneficiary eligibility changes would not jeopardize receipt of the temporary FMAP increase.

In most cases, transferring a beneficiary from one eligibility group to another would not result in a significant change in available benefits. With a few exceptions, Medicaid is considered to be minimum essential coverage (MEC) as defined in section 5000A(f) of the Internal Revenue Code of 1986 (''Code'') and implementing regulations at 26 CFR 1.5000A–2. Certain Medicaid eligibility groups, however, such as the optional eligibility group for individuals infected with tuberculosis (described at 42 CFR 435.215), provide only limited benefits pursuant to the matter following section 1902(a)(10)(G) of the Act. This optional coverage of tuberculosis and tuberculosis-related services is excepted from the definition of MEC at 26 CFR 1.5000A–2(b)(2)(ii) and transferring a beneficiary from an eligibility group that provides MEC to the eligibility group for individuals infected with tuberculosis would result in a significant reduction in available benefits.

Another example of non-MEC coverage available through Medicaid is the optional eligibility group limited to family planning and related services at 42 CFR 435.214, which also provides only a limited benefits package pursuant to the matter following section 1902(a)(10)(G) of the Act, and which is excluded from MEC at 26 CFR 1.5000A–2(b)(2)(i). If the enrollment interpretation was adopted, following the postpartum period for coverage of pregnant women at 42 CFR 435.116, states that cover the optional family planning group (or that provide family planning-only coverage through a section 1115 demonstration) would be required to transfer women who do not qualify for a full-benefit Medicaid eligibility group into family planning-only coverage if they meet the eligibility requirements for the family planning-only group or demonstration.

The enrollment interpretation of section 6008(b)(3) of the FFCRA would make it more challenging for some beneficiaries to access medically necessary services, including services related to the COVID–19 pandemic. A beneficiary transferred to the family planning group following the end of her postpartum period would continue to have access to provider visits for family planning and outpatient drugs and supplies related to those visits, but she would no longer have access to testing services and treatment for COVID–19, pursuant to CMS's interpretation of section 6008(b)(4) of the FFCRA, which is discussed above in section II.B. In addition, she would lose access to inpatient and outpatient hospital services, prescription drugs, and other Medicaid-covered services that are unrelated to family planning.

Beneficiaries with certain chronic conditions like diabetes and sickle cell disease are at higher risk for severe illness from the virus that causes COVID–19.[38] Under the enrollment interpretation, individuals who lose eligibility for a group that offers MEC may be transitioned to a limited benefit eligibility group, in a state that offers such coverage, in which they would no longer have access to the benefits needed to manage their chronic conditions. Not only would this negatively impact the beneficiary who loses comprehensive Medicaid coverage as a result of this interpretation, but it could also undermine states' COVID–19 response efforts during the public health emergency.

4. Adopting a Blended Approach

As we considered changing our interpretation of section 6008(b)(3) of the FFCRA, CMS examined the implications of both the existing and alternative interpretations on each of the major Medicaid stakeholder groups. Based on that analysis, this IFC adopts a blended approach. It is intended to balance the interests of states, providers, and beneficiaries, without materially undermining their ability to address the challenges presented by COVID–19.

[38] Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID–19); People with Certain Medical Conditions; accessed 10/08/2020 at *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html.*

Looking first at states, the circumstances facing each state during the PHE for COVID–19 are different. States have sent a strong message to CMS that they need more flexibility to make choices that meet their unique needs. They have made clear that our existing interpretation of section 6008(b)(3) of the FFCRA has interfered with their ability to implement cost-saving decisions in the face of increasing beneficiary enrollment and declining state revenues. The enrollment interpretation would allow states to impose coverage limitations that reduce spending and allow for better management of state programs during the PHE for COVID–19. More flexibility in managing their programs could help states to stretch scarce financial resources over the long term, including after the PHE for COVID–19 ends, and that could ultimately benefit both providers and beneficiaries. Supporting states and providers fighting the pandemic is consistent with the protections and the various provider relief funds established by Congress in the FFCRA, the CARES Act, and the PPPHCEA.

While the enrollment interpretation of section 6008(b)(3) of the FFCRA may be the preferred option for states, we recognize that it could negatively impact certain provider types. Under the enrollment interpretation, states could eliminate optional benefits. For example, a state could cut its optional dental benefit, and dentists in that state would lose Medicaid reimbursement. CMS's existing interpretation, however, leaves states with little ability to manage program costs other than by cutting provider rates to the fullest extent permitted under section 1902(a)(30)(A) of the Act. We believe such rate cuts represent a far more significant threat to providers and their continued availability to beneficiaries. Under the enrollment interpretation, states may be less likely to reduce provider rates, which could benefit both providers and beneficiaries.

Considering the impact on beneficiaries, our existing interpretation provided the strongest protections for beneficiary access to medically necessary care during the PHE. It ensured that beneficiaries remained enrolled in Medicaid and that no new coverage restrictions were imposed. Every Medicaid beneficiary who had access to MEC and to testing services and treatment for COVID–19 as of or after March 18, 2020 would continue to have access to these services under the existing interpretation. The enrollment interpretation would also protect beneficiary enrollment in Medicaid. At the same time, it would expand state flexibility to make cost-saving decisions that could reduce beneficiaries' coverage below what they had access to as of or after March 18, 2020. Under the enrollment interpretation, some beneficiaries would be transitioned from MEC to non-MEC coverage, which may not include testing services and treatment for COVID–19 pursuant to CMS's interpretation of FFCRA section 6008(b)(4). Ensuring access to testing and treatment, along with care for the chronic health conditions that place beneficiaries at higher risk for COVID–19, is important for fighting the pandemic.

Seeking to balance the needs of each stakeholder group, both in fighting the pandemic and ensuring long-term program sustainability, this IFC adopts a blended approach to interpreting section 6008(b)(3) of the FFCRA. This blended approach adopts the state flexibility available through the enrollment interpretation—allowing states to make programmatic changes to benefits and cost sharing and to transition individual beneficiaries between eligibility groups with differing benefit packages—while also establishing parameters to prevent beneficiaries from losing access to comprehensive coverage, consistent with our existing interpretation, through the end of the month in which the PHE for COVID–19 ends.

This blended approach is expected to give states more flexibility, beyond what is available under our existing interpretation, to manage their Medicaid programs. This is consistent with section 1902(a)(4) of the Act, which requires the state plan to provide for such methods of administration as are necessary for the proper and efficient operation of the plan. CMS is also exercising its general rulemaking authority under sections 1102 and 1902(a)(19) of the Act to establish parameters under which states must operate when they exercise the flexibility that CMS is providing with respect to compliance with section 6008(b)(3) of the FFCRA.

The parameters established by this IFC will help to ensure that states are determining eligibility, and providing care and services, in a manner that is consistent with the simplicity of administration, as described in section 1902(a)(19) of the Act. Under this blended approach, CMS is giving states a wider degree of flexibility to effectuate enrollment transitions during the PHE for COVID–19, which could decrease backlogs in redeterminations and appeals following the PHE for COVID–19, thereby simplifying state implementation of the conditions in FFCRA section 6008(b)(3) and administration of the state plan. These parameters are also expected to help ensure that states are determining eligibility, and providing care and services, in a manner that is consistent with the best interests of beneficiaries, as described in section 1902(a)(19) of the Act. That is because CMS is giving states less flexibility to reduce beneficiaries' coverage under this blended approach than might be available to states under the enrollment interpretation, in an effort to help protect beneficiaries' access to potentially necessary medical care during the period in which the FFCRA 6008(b)(3) requirement applies. We therefore believe this blended approach balances the interests of all stakeholders consistent with the statute.

This IFC adds a new subpart G, Temporary FMAP Increase During the Public Health Emergency for COVID–19, to 42 CFR part 433, including a new § 433.400. Section 433.400(a) describes the statutory basis for this provision, while § 433.400(b) provides definitions specific to this subpart. As described in detail below, § 433.400(c) requires states, as a condition for receiving the temporary FMAP increase, to maintain beneficiary enrollment in an eligibility group that provides one of three tiers of coverage through the end of the month in which the PHE for COVID–19 ends, except under the circumstances specified in paragraph (d). This provision generally does not require states to provide the exact same (or greater) amount, duration, and scope of medical assistance, or maintain the cost-sharing or PETI liability for a particular beneficiary at the same (or lower) level that was applicable to the beneficiary as of March 18, 2020 or subsequent date of initial enrollment during the PHE. Section 433.400 is effective immediately upon display of this rule. CMS' previous interpretation, as described in section II.F.2. of this preamble, continues to apply from the beginning of the quarter up to the date that this IFC is displayed.

5. Maintaining Enrollment in the Same Tier of Coverage

As discussed, we believe that interpreting FFCRA section 6008(b)(3) only to require continued enrollment in a state's Medicaid program (even if benefits are strictly limited), could have significant negative consequences for both beneficiaries and efforts to combat the COVID–19 pandemic. Some beneficiaries may transition from medical assistance that qualifies as MEC to non-MEC coverage, and some may even lose access to COVID–19 testing

services and treatment. CMS has not interpreted section 6008(b)(4) of the FFCRA to require state Medicaid programs to cover COVID–19 testing services and treatment for beneficiaries whose Medicaid eligibility is limited by statute or under existing section 1115 demonstration authority to coverage for care and services that are for a specific (non-COVID–19-related) condition, disease or purpose and that would not otherwise include COVID–19 testing and treatment services.

Consistent with the blended approach to interpreting section 6008(b)(3) of the FFCRA that is described above, and consistent with section 1902(a)(4) and (a)(19) of the Act, we are requiring states to ensure that beneficiaries who were validly enrolled for benefits as of or after March 18, 2020 with access to minimum essential coverage retain access to minimum essential coverage, and to ensure that beneficiaries with access to testing services and treatment for COVID–19 maintain access to those services.

We believe it is reasonable to interpret the term ''enrolled for benefits'' in section 6008(b)(3) to mean validly enrolled, such that those who were erroneously enrolled are not to be considered ''enrolled for benefits'' for purposes of FFCRA section 6008. Therefore, we define ''validly enrolled'' at § 433.400(b) to mean that the beneficiary was enrolled in Medicaid based on a determination of eligibility, including during the retroactive eligibility period, and that the beneficiary was not erroneously granted eligibility at the point of application or last redetermination (if such last redetermination was completed prior to March 18, 2020) because of: (1) Agency error; or (2) fraud (as evidenced by a fraud conviction) or abuse (as determined following the completion of an investigation pursuant to 42 CFR 455.15 and 455.16) attributed to the beneficiary or the beneficiary's representative which was material to the determination of eligibility. Terminating the eligibility of beneficiaries who are not validly enrolled as defined at § 433.400(b) will not impact a state's ability to claim the temporary FMAP increase. We note that prior to termination, however, the state must complete a redetermination consistent with 42 CFR 435.916 and provide the beneficiary with advance notice and the opportunity for a fair hearing consistent with 42 CFR part 431, subpart E. Additionally, individuals receiving medical assistance during a presumptive eligibility period in accordance with section 1902(a)(47) of the Act and 42 CFR part 435, subpart L, have not received a determination of eligibility by the state under the state plan and therefore are not considered to be validly enrolled for continuous coverage under section 6008(b)(3) of the FFCRA.

In order to receive the temporary FMAP increase (defined at § 433.400(b)) for any quarter in which it is available, a state must meet the requirements described in paragraph (c). As described in § 433.400(c)(1)(i), for the quarter in which this rule becomes effective, states would be expected to meet the requirements described in § 433.400(c)(2) and (3) only from the date of display through the end of the quarter. CMS' previous interpretation, as described in section II.F.2. of this preamble and in the FAQs cited therein, continues to apply from the beginning of the quarter up to the date this rule is effective. For all quarters following the effective date of this rule, states would be expected to meet the requirements of § 433.400(c) for the entirety of the quarter in order to claim the temporary FMAP increase.

Section 433.400(c)(2) requires states to maintain the enrollment of all beneficiaries who were validly enrolled on or after March 18, 2020. Paragraphs (c)(2)(i), (ii), and (iii) of 433.400 establish safeguards for the maintenance of enrollment. For beneficiaries who were not validly enrolled during this period, and whom the state is therefore permitted to disenroll, the state must provide advance notice of termination and fair hearing rights in accordance with 42 CFR 435.917 and 42 CFR part 431, subpart E, when terminating coverage.

Consistent with the Secretary's rulemaking authority under section 1102 of the Act and section 1902(a)(19) of the Act, which provides for such safeguards as are needed to ensure that care and services are provided in a manner consistent with the best interests of beneficiaries, § 433.400(c)(2) establishes three tiers of Medicaid coverage. These coverage tiers will help to ensure that beneficiaries protected under section 6008(b)(3) of the FFCRA in states claiming the temporary FMAP increase, who no longer meet eligibility requirements for the initial eligibility group in which they are enrolled but who become eligible under a different eligibility group or who lose Medicaid eligibility entirely, do not experience a reduction in covered benefits that would be inconsistent with section 1902(a)(19) of the Act, or with our interpretation of sections 6008(b)(3) and (4) of the FFCRA.

The first tier of coverage, under paragraph (c)(2)(i) of § 433.400, consists of Medicaid coverage that meets the definition of MEC, as defined in section 5000A(f) of the Code and implementing regulations at regulation at 26 CFR 1.5000A–2. Under § 433.400(c)(2)(i)(A), for beneficiaries whose Medicaid coverage as of or after March 18, 2020 meets the definition of MEC, the state must generally continue to provide Medicaid coverage that meets the definition of MEC throughout the period in which this rule applies. This means that if a state determines a beneficiary ineligible for the group in which he or she is currently enrolled, which provides MEC, and finds the beneficiary eligible for another group that also provides MEC, the state would transition the beneficiary to the new eligibility group. In contrast, if the beneficiary lost eligibility for a group that provides MEC, but gained eligibility for coverage that does not meet the definition of MEC, the state may not move the beneficiary to the new group or demonstration but must instead maintain the beneficiary's access to coverage meeting the definition of MEC during the period in which the rule applies, except as discussed below.

For example, the state must transition a beneficiary enrolled in the eligibility group for children under age 19 at 42 CFR 435.118 to the adult group described at 42 CFR 435.119 when the beneficiary reaches age 19, provided that the state covers this group and the beneficiary meets the eligibility requirements of the group. That is because the medical assistance provided under the eligibility group for children under age 19 includes full state plan benefits with no cost sharing, which meets the definition of MEC, and the medical assistance offered under the adult group may include a somewhat different set of benefits through the state's ABP, and may include cost sharing for certain services, but it also meets the definition of MEC. This transition would therefore be permissible under § 433.400(c)(2)(i).

In contrast, a state may not transition a beneficiary from the eligibility group for children under age 19 or the adult group, both of which provide MEC, to a limited benefit group that does not provide MEC, such as the family planning group at 42 CFR 435.214, which covers only family planning and family planning-related services. As described further in § 433.400(c)(2)(iv), if a beneficiary receiving tier 1 coverage no longer meets the eligibility requirements for the original group in which he or she was enrolled, and the beneficiary does not meet the requirements for any other eligibility groups with tier 1 coverage, the state

must continue to provide the medical assistance offered under the eligibility group in which the beneficiary was eligible on or after March 18, 2020.

At § 433.400(c)(2)(i)(B), we establish a variation on this requirement for beneficiaries who have coverage meeting the definition of MEC as of or after March 18, 2020, and whom the state subsequently determines are eligible for coverage under a Medicare Savings Program eligibility group. The Medicare Savings Program is defined at § 433.400(b) to include the eligibility groups described at section 1902(a)(10)(E)(i), (iii), and (iv) of the Act. For such beneficiaries, the state satisfies the requirement described in paragraph (c)(2) of this section if it furnishes the medical assistance available through the Medicare Savings Program, because the coverage that beneficiary receives under the Medicare program qualifies as MEC. Thus, for example, a beneficiary enrolled in the adult group as of or after March 18, 2020, may be transitioned to a Medicare Savings Program eligibility group, such as the qualified Medicare beneficiaries (QMB) group described at section 1902(a)(10)(E)(i) of the Act, when the beneficiary reaches age 65, if the beneficiary meets the eligibility requirements of the QMB group. Such a beneficiary would receive Medicaid coverage of Medicare premiums and Medicare-related cost sharing through the QMB group. However, unless that beneficiary was also eligible for another full-benefit Medicaid eligibility group, all of the beneficiary's health care services would be provided through Medicare and the beneficiary would not receive any other Medicaid covered services. While the medical assistance provided under the adult group differs from the medical assistance provided under the QMB group, the beneficiary maintains access to MEC. Therefore, the state may transition the beneficiary from the adult group to a Medicare Savings Program group.

The second tier of coverage, which is described at § 433.400(c)(2)(ii), consists of coverage that is not defined as MEC but that is robust enough to include access to coverage of both testing services and treatment for COVID–19 under CMS's interpretation of FFCRA section 6008(b)(4). Not all Medicaid coverage qualifies as MEC, and the non-MEC coverage provided to beneficiaries can vary greatly. As noted previously, some beneficiaries' coverage is limited by statute or existing section 1115 demonstration authority to a very narrow range of services that would not include COVID–19 testing or treatment services, and CMS has not interpreted section 6008(b)(4) of the FFCRA to require states to cover COVID–19 testing and treatment services for those beneficiaries. However, other Medicaid beneficiaries receive a relatively robust set of benefits, such as pregnancy-related services described in the matter following section 1902(a)(10)(G) of the Act, which would include testing services and treatment for COVID–19, including vaccines, specialized equipment, and therapies, during the period when FFCRA section 6008(b)(4) applies in a state, but which does not qualify as MEC in all states.

Section 433.400(c)(2)(ii) of this IFC provides that states must continue to provide Medicaid coverage that includes coverage of COVID–19 testing services and treatments, including vaccines, specialized equipment, and therapies, to beneficiaries who had access to coverage in tier 2 as of or after March 18, 2020. Thus, states must transition beneficiaries who lose eligibility for tier 2 coverage but gain access to MEC coverage in tier 1 or to other coverage in tier 2 to the new eligibility group or demonstration, but they may not transition such beneficiaries to coverage that does not include access to testing services and treatment for COVID–19. This interpretation is consistent with the requirement for states claiming the temporary FMAP increase to provide coverage for testing services and treatments for COVID–19, as described at section 6008(b)(4), and with CMS's interpretation of that requirement.

Consistent with § 433.400(c)(2)(ii), a state must transition a beneficiary from tier 2 coverage to tier 1 coverage if that beneficiary becomes eligible for coverage that qualifies as MEC. For example, a state must transition a woman receiving tier 2 postpartum coverage under the pregnant women group described at 42 CFR 435.116 (in a state in which such coverage is not considered MEC) to the adult group described at 42 CFR 435.119 at the end of the postpartum period, because coverage under the adult group qualifies as MEC and is therefore included in tier 1. If this postpartum beneficiary was not eligible for any eligibility groups with tier 1 coverage, such as in a state that does not cover the adult group, but was eligible for tier 2 coverage, such as through a limited benefit section 1115 demonstration providing non-MEC coverage that includes access to testing services and treatment for COVID–19, the state must move her to that coverage. If such a beneficiary is not eligible for any other tier 1 or tier 2 coverage, the state must continue to provide the medical assistance available through the pregnant women group until the end of the month in which the PHE for COVID–19 ends, in order to qualify for the temporary FMAP increase, as described at § 433.400(c)(2)(iv). For example, a woman receiving non-MEC pregnancy related coverage that includes coverage of testing services and treatments for COVID–19 could not be transitioned to coverage of only family planning services at the end of the postpartum period.

The third tier, described at § 433.400(c)(2)(iii), includes coverage that is not MEC and that also does not cover testing services and treatment for COVID–19, including vaccines, specialized equipment, and therapies, under CMS's interpretation of FFCRA section 6008(b)(4). Coverage under tier 3 may include coverage for the eligibility group limited to family planning described at 42 CFR 435.214 or the eligibility group for individuals with tuberculosis described at 42 CFR 435.215. Coverage through an existing family planning demonstration or other limited benefit section 1115 demonstration may also be included in tier 3 if it does not cover COVID–19 testing and treatment. If a beneficiary loses eligibility for coverage meeting the tier 3 description during the period in which the FFCRA section 6008(b)(3) requirement applies, and the beneficiary gains eligibility for a group that provides coverage in tier 1 or tier 2, then, under § 433.400(c)(2)(iii), the state must transfer the beneficiary into that new eligibility group as coverage in those tiers is more robust than coverage in tier 3.

The coverage in tier 3 differs from the coverage in tier 1, which is always considered MEC and the coverage in tier 2, which always includes testing services and treatment for COVID–19. The coverage available to a beneficiary in tier 3 is more limited and may vary widely from one group or demonstration to the next. Coverage limited to family planning and family planning-related services is significantly different from coverage in a limited-benefit section 1115 demonstration that focuses, for example, on preventing the progression of a specific disease. Therefore, the requirement in § 433.400(c)(2)(iii) for tier 3 coverage differs somewhat from the requirements in § 433.400(c)(2)(i) and (ii) for tiers 1 and 2. If a beneficiary becomes ineligible for the tier 3 eligibility group or demonstration in which he or she is enrolled and becomes eligible for another eligibility group or demonstration with coverage that is also within tier 3, the state must continue to provide the coverage

available through the eligibility group or demonstration for which the beneficiary was eligible as of or after March 18, 2020, unless the beneficiary requests a voluntary termination to transition to the new eligibility group or demonstration, as discussed below. Transitioning a beneficiary from one eligibility group offering tier 3 coverage to another eligibility group offering tier 3 coverage would not satisfy the requirement in § 433.400(c)(2)(iii).

We note that beneficiaries enrolled in certain limited-benefit state plan eligibility groups may be eligible for coverage in the optional COVID–19 testing group authorized under section 1902(a)(10)(A)(ii)(XXIII), and such individuals can be enrolled in both limited benefit groups. Section 3716 of the CARES Act amended section 1902(ss) of the Act to establish that individuals eligible for certain optional eligibility groups, such as the eligibility group limited to family planning and related services described at 1902(a)(10)(A)(ii)(XXI) of the Act, are considered ''uninsured'' for purposes of eligibility under the optional COVID–19 testing group and therefore may obtain COVID–19 testing coverage under that group in addition to coverage under the other optional eligibility group.

In addition, beneficiaries in each benefit tier retain the right to request a voluntary transition to a different eligibility group (provided that they meet the applicable eligibility requirements), even if such transition results in a change in the individual's benefit package that would not otherwise satisfy the conditions of this rule, such as a transition from an eligibility group with coverage in tier 1 to an eligibility group with coverage in tier 3 or a transition from one tier 3 group to another tier 3 group. Such a transition is permissible under the exception at § 433.400(d)(1)(i), as described at § 433.400(d)(3)(i), in which a beneficiary may request a voluntary termination of eligibility, and would not impact the state's ability to claim the temporary FMAP increase.

Section 42 CFR 430.400(c)(2)(iv) specifies that for any beneficiary who is validly enrolled and receiving medical assistance on or after March 18, 2020, and who is determined ineligible for Medicaid prior to the last day of the month in which the PHE for COVID–19 ends, except as provided in paragraph (d), a state meets the requirements of § 430.400(c)(2)(i), (ii), or (iii) by continuing the provide the same coverage that the individual would have received absent the determination of ineligibility. For example, if a beneficiary is enrolled in the age and disability-related poverty level group described at section 1902(a)(10)(A)(ii)(X) of the Act, and the beneficiary reports a change in resources that would result in ineligibility for this group, if the beneficiary is not eligible for coverage in any other Medicaid eligibility group, the state would continue to provide that individual with the coverage available to beneficiaries enrolled in the age and disability-related poverty level group.

The requirement at § 430.400(c)(2)(iv) also applies in cases where a state finds a beneficiary ineligible on a procedural basis, such as a failure to respond to a request for additional information, with an exception related to residency described at § 430.400(d)(3). For example, if a state receives information from quarterly wage data, which indicates that a child's household income exceeds the income standard for the eligibility group for children under age 19 (described at 42 CFR 435.118), the child is not eligible on another basis, and the beneficiary's family does not respond to a request from the state for additional information, the child may be determined ineligible on a procedural basis. In this case, through the end of the month in which the PHE for COVID–19 ends, the state would continue to provide the child with the same coverage provided to beneficiaries enrolled in the eligibility group for children under age 19. If the beneficiary is subsequently determined eligible for a different eligibility group that provides the same tier of coverage, in this case tier 1, the state would transfer the beneficiary to the new eligibility group.

CMS is available for technical assistance to help states ensure that all beneficiaries retain coverage in either the same tier or in a more robust tier of coverage when their eligibility changes in a manner that would ordinarily result in a transition between eligibility groups.

6. Changes to Benefits, Cost Sharing, and PETI

Section 433.400 of this IFC allows states, during the period when section 6008(b)(3) of the FFCRA applies, to move a beneficiary from one eligibility group to another when the beneficiary becomes ineligible for one group and eligible for another group, as long as the coverage provided under the new group is within the same tier of coverage (applicable to tier 1 and tier 2 coverage only) or a beneficiary may also be moved to a more generous tier of coverage than the coverage available to the beneficiary on or after March 18, 2020. Section 433.400(c)(3) specifies that states may make programmatic changes to coverage, cost sharing, and beneficiary liability without violating the requirements for receiving the temporary FMAP increase, provided that such changes do not violate the individual beneficiary protections at § 433.400(c)(2) or the requirements under section 6008(b)(4) of the FFCRA to cover COVID–19 testing and treatment services without cost-sharing.

As described at § 433.400(c)(3), states may generally make changes to benefits offered under the state plan (as allowed under relevant provisions of the Act) or a section 1115 demonstration. For example, section 6008(b)(3) of the FFCRA does not prohibit a state from eliminating an optional benefit from its state plan. Therefore, a state could eliminate dental services for individuals age 21 and above, and still comply with section 6008(b)(3) of the FFCRA. Note that under section 1905(r)(5) of the Act, as part of the mandatory EPSDT benefit, states must provide beneficiaries under age 21 with all necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) of the Act, to correct or ameliorate defects and physical and mental illnesses and conditions discovered by EPSDT screening services, whether or not such services are covered under the state plan. However, states need not maintain EPSDT benefits for beneficiaries who turn 21 in order to comply with the terms of section 6008(b)(3) of the FFCRA.

Additionally, states are permitted to change the scope of benefits provided to beneficiaries without violating the requirements of section 6008(b)(3) for claiming the temporary FMAP increase, as long as they comply with otherwise applicable Medicaid law, including section 6008(b)(4) of the FFCRA. For example, section 6008(b)(3) of the FFCRA does not prohibit states from applying service authorization criteria, including for services authorized under section 1915(c) of the Act, in determining the amount, duration, or scope of coverage a beneficiary is entitled to receive under the state's program. Section 440.230(b) still applies as a limit on state flexibility. That regulation requires that each Medicaid service must be sufficient in amount, duration, and scope to reasonably achieve its purpose.

In considering optional changes to coverage, states may wish to avoid service authorization changes that lead to more individuals being placed in institutional or congregate settings, as these settings have had a disproportionate share of COVID–19 cases and deaths. We also note that

regardless of the flexibility provided at § 433.400(c)(3), states retain their obligations to provide services and supports in the ''most integrated setting'' under the integration mandate of Title II of the Americans with Disabilities Act (ADA), as interpreted by the Supreme Court in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999) (hereafter ''*Olmstead*''),[39] to avoid unjustified institutionalization or segregation. If the elimination of an optional benefit results in or places an individual with a disability at risk of unjustified institutionalization or segregation, it may be a violation of the state's obligations under the ADA and *Olmstead*.[40] States' *Olmstead* obligations do not confer Medicaid authority or create Medicaid obligations where they do not otherwise exist; states may choose to (and in some cases would be required to) use funds outside of or in addition to Medicaid to comply with *Olmstead* responsibilities.

Finally, states may generally establish or increase cost sharing (consistent with sections 1916 and 1916A of the Act, implementing regulations at 42 CFR 447.50 through 447.90, and the state plan), and increase beneficiary obligations under the PETI rules, and still comply with FFCRA section 6008(b)(3). However, states should also comply with FFCRA 6008(b)(4) if they are claiming the temporary FMAP increase. For example, a state may increase the liability of individuals receiving Medicaid coverage for institutional services under the state plan through otherwise permissible reductions in their standard personal needs allowances or family allowances. In addition, they may transfer a beneficiary from one program furnishing HCBS (for example, a waiver program authorized under section 1915(c) of the Act) to another as a beneficiary's health status and level of care changes.

Prior to reducing benefits or increasing cost sharing or beneficiary liability a state must provide proper advance notice and comply with other applicable statutory and regulatory requirements. In particular, the advance notice requirements that apply under 42 CFR 431.211 preclude states from reducing benefits or increasing cost sharing or beneficiary liability retroactively. Additionally, 42 CFR 440.230(b) limits states' flexibility to reduce the amount, duration, or scope of benefits; that regulation requires that each Medicaid service must be sufficient in amount, duration, and scope to reasonably achieve its purpose.

7. Exceptions to Maintaining Enrollment

Section 433.400(d) of this IFC describes the exceptions to the continuous enrollment requirement in § 433.400(c)(2). Section 6008(b)(3) of the FFCRA specifies that a beneficiary's Medicaid enrollment may be terminated if the beneficiary requests a voluntary termination of eligibility or the beneficiary is no longer a resident of the state. These exceptions are described in § 433.400(d)(1)(i) and (ii). Because a beneficiary who dies is no longer a state resident, § 433.400(d)(1)(iii) also provides an exception for deceased beneficiaries.

Section 433.400(d)(2) provides that states that have elected the option under section 1903(v)(4) of the Act to provide coverage to certain lawfully residing children and/or pregnant women, must limit the provision of services for these beneficiaries to services necessary for treatment of an emergency medical condition, as defined in section 1903(v)(3) of the Act, when they no longer meet the criteria at section 1903(v)(4) of the Act. This is because section 1903(v) of the Act prohibits the provision of FFP for otherwise eligible non-citizens who are not in a satisfactory immigration status, except as provided under paragraphs (2) (authorizing FFP for services necessary to treat an emergency medical condition) and (4) (relating to coverage of certain lawfully residing children and/or pregnant women) of section 1903(v) of the Act.

Finally, § 433.400(d)(3) clarifies the exceptions at § 433.400(d)(1). As noted above, § 433.400(d)(1)(i) provides an exception for beneficiaries who request a voluntary termination. Section 433.400(d)(3)(i) provides that this exception applies not only to beneficiaries who request that their Medicaid coverage be terminated in its entirety, but also to beneficiaries who request a voluntary transition to a different eligibility group (provided that they meet the applicable eligibility requirements), even if such transition results in a change in the individual's benefit package that would not otherwise satisfy the conditions of § 433.400(c)(2). For example, a state may transition a beneficiary from an eligibility group with coverage in tier 1 to an eligibility group with coverage in tier 3, at the beneficiary's request. Such a transition would not impact the state's ability to claim the temporary FMAP increase because the change resulted from a beneficiary request for voluntary termination from the original eligibility group.

Additionally, as described at § 433.400(d)(3)(ii), individuals who are identified as receiving benefits in more than one state via a data match with the Public Assistance Reporting Information System (PARIS) interstate matching service in accordance with § 435.945(d) and who fail to respond to a request for information to verify their residency in the reasonable period permitted by the state, consistent with § 435.952(c)(2)(iii), are generally considered to no longer be residents of the state for purposes of section 6008(b)(3) of the FFCRA, provided that the state takes all available reasonable measures to determine state residency prior to termination. These measures include, but are not limited to, reviewing existing information in the beneficiary's record to validate state residency, checking available state electronic data sources such as the Department of Motor Vehicles records or other state benefit programs, and coordinating with agencies in the other state(s) in which the PARIS interstate match identified the beneficiary as receiving benefits to determine the state in which the individual is a resident for purposes of Medicaid eligibility. If the state is unable to verify the beneficiary's continued residency in the state because the beneficiary fails to respond to requests for additional information and the state's alternative efforts cannot verify the beneficiary's continued residency in the state through other sources, that beneficiary's Medicaid enrollment may be terminated in accordance with § 435.400(d)(1)(ii). Such an individual will be considered a non-resident for purposes of section 6008(b)(3) of the FFCRA until such time as the state has information verifying residency. If, after termination, the state obtains information that verifies residency, the state must reinstate the individual's eligibility back to the date of termination.

G. Updates to the Comprehensive Care for Joint Replacement (CJR) Model, Performance Year (PY) 5 During the COVID–19 Public Health Emergency (PHE)

1. Background

Under the authority of section 1115A of the Act, through notice-and-comment

[39] Under title II of the ADA and *Olmstead,* the unjustified isolation of individuals with disabilities constitutes unlawful discrimination. States are required to provide community-based treatment where such treatment would be appropriate, the affected person does not oppose such treatment, and the treatment can be reasonably accommodated.

[40] See DOJ's Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead* v. *L.C.,* Question 9, updated February 25, 2020, available at: *https://www.ada.gov/olmstead/q&a_olmstead.htm.*

rulemaking, the Innovation Center established the CJR model in a final rule titled ''Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services'' published in the November 24, 2015 **Federal Register** (80 FR 73274) (referred to as the ''November 2015 final rule''). The CJR model, which was implemented on April 1, 2016, aims to support better and more efficient care for beneficiaries undergoing the most common inpatient surgeries for Medicare beneficiaries: Hip and knee replacements (also called lower extremity joint replacements or LEJR). This model tests bundled payment and quality measurement for an episode of care associated with hip and knee replacements to encourage hospitals, physicians, and post-acute care providers to work together to improve the quality and coordination of care from the initial hospitalization through recovery. All related care covered by Medicare Parts A and B within 90 days of hospital discharge from the LEJR procedure is included in the episode of care. During the first CJR model performance period, the CJR model required hospitals located in the 67 MSAs selected participation to participate in the model through December 31, 2020 unless the hospital was an episode initiator for an LEJR episode in the risk-bearing phase of Models 2 or 4 of the Bundled Payments for Care Improvement (BPCI) initiative. Hospitals located in one of the 67 MSAs that participated in Model 1 of the BPCI initiative, which ended on December 31, 2016, were required to begin participating in the CJR model when their participation in the BPCI model ended.

In the December 1, 2017 **Federal Register**, we published another final rule (82 FR 57066), titled ''Medicare Program; Cancellation of Advancing Care Coordination Through Episode Payment and Cardiac Rehabilitation Incentive Payment Models; Changes to Comprehensive Care for Joint Replacement Payment Model: Extreme and Uncontrollable Circumstances Policy for the Comprehensive Care for Joint Replacement Payment Model'' (referred to as the ''December 2017 final rule''), that implemented revisions to the CJR model, including giving rural and low volume hospitals selected for participation in the CJR model as well as those hospitals located in 33 of the 67 metropolitan statistical areas (MSAs)[41] a one-time option to choose whether to continue their participation in the model through December 31, 2020 (that is, continue their participation through PY5). An interim final rule with comment period was also issued in conjunction with the December 2017 final rule (82 FR 57092) in order to address the need for a policy to provide some flexibility in the determination of episode costs for providers located in areas impacted by extreme and uncontrollable circumstances. This extreme and uncontrollable circumstances policy was adopted as final in the final rule (83 FR 26604) we published in the June 8, 2018 **Federal Register**, titled ''Medicare Program; Changes to the Comprehensive Care for Joint Replacement Payment Model (CJR): Extreme and Uncontrollable Circumstances Policy for the CJR Model.''

In the February 24, 2020 **Federal Register** (85 FR 10516), we published the proposed rule titled ''Medicare Program: Comprehensive Care for Joint Replacement Model Three-Year Extension and Changes to Episode Definition and Pricing'' (hereinafter referred to as the ''February 2020 proposed rule''). Among other changes, this proposed rule proposed to add three additional performance years to the CJR model (*i.e.,* performance years 6 through 8).

In the April 6, 2020 **Federal Register** (85 FR 19230), we published an interim final rule with comment period (IFC) titled ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency'' (hereinafter referred to as the ''April 2020 IFC''). In the April 2020 IFC, to account for the impact of the PHE for COVID–19 on CJR participant hospitals, we extended PY5 through March 31, 2021, and adjusted the extreme and uncontrollable circumstances policy to account for COVID–19 by specifying that all episodes with a date of admission to the anchor hospitalization that is on or within 30 days before the date that the emergency period (as defined in section 1135(g) of the Act) begins or that occurs through the termination of the emergency period (as described in section 1135(e) of the Act), actual episode payments are capped at the target price determined for that episode under § 510.300.

Additionally, in the May 29, 2020 **Federal Register** (85 FR 32460), CMS published a proposed rule titled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2021 Rates; Quality Reporting and Medicare and Medicaid Promotion Interoperability Programs Requirements for Eligible Hospitals and Critical Access Hospitals: (hereinafter referred to as the FY 2021 IPPS/LTCH proposed rule). In the FY 2021 IPPS/LTCH proposed rule (85 FR 32510), we solicited comment on the effect of the proposal to create new MS–DRG 521 and MS–DRG 522, the effect this proposal would have on the CJR model and whether to incorporate MS–DRG 521 and MS–DRG 522, if finalized, into the CJR model's proposed extension to December 31, 2023.

Through this IFC we are implementing four changes to the CJR model. These are: (1) Extending performance year 5 an additional 6 months to provide for continuity of model operations with the same scope while we continue to consider comments received on our proposal to extend the model to performance years 6 through 8 and adopt other changes to the model; (2) making changes to the reconciliation process for PY5 to allow for two periods and to enable more frequent receipt of reconciliation reports by participants; (3) making a technical change, retroactive to October 1, 2020, to ensure that the model continues to include the same inpatient Lower Extremity Joint Replacement (LEJR) procedures, despite the adoption of new MS–DRGs to describe those procedures; and (4) making changes to the extreme and uncontrollable circumstances policy for COVID–19 to adapt to an increase in CJR episode volume and renewal of the PHE, while providing protection against financial consequences of COVID–19 after the extreme and uncontrollable circumstances policy no longer applies.

2. Extension of Performance Year 5 to September 30, 2021

We are implementing a 6-month extension to CJR performance year (PY) 5 such that the model will now end on September 30, 2021. In the February 2020 proposed rule, we proposed to extend the CJR model by adding three performance years (PY6 through 8), from January 1, 2021 to December 31, 2023, to revise target prices, to change the definition of an episode of care to

[41] Metropolitan Statistical Area (MSA) means a core-based statistical area associated with at least one urbanized area that has a population of at least 50,000. MSAs included in the CJR model are available in the December 2017 final rule available at *https://www.federalregister.gov/documents/2017/12/01/2017-25979/medicare-program-cancellation-of-advancing-care-coordination-through-episode-payment-and-cardiac.*

include outpatient procedures for Total Knee Arthroplasty and Total Hip Arthroplasty, as well as to revise other sections of 42 CFR part 510.[42] In response to the PHE for COVID–19, in the April 2020 IFC we extended PY 5 an additional 3 months to end on March 31, 2021 rather than on December 31, 2020 as finalized in November 2015 final rule.

While we continue to consider the addition of performance years to the model and other changes proposed in the February 2020 proposed rule, we also do not want to create a disruption to the model by allowing the model to end on March 31, 2021, which could be disruptive to hospitals and patient care during the PHE if it is still ongoing at that time. Implementing an additional six months of PY5, so that PY5 now ends on September 30, 2021, provides participant hospitals additional relief and stability in model operations. In the event the three-year extension is finalized, participant hospitals would be in a worse position if PY 5 was not extended to September 30, 2021 because participant hospitals would have made operational choices in reliance on the model ending on March 31, 2021 and then have to adjust to model changes on top of the significant burden of managing COVID–19 treatment and under COVID–19 safety protocols and utilization changes. Overall, this means a nine-month extension from the original conclusion of the model as finalized in the November 2015 final rule (80 FR 73274), which had established that the model would end on December 31, 2020 with no new episodes initiating after October 4, 2020.

We received several comments on the April 2020 IFC supporting the policy to extend PY5 an additional three months and asking that we extend PY5 by 12 months instead, not just the 3 months in the April 2020 IFC. In addition, commenters noted that though state and local guidelines have laid out a process for regions and facilities to determine when to re-open elective procedures, the progression of COVID–19 could impact elective procedures well into 2021. We appreciate commenters' request to extend PY 5 by 12 additional months because of the impact COVID–19 has had on LEJR procedures. We observe that COVID–19 has had an impact on CJR procedures from February 2020 to August 2020. Table 1 depicts recent Medicare claims data comparing February to August of 2019 and February to August of 2020. These numbers reflect episode volume for each month, accounting for any CJR episode that began within that month.

TABLE 1—CJR EPISODE VOLUME COMPARISON

	February	March	April	May	June	July	August
2019	6214	6174	6515	6019	5836	6060	5838
2020	5245	3374	876	2242	4036	3838	3090

In light of these data, we believe providing an additional 6 months beyond what we adopted in the April 2020 IFC provides participant hospitals relief from COVID–19 challenges. Therefore, we are implementing an additional 6-month extension of CJR PY 5 and amending the provisions at 42 CFR 510.2 and 510.200(a) to reflect this extension.

We note that in our February 2020 proposed rule to extend and modify the CJR model through PYs 6 to 8 (CMS–5529–P), we proposed PY 6 would comprise all CJR episodes ending on or after January 1, 2021 and on or before December 31, 2021. However, since we are amending PY 5 such that it comprises all CJR episodes ending on or after January 1, 2020 and on or before September 30, 2021, we seek comment on the duration of PY 6, if finalized. In particular, we seek comment on the potential for PYs 6 through 8 to remain 12-month performance years and each begin with episodes ending on or after October 1 each year. We also seek comment on increasing the duration of proposed PY 6 to 15 months. Under this alternative, PY 6 would comprise all CJR episodes ending on or after October 1, 2021 and on or before December 31, 2022; PY 7 and PY 8 would remain 12 months and each begin with episodes ending on or after January 1, 2023 or January 1, 2024, respectively.

3. Additional Reconciliations for Performance Year 5

Currently, following the end of each performance year, CMS determines actual episode payments and calculates the amount of a reconciliation payment or repayment amount, as described in 42 CFR 510.305. Each performance year is reconciled twice. The first reconciliation calculation process begins after a 2-month period of claims runout, while the final reconciliation calculation process begins after a 14-month period of claims runout. The initial reconciliation of a given performance year is conducted concurrently with the final reconciliation of the previous performance year, and the resulting amounts are netted against one another for one annual reconciliation payment or repayment amount, as set forth in 42 CFR 510.305. The initial reconciliation process typically begins in late February of the calendar year following the performance year, with reports and reconciliation amounts issued in June. Final reconciliation for the performance year is issued the following June.

Absent modification to the reconciliation process, the extension of PY 5 to a total of 21 months, from January 1, 2020 through September 30, 2021 would mean that participant hospitals would experience a 21-month gap between the PY4 final reconciliation in June of 2020 and initial PY 5 reconciliation in early 2022. We believe this significant gap is problematic because participant hospitals gain important feedback from their annual reconciliation reports that they can use to gauge their quality performance and efforts at cost-savings. These annual reports also facilitate the relationships that participant hospitals have established with clinicians and other entities with whom they coordinate care and/or have gainsharing arrangements. Further, not having an initial reconciliation for PY5 until early 2022 is not consistent with the model design goal of reconciling one time a year and netting against final reconciliation amounts from the prior year. Therefore, we believe there is good cause to conduct two initial, and two final, reconciliations of PY5. The first initial reconciliation will apply to the first 12 months of PY5 in order to maintain consistency with the 12 month reconciliation cycles for previous PYs 2–4 (we note that PY 1 was 9 months rather than 12 months), and the second initial reconciliation will apply to the

[42] For proposed changes to the CJR Model in ''Medicare Program: Comprehensive Care for Joint Replacement Model Three Year Extension and Changes to Episode Definition and Pricing'' *See* 85 FR 10516.

remaining 9 months of PY5. To minimize confusion, we will refer to these two subsets of PY5 as performance year subset 5.1and 5.2, respectively.

The initial reconciliation of performance year subset 5.1 will occur fourteen months after the start of PY5, which is the same timeline as would have occurred PY5 under the December 2017 final rule. After the usual 2-month period of claims runout, the initial reconciliation for performance year subset 5.1 episodes will begin in late February of 2021 using 12 months of claims from CY 2020 to calculate reconciliation payments, with the resulting amounts netted against the results of the concurrent PY4 final reconciliation calculation when we issue reports and reconciliation amounts to participants in June 2021. Participants can expect to receive their 2021 reconciliation reports on approximately the same schedule as in previous model years.

The nine additional months of PY 5 (performance year subset 5.2) will be reconciled one full calendar year after the reconciliation of PY 4 final/ performance year subset 5.1 initial. We will use claims data for the initial reconciliation of performance year subset 5.2 that reflect a 2-month period of claims runout (as set forth in 42 CFR 510.305(e)(1)(i)), as we have for PY 1–4 and performance year subset 5.1. In short, performance year subset 5.2 will run from January 1, 2021 through September 30, 2021. Consistent with using two months of claims run out, we will pull claims for the initial reconciliation in December 2021. However, we will not reconcile performance year subset 5.2 until late February 2022 along with the final reconciliation for performance year subset 5.1. This means that we will not begin reconciliation calculation for performance year subset 5.2 until five months after the end of performance year subset 5.2 in order to align the initial reconciliation calculation for performance year subset 5.2 with the timing of the subsequent reconciliation calculation for performance year subset 5.1. While alignment with the performance year subset 5.1 subsequent reconciliation calculation is the primary reason for this delay in the performance year subset 5.2 initial reconciliation, it is also necessary to allow time to receive certain input files to perform the initial reconciliation calculation, including standardized claims files and quality data. These data are generally not available more than a few weeks prior to the usual reconciliation process start date in late February. Therefore, the reconciliation process will occur on the same schedule as PY 1 through 4 and performance year subset 5.1, with the reconciliation report available one year after the reports from the previous year's reconciliation.

We note that, as part of the separate reconciliation calculation processes for performance year subsets 5.1 and 5.2, we will calculate a separate Composite Quality Score (CQS) for each of performance year subsets 5.1 and 5.2, including a separate set of quality improvement points and quality performance points for each performance year subset. In order to conduct separate CQS calculations for each time period, we are amending 42 CFR 510.400 to indicate that the required data submissions that previously applied to PY 5 will now apply to performance year subset 5.1, and we are adding a required data submission for performance year subset 5.2. These additional requirements will reflect the timeframe of performance year subset 5.2, but will otherwise parallel the requirements for performance year subset 5.1, and will not require an increased amount of data for performance year subset 5.2 as compared to performance year subset 5.1. We recognize that some of the timeframe for both performance year subsets 5.1 and 5.2 quality data collection overlap with the effective dates of the COVID–19 waiver [43] that provided reporting exemptions for hospitals participating in quality reporting programs, so we will use quality data reported before and after the effective dates of the COVID–19 waiver, for those quality measures to which the waiver applied.

The final reconciliation calculation for performance year subset 5.2 will occur one year after the initial reconciliation of performance year subset 5.2. Although we will use claims data that were available 14 months after the end of performance year subset 5.2 for the subsequent reconciliation (as set forth in 42 CFR 510.305(i)(1)), as with the initial reconciliation, we will not begin the subsequent reconciliation calculation process until 17 months after the end of performance year subset 5.2. We would begin the final reconciliation calculation for performance year subset 5.2 in late February 2023 with reconciliation payment amounts and reports issued in June, because input files that are required for the final reconciliation will not be available until 17 months after the end of performance year subset 5.2. In particular, we need to receive the reconciliation results from Accountable Care Organizations (ACOs) that overlap with CJR in order to conduct the ACO overlap calculation. Since we cannot state with confidence that we will have access to those data prior to the normal reconciliation process start date in late February 2023, we will perform the reconciliation calculation at the same time of year that we have performed previous reconciliations. As noted above, we will conduct the final reconciliation of performance year subset 5.2 independently. Table 2 illustrates the timelines for performance year subsets 5.1 and 5.2.

TABLE 2—TIMELINES FOR PERFORMANCE YEARS 4 AND 5

Performance year (PY)	Performance period	Initial reconciliation calculation start	Subsequent reconciliation calculation start	Reconciliation amount (+/−)
4	01/01/2019 to 12/31/2019	2 months after 12/31/2019: Late February 2020.	14 months after 12/31/2019: Late February 2021.	Net PY3 and PY4 reconciliation amounts.
5 (two periods)	01/01/2020 to 09/30/2021.			
Subset 5.1	01/01/2020 to 12/31/2021	2 months after 12/31/2020: Late February 2021.	14 months after 12/31/2020: Late February 2022.	Net PY4 and PY5.1 reconciliation amounts.

[43] *https://www.cms.gov/files/document/covid-ifc-3-8-25-20.pdf.*

TABLE 2—TIMELINES FOR PERFORMANCE YEARS 4 AND 5—Continued

Performance year (PY)	Performance period	Initial reconciliation calculation start	Subsequent reconciliation calculation start	Reconciliation amount (+/−)
Subset 5.2	01/01/2021 to 09/30/2021	5 months after 09/30/2021: Late February 2022.	17 months after 09/30/2021: Late February 2023.	Net PY5.1 and PY5.2 reconciliation.

In order to reflect the changes in reconciliation timing and other changes associated with additional reconciliations in PY5, we are amending the following provisions: 42 CFR 510.2, 42 CFR 510.200, 42 CFR 510.305(b), (d)(1), (e), (i)(1) and (2), and (j)(1) and (2), and 42 CFR 510.400(b)(3)(v), and adding 42 CFR 510.400(b)(3)(vi).

4. DRG 521 and DRG 522

In this IFC we are amending our regulations at § 510.300(a) to specify that, as of October 1, 2020, the CJR model includes episodes when the MS–DRG assigned at discharge for an anchor hospitalization is one of two new MS–DRGs we adopted in the FY 2021 IPPS/LTCH final rule (85 FR 58432): MS–DRG 521 (Hip Replacement with Principal Diagnosis of Hip Fracture with Major Complications and Comorbidities (MCC)) and MS–DRG 522 (Hip Replacement with Principal Diagnosis of Hip Fracture, without MCC). As indicated in 42 CFR 510.300(a)(1), the CJR model episode definition historically included MS–DRG 469 (Major Hip and Knee Joint Replacement or Reattachment of Lower Extremity with MCC) and MS–DRG 470 (Major Hip and Knee Joint Replacement or Reattachment of Lower Extremity without MCC). For purposes of calculating quality adjusted target prices, we further subdivided episodes within each MS–DRG based on the presence or absence of a primary hip fracture. In the FY 2021 IPPS/LTCH final rule, we stated that because the CJR model would continue until at least March 31, 2021, we intended to adopt a policy in the CJR final rule that incorporates these new MS–DRGs into the CJR model as of October 1, 2020 to avoid disruption to the model for the remainder of PY5 (as extended) and thereafter, if our proposal to extend the CJR model through PY8 were finalized (85 FR 58502). To this end, we are adopting the change in this IFC, with retroactive effect to October 1, 2020. This change ensures that hip replacements with a principal diagnosis of hip fracture, with and without MCC, will continue to trigger CJR model episodes even though they are now assigned to these new DRGs rather than MS–DRGs 469 and 470.

As background, in the FY 2021 IPPS/LTCH proposed rule (85 FR 32510), CMS proposed the creation of two new MS–DRGs, 521 and 522 (Hip Replacement with primary hip fracture, with and without major complications and comorbidities, respectively). Because the FY2021 IPPS/LTCH proposed rule was published after the CJR February 2020 proposed rule, the new MS–DRGs 521 and 522 were not addressed in the February 2020 proposed rule. We solicited comment in the FY2021 IPPS/LTCH proposed rule on the effect this proposal would have on the CJR model and whether to incorporate MS–DRG 521 and MS–DRG 522, if finalized, into the CJR model's proposed extension to December 31, 2023. The public also had the opportunity to address this issue in comments responding to the CJR February 2020 proposed rule, as the comment period for that rule had been extended.

We received three comments in response to the February 2020 proposed rule and 20 comments in response to the FY2021 IPPS/LTCH proposed rule addressing the effects of the proposed new MS–DRGs on the CJR model. Most commenters agreed that MS–DRGs 521 and 522 should be included in the definition of a CJR model episode, noting their assumption that this would have a neutral economic impact on the model and participants, as the CJR model already provides for separate quality adjusted target prices for hip fracture cases for MS–DRGs 469 and 470. Multiple commenters stated their belief that there is value in maintaining hip fracture cases in the CJR model, including that it is administratively simpler and that maintaining hip fractures in the CJR model would mean those procedures remain subject to the value-based care incentives of the CJR model. Some commenters suggested that quality adjusted target prices for episodes previously triggered by MS–DRG 469 and MS–DRG 470 with hip fracture could apply to episodes triggered by the new MS–DRGs. Others noted that if the DRGs were added retroactively, they would not want the new DRGs to retroactively impact quality adjusted target prices.

As of October 1, 2020, MS–DRGs 521 and 522 separately identify a subset of LEJR procedures that were previously grouped to MS–DRGs 469 and 470, and if the definition of a CJR model episode is not revised to accommodate this technical change the LEJR procedures associated with these new codes will no longer be part of the CJR model. This result would be highly disruptive to the CJR model, because it would remove a significant number of episodes midway through a performance year. Therefore, we believe there is good cause for this rulemaking to change the definition of a CJR model episode to include MS–DRGs 521 and 522. Indeed, it would be contrary to the public interest to undertake traditional notice and comment rulemaking to adopt these regulatory changes because they are intended to preserve the model's scope in light of underlying technical changes in the IPPS. Based on the public comments previously described, we believe that including DRGs 521 and 522 in the CJR episode definition is less disruptive to participant hospitals than the alternative, which would be to allow hip replacements with a primary hip fracture to drop abruptly out of the model (or to drop out of the model until we were able to undertake full notice and comment rulemaking to add them back at a later point). We believe that failure to retroactively incorporate MS–DRGs 521 and 522 into the CJR model as of October 1, 2020 would be contrary to the public interest because it would result in approximately 20–25% of all LEJR episodes to be dropped from the CJR model. The categories of episodes that would be dropped tend to be associated with emergent surgeries, high-costs, and complex post-acute care needs. Dropping these episodes from the model would create confusion, increase administrative burden for participant hospitals, and remove the opportunity for participant hospitals to earn reconciliation payments by coordinating care for these complex, high-cost episodes.

Operationally, this is a seamless transition for participant hospitals, which have continued to bill Medicare

FFS as usual for hip replacements with hip fractures. Beginning on October 1, 2020, the Medicare IPPS grouper began to assign those hospitalizations to one of the new MS–DRGs, with no billing changes required of participant hospitals. The new MS–DRGs will be incorporated into the CJR episode reconciliation data system, and will be included in participant hospitals' monthly data feeds going forward. Participant hospitals were notified of their quality adjusted target prices for episodes beginning on October 1, 2020 for MS–DRGs 469 and 470, with and without hip fracture. As of October 1, 2020, the quality adjusted target prices for MS–DRGs 469 and 470 with hip fracture will apply to episodes initiated by the new MS–DRGs 521 and 522, respectively, for the remainder of PY5 (including both performance year subsets 5.1 and 5.2).

Given that the CJR model currently provides separate quality adjusted target prices for episodes with and without a hip fracture, incorporating the new DRGs would have minimal financial impact on the model. The PY5 quality adjusted target price calculation methodology includes the application of update factors (80 FR 73342–73346), which incorporate annual changes to each CMS payment system (for example, IPPS, OPPS, and SNF). The update factor is calculated and applied twice per year, in order to incorporate both fiscal year and calendar year payment system updates. The MS–DRG weights assigned to the new MS–DRGs 521 and 522 in the FY 2021 IPPS/LTCH final rule (84 FR 42044) will be incorporated into the IPPS update factor as part of the calculation of the quality adjusted target prices for episodes beginning between October 1, 2020 and December 31, 2020. These FY 2021 MS–DRG weights will continue in the quality adjusted target prices for episodes that begin between January 1, 2021 and September 30, 2021, which will incorporate CY 2021 payment system updates. As a result, baseline prices for hip replacements with primary hip fracture, which would have been assigned the MS–DRGs 469 and 470 and stratified by hip fracture status, are comparable to those same episodes in the performance period that are assigned to MS–DRGs 521 and 522, respectively. For the remainder of PY5, we will calculate quality adjusted target prices for episodes initiated by MS–DRGs 521 and 522 using baseline episodes initiated by MS–DRG 469 with fracture and MS–DRG 470 with fracture, respectively, but updated to include the MS–DRG weights assigned to MS–DRGs 521 and 522 for FY 2021.

In this IFC we are incorporating the new MS–DRGs 521 and 522 into the CJR model episode definition as of October 1, 2020, updating quality adjusted target prices to reflect the applicable MS–DRG weights, and amending the provisions at 42 CFR 510.300(a)(1)(i) and (iii) to reflect these changes.

5. Changes to Extreme and Uncontrollable Circumstances Policy for the PHE for COVID–19

We are also modifying the extreme and uncontrollable circumstances adjustment for COVID–19 in § 510.300(k)(4) to expire on March 31, 2021 or the last day of the emergency period, whichever is earlier. In addition, we are adopting a more targeted adjustment, which will apply after March 31, 2021 or the last day of emergency period (whichever is earlier), so that financial safeguards continue to apply for CJR episodes during which a CJR beneficiary receives a positive COVID–19 diagnosis.

Currently, the extreme and uncontrollable circumstances adjustment for COVID–19 provides financial safeguards for participant hospitals that have a CCN primary address that is located in an emergency area during an emergency period, as those terms are defined in section 1135(g) of the Act, for which the Secretary issued a waiver or modification of requirements under section 1135 of the Act on March 13, 2020, effectively applying the financial safeguards to all participant hospitals. These financial safeguards, wherein actual episode payments are capped at the target price determined for that episode, apply to fracture or non-fracture episode with a date of admission to the anchor hospitalization that is on or within 30 days before the date that the emergency period (as defined in section 1135(g) of the Act) begins or that occurs through the termination of the emergency period (as described in section 1135(e) of the Act). In the April 2020 IFC we explained this extreme and uncontrollable circumstances adjustment, noting that the previous CJR model policy for extreme and uncontrollable circumstances was not applicable to the PHE for the COVID–19 pandemic. We also indicated that we did not expect many new CJR episodes to initiate in light of the COVID–19 virus and the related guidance to avoid elective surgeries. We further stated that we wanted to avoid inadvertently creating incentives to place cost considerations above patient safety within the CJR model, given the challenges to the health care delivery system in responding to COVID–19 cases and the expenses associated with treating the virus.

We received comments on both the April 2020 IFC and the CJR February 2020 proposed rule about the extreme and uncontrollable circumstances adjustment. Commenters favored the extreme and uncontrollable circumstances policy for COVID–19 and commended CMS for providing relief to participant hospitals. Some commenters questioned what steps CMS would take once the PHE ends and noted the uncertainty in the current policy since there is not a concrete end date for the PHE. A commenter recommended CMS hold participant hospitals harmless from performance-related penalties for the 2020 performance year and urged CMS to make appropriate adjustments for the 2020 and 2021 performance years and to address the impact of COVID–19 on financial expenditures, performance scores and risk adjustment.

We appreciate commenters' positive feedback on the April 2020 IFC and our decision to provide relief to participant hospitals. At the onset on the PHE, we quickly developed financial safeguards in the April 2020 IFC due to the mandatory nature of the model and the location of all 471-participant hospitals in MSAs where COVID–19 was most prevalent. For example, there are 98 participant hospitals in the New York/New Jersey Metropolitan Area, which was the epicenter for COVID–19.[44] Further, at that time, we did not possess data that allowed CMS to determine the COVID–19 virus's effect on the CJR model, and believed it was most prudent to waive downside risk for all episodes thorough the duration of the PHE.

Since publishing the April 2020 IFC, we reviewed Medicare claims data and observe a steep decline in the initiation of episodes in April 2020 (See Table 1). Post April 2020, CJR episodes are increasing, and though not at normal utilization as compared to 2019 Medicare claims data, the data reflects a continual initiation of CJR episodes despite the ongoing PHE. In addition, related Federal guidance to avoid elective surgeries has expired, which allows certain participant hospitals to initiate elective LEJR procedures.[45] The continual initiation of CJR episodes during the PHE is contrary to our assumption in the April 2020 IFC, that

[44] ''New York City Region Is Now an Epicenter of the Coronavirus Pandemic'' March 22, 2020. Available at *https://www.nytimes.com/2020/03/22/nyregion/Coronavirus-new-York-epicenter.html.*

[45] *https://www.cms.gov/files/document/covid-flexibility-reopen-essential-non-covid-services.pdf.*

is, we did not expect many new CJR episodes to initiate during the PHE.

Absent a change to specify an end date, the current extreme and uncontrollable adjustment in 42 CFR 510.300(k)(4) would continue as long as the PHE. Unfortunately, the combination of CJR episode volume increasing to levels we did not anticipate during the PHE and the continued renewal of the PHE threatens the ability of the CJR model to generate any savings over the course of the model. With greater surgical volume, we do not believe such a broad extreme and uncontrollable circumstances policy for COVID–19 remains necessary.

For these reasons, we are implementing an end date to the extreme and uncontrollable circumstances adjustment for COVID–19. Specifically, for a fracture or non-fracture episode with a date of admission to the anchor hospitalization that is on or within 30 days before the date that the emergency period (as defined in section 1135(g) of the Act) begins or that occurs on or before March 31, 2021 or the last day of such emergency period, whichever is earlier, actual episode payments are capped at the quality adjusted target price determined for that episode under § 510.300. We are amending the provisions at 42 CFR 510.305(k)(4) to reflect this change.

In addition, in order to account for CJR beneficiaries with a positive COVID–19 diagnosis during a CJR episode that initiates after the adjustments for extreme and uncontrollable circumstances specified in § 510.305(k)(4) end, we are amending our regulations at § 510.305(e)(1)(i) to cap actual episode payments at the quality adjusted target price for the episode, effectively waiving downside risk for all episodes with actual episode payments that include a claim with a COVID–19 diagnosis code. This policy will apply after March 31, 2021 or the last day of the PHE, whichever occurs earlier.

In response to commenters' questions about how the CJR model will alleviate financial risk associated with COVID–19 once the PHE expires, we explored the flexibilities provided by other CMMI models and found them to be consistent with a targeted, episode-based approach to providing financial relief from COVID–19. In order to be responsible stewards of the Medicare Trust Fund, we are adopting a policy to provide participant hospitals continuing financial protection from the effect of COVID–19 on the CJR model that may continue beyond the end of the PHE for COVID–19 or March 31, 2021 (whichever is earlier). Specifically, at the initial and subsequent reconciliations of performance year subset 5.2, which will include episodes subject to this new adjustment policy, we will identify episodes with actual episode payments with any claim containing a COVID–19 diagnosis and costs for those episodes will be capped at the quality adjusted target price, effectively waiving downside risk for that episode. A COVID–19 diagnosis is identified by the following ICD–10–CM diagnosis codes: B97.29; U07.1; or any other ICD–10–CM diagnosis code that is recommended by the Centers for Disease Control and Prevention for the coding of a confirmed case of COVID–19.[46] We understand that ICD–10 diagnosis codes B97.29 (which was used for dates of service on or after January 27, 2020 through March 31, 2020) and U07.1 (which was used for dates of service on or after April 1, 2020 through September 30, 2020) might not be used for dates of service to which our new adjustment policy will apply. Nevertheless, given the potential for uncertainty as to whether either of these codes will be used for dates of service after September 30, 2020, we are including them in the definition of ''COVID–19 diagnosis code'' that we are adding to § 510.2 for completeness.

In order to provide participant hospitals continuing financial protection from the effect of COVID–19 on the CJR model that may continue beyond the end of the PHE for COVID–19 or March 31, 2021, whichever occurs earlier, we are implementing that actual episode payments are capped at the quality adjusted target price determined for that episode under § 510.300 for episodes with actual episode payments that include a claim with a COVID–19 diagnosis code and initiate after the earlier of March 31, 2021 or the last day of the emergency period.

III. Provisions of the Interim Final Rule—Departments of the Treasury, Labor and Health and Human Services

A. Rapid Coverage of Preventive Services for Coronavirus

1. Background

In addition to the steps Congress took to ensure coverage of COVID–19 diagnostic testing, in section 3203 of the CARES Act, Congress required group health plans and health insurance issuers offering group or individual health insurance coverage to cover, without cost sharing, qualifying coronavirus preventive services. This coverage is required to be provided ''pursuant to section 2713(a) of the [PHS] Act,'' including its implementing regulations or any successor regulations.

Section 2713 of the PHS Act was added by section 1001 of PPACA and incorporated by reference into ERISA by section 715 of ERISA and into the Code by section 9815 of the Code. Section 2713 of the PHS Act and the regulations implementing section 2713 of the PHS Act require non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to provide coverage of certain specified preventive items and services without cost sharing. These services include:

- Evidence-based items or services that have in effect a rating of ''A'' or ''B'' in the current recommendations of the USPSTF with respect to the individual involved.
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from ACIP with respect to the individual involved. A recommendation of ACIP is considered to be ''in effect'' after it has been adopted by the Director of the CDC. A recommendation is considered to be for ''routine use'' if it appears on the Immunization Schedules of the CDC.
- With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).
- With respect to women, preventive care and screenings provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the USPSTF), subject to certain exemptions and accommodations (see 45 CFR 147.131 through 147.133).

The Departments' current regulations (herein referred to as the 2015 Final Regulations) under section 2713 of the PHS Act at 26 CFR 54.9815–2713; 29 CFR 2590.715–2713; and 45 CFR 147.130 require that plans and issuers provide coverage of recommended preventive services for plan years that begin on or after September 23, 2010, or, if later, for plan years that begin on or after the date that is one year after the date the recommendation or guideline is issued.

Under the 2015 Final Regulations, if a recommended preventive service is billed separately (or is tracked as individual encounter data separately) from an office visit, then a plan or issuer

[46] *https://www.cdc.gov/nchs/data/icd/ICD-10-CM-Official-Coding-Gudance-Interim-Advice-coronavirus-feb-20-2020.pdf?fbclid=IwAR2c9LrGMAhum_Ogu-LrxPJ-S4u_j4wGW1615I_fmoiDB5AA0wKHKitjoXo.*

may impose cost-sharing requirements with respect to the office visit. However, if a preventive service is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is the delivery of such an item or service, then a plan or issuer may not impose cost-sharing requirements with respect to the office visit.

The 2015 Final Regulations generally do not require a plan and issuer that has a network of providers to provide benefits for applicable preventive items or services that are delivered by an out-of-network provider. Moreover, the 2015 Final Regulations generally do not preclude a plan or issuer that has a network of providers from imposing cost-sharing requirements for preventive services that are delivered by an out-of-network provider. However, if a plan or issuer does not have in its network a provider who can provide a preventive service, then the plan or issuer must cover the recommended preventive service when performed by an out-of-network provider and may not impose cost sharing with respect to the recommended preventive service.

Many items and services required to be covered under section 2713 of the PHS Act typically are provided as part of the usual course of preventive care, often according to regularly scheduled intervals. Examples include immunizations provided according to schedules established by the CDC and other annual screenings or counseling. Therefore, the 2015 Final Regulations require coverage without cost sharing for applicable immunizations that are recommended by ACIP for routine use, and state that a recommendation is considered to be for ''routine use'' if it appears on the Immunization Schedules of the CDC.

Section 3203 of the CARES Act establishes a more accelerated timeline for required coverage of qualifying coronavirus preventive services than other recommended preventive services under PHS Act section 2713. As stated above, coverage of qualifying coronavirus preventive services must be provided no later than 15 business days following an applicable recommendation. In addition, it is possible that items, services, and immunizations used to prevent or mitigate COVID–19 will not, in the immediate future, be recommended as part of a usual course of preventive care, but rather for more urgent use. As reflected by the expedited timeline for coverage Congress established in section 3203 of the CARES Act, the need to provide coverage of qualifying coronavirus preventive services is urgent. Therefore, as discussed below, this IFC requires coverage of COVID–19 immunizations within 15 business days after the immunization has been recommended by ACIP and adopted by the CDC, regardless of whether it appears on the Immunization Schedules of the CDC for routine use.

Additionally, in light of the current PHE for COVID–19, it is imperative that group health plans and health insurance issuers provide full coverage for these items and services, including costs for the administration of vaccines, and ensure timely access to coverage as Congress intended. Accordingly, in this IFC, the Departments provide certain clarifications previously made with respect to the 2015 Final Regulations and amend those regulations to implement unique requirements related to covering qualifying coronavirus preventive services.[47]

2. Scope of Requirement To Cover Certain Recommended Preventive Services Under Section 2713 of the Public Health Service Act

a. Related Items and Services

In implementing section 2713 of the PHS Act, the 2015 Final Regulations addressed whether office visit charges associated with certain recommended preventive services must be covered without cost sharing. Specifically, *Example 1* in the 2015 Final Regulations illustrates how the requirements apply in situations where a provider bills a plan for an office visit where a preventive screening for cholesterol abnormalities (which has in effect a rating of A or B from the USPSTF) is conducted and for the laboratory work of the cholesterol screening test. In that example, the plan may not impose any cost-sharing requirements with respect to the separately billed laboratory work of the cholesterol screening test. Because the office visit is billed separately from the cholesterol screening test, the 2015 Final Regulations provide that the plan may impose cost-sharing requirements for the office visit.

Prior to the publication of the 2015 Final Regulations, the Departments received questions from stakeholders regarding discrete coverage issues related to certain recommended preventive services. In particular, with respect to colonoscopies, stakeholders asked whether certain related services (such as the cost of polyp removal or anesthesia) must also be covered without cost sharing. The Departments clarified in subregulatory guidance that a plan or issuer may not impose cost sharing for polyp removal during a preventive screening colonoscopy, as such service is an integral part of a colonoscopy, and also stated that anesthesia provided in connection with a preventive colonoscopy must be covered without cost sharing.[48]

Consistent with the examples provided in the 2015 Final Regulations and subregulatory guidance cited in the preamble to the rulemaking promulgating the 2015 Final Regulations, the Departments further clarify that under the 2015 Final Regulations and this IFC, plans and issuers subject to section 2713 of the PHS Act must cover, without cost sharing, items and services that are integral to the furnishing of the recommended preventive service, regardless of whether the item or service is billed separately. For example, several of the recommended preventive services involve screenings for the presence of certain health conditions, such as diabetes, or a variety of sexually transmitted infections. These recommended screenings, typically performed by laboratories, cannot be conducted without first collecting a specimen. Accordingly, plans and issuers subject to section 2713 of the PHS Act must cover without cost sharing both the specimen collection and the recommended preventive service, regardless of how the specimen collection is billed. Similarly, a recommended immunization generally cannot be furnished without being administered by a medical professional. As qualifying coronavirus preventive services are expected to include immunizations, plans and issuers subject to section 2713 of the PHS Act

[47] The 2015 Final Regulations address the obligation to continue to provide coverage for recommended preventive services that are in effect on the first day of a plan or policy year when there are changes in recommendations or guidelines. See 26 CFR 54.9815–2713(b)(2)(i) and (ii); 29 CFR 2590.715–2713(b)(2)(i) and (ii); 45 CFR 147.130(b)(2)(i) and (ii). Given the expedited timeline for coverage under section 3203 of the CARES Act, this IFC amends the 2015 Final Regulations to make clear that these paragraphs apply to recommended preventive services that are covered on the first day of the plan or policy year or, with respect to qualifying coronavirus preventive services, ''as otherwise specified in paragraph (b)(3) of this section.''

[48] See FAQs About Affordable Care Act Implementation Part 12, Q5 (Feb. 20, 2013), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xii.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs12* and FAQs About Affordable Care Act Implementation Part XXVI, Q7 (May 11, 2015), available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xxvi.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca_implementation_faqs26.pdf.*

must cover without cost sharing such an immunization and its administration, regardless of how the administration is billed, and regardless of whether a COVID–19 vaccine or any other immunization requires the administration of multiple doses in order to be considered a complete vaccination. This includes coverage without cost sharing of the administration of a required preventive immunization in instances where a third party, such as the Federal Government, pays for the preventive immunization. Further, if a COVID–19 immunization is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the visit is the delivery of the recommended COVID–19 immunization, then consistent with the 2015 Final Regulations, the plan or issuer may not impose cost-sharing requirements with respect to the office visit. The Departments seek comment on this clarification.

b. Out-of-Network Coverage During the PHE for COVID–19

The 2015 Final Regulations permit a group health plan or issuer that has a network of providers to omit coverage or to impose cost-sharing requirements for recommended preventive services when such services are provided by an out-of-network provider, unless the plan or issuer does not have in its network a provider who can provide the service.[49] This approach reflects that, as noted earlier in this section of the preamble, recommended preventive services generally are obtained as part of a regular course of preventive care, so participants, beneficiaries, and enrollees typically have the opportunity to seek such care from an in-network provider. By contrast, in the immediate term, newly developed qualifying coronavirus preventive services might be available from a narrower range of providers than other, more established recommended preventive services. To help ensure full access to and the widespread use of qualifying coronavirus preventive services to mitigate the effect of the PHE for COVID–19 and slow transmission of the virus, it is critical that individuals be able to receive such services from any provider authorized to provide the service. Therefore, this IFC amends the 2015 Final Regulations to require that plans and issuers subject to section 2713 of the PHS Act must cover without cost sharing a qualifying coronavirus preventive service, regardless of whether such service is delivered by an in-network or out-of-network provider. This is based on the Departments' view that participants, beneficiaries, and enrollees may not be able to locate in-network providers consistently during the emergency period.

To satisfy this requirement, the Departments are of the view that plans and issuers must administer this out-of-network coverage requirement in such a way that makes receiving out-of-network services for qualifying coronavirus preventive services a meaningful benefit for participants, beneficiaries, and enrollees. To be a meaningful benefit, the Departments are of the view that plans and issuers must administer this out-of-network coverage requirement in a way that ensures that participants, beneficiaries, and enrollees have access to a variety of out-of-network providers for such services. To the extent plans and issuers reimburse out-of-network providers an unreasonably low amount for qualifying coronavirus preventive services, including for administration of a COVID–19 vaccine, this approach could severely limit the number of such providers that are willing to provide the service, which would contravene the purpose of the requirement to provide out-of-network coverage without cost sharing of qualifying coronavirus preventive services. Therefore, this IFC provides that with respect to a qualifying coronavirus preventive service and a provider with whom the plan or issuer does not have a negotiated rate for such service (such as an out-of-network provider), the plan or issuer must reimburse the provider for such service in an amount that is reasonable, as determined in comparison to prevailing market rates for such service. The Departments will consider the amount of payment to be reasonable, for example, if the plan or issuer pays the provider the amount that would be paid under Medicare for the item or service. In the Departments' view, these minimum payment standards are necessary and appropriate because providers that participate in the CDC COVID–19 Vaccination Program contractually agree to administer a COVID–19 vaccine regardless of an individual's ability to pay and regardless of their coverage status, and also may not seek any reimbursement, including through balance billing, from a vaccine recipient.

The Departments request comment on all aspects of this approach. The Departments request comment on the issue of network adequacy and whether and, if so, how long provider networks are expected to be inadequate. The Departments also request comment on the safeguards in this IFC to ensure that out-of-network reimbursement rates are reasonable and that providers administering a publicly funded COVID–19 vaccine are reimbursed by group health plans and issuers prevailing market rates in the absence of a negotiated rate, and whether other examples of reasonable reimbursement rates, in addition to Medicare rates, would be useful.

3. Definition of Qualifying Coronavirus Preventive Services

Section 3203(b)(1) of the CARES Act defines ''qualifying coronavirus preventive service'' as an item, service, or immunization that is intended to prevent or mitigate COVID–19 and that is—(A) an evidence-based item or service that has in effect a rating of 'A' or 'B' in the current recommendations of the USPSTF; or (B) an immunization that has in effect a recommendation from ACIP with respect to the individual involved. The statutory provisions describing USPSTF and ACIP recommendations in this definition are substantively identical to the ones at section 2713(a)(1) and (2) of the PHS Act. However, as stated above, under the 2015 Final Regulations, only ''immunizations for routine use in children, adolescents, and adults'' that are recommended by ACIP must be covered without cost sharing.[50] A recommendation is considered to be for routine use if it is listed on the CDC's Immunization Schedules.[51]

This IFC provides a definition of qualifying coronavirus preventive services that is consistent with the statutory definition in section 3203 of the CARES Act. However, the Departments note that unlike the other preventive service immunizations required to be covered without cost sharing under section 2713 of the PHS Act and the 2015 Final Regulations, this definition and related coverage requirement are not limited to COVID–19 immunizations recommended by ACIP for ''routine use.'' While other preventive items and services may be recommended for routine use, for reasons described elsewhere in this section of the preamble, the PHE for COVID–19 presents unique circumstances and qualifying coronavirus preventive services might not, in the immediate term, be recommended for routine use, according to specified schedules. Rather, the

[49] 26 CFR 54.9815–2713(a)(3); 29 CFR 2590.715–2713(a)(3); 45 CFR 147.130(a)(3).

[50] See 75 FR 41726, 41728 (July 19, 2010), codified at 26 CFR 54.9815–2713(a)(1)(ii); 29 CFR 2590.715–2713(a)(1)(ii); 45 CFR 147.130(a)(1)(ii).

[51] *Id.*

Departments generally expect consumers should receive an immunization for COVID–19 as soon as it becomes available to the general public, or as soon as it becomes available to them based on their status as part of a high-risk or high-priority population, as recommended by ACIP. Plans and issuers subject to section 2713 of the PHS Act must cover, without cost sharing, COVID–19 immunizations that are recommended by ACIP and adopted by the Director of CDC, even if not listed for routine use on the CDC Immunization Schedules, pursuant to 26 CFR 54.9815–2713T(a); 29 CFR 2590.715–2713(a); and 45 CFR 147.130(a), and subject to the additional changes described later in this section of the preamble.[52]

4. Qualifying Coronavirus Preventive Services—Timing Requirement

Section 2713 of the PHS Act and the 2015 Final Regulations require plans and issuers to cover recommended preventive items and services beginning with the first plan year (or in the individual market, policy year) that is one year after the date the recommendation or guideline is issued. Section 3203 of the CARES Act accelerates the timeline for coverage of qualifying coronavirus preventive services without cost sharing, requiring coverage to be provided within 15 business days after the date on which a recommendation is made relating to such service. This IFC codifies these timing requirements at 26 CFR 54.9815–2713T(b)(3); 29 CFR 2590.715–2713(b)(3); and 45 CFR 147.130(b)(3).

In addition, the IFC adds a sunset provision at 26 CFR 54.9815–2713T(e); 29 CFR 2590.715–2713(e); and 45 CFR 147.130(e), under which the amendments made to the regulations will not apply with respect to qualifying coronavirus preventive services furnished on or after the expiration of the PHE for COVID–19. The Departments note, however, that coverage under section 3203 of the CARES Act is not limited to the duration of the PHE for COVID–19 and therefore the statutory provisions will continue to apply.

B. Diagnostic Testing for COVID–19

Section 6001 of the FFCRA generally requires group health plans and health insurance issuers offering group or individual health insurance coverage to provide benefits for COVID–19 diagnostic tests and certain items and services related to diagnostic testing for COVID–19 when those items or services are furnished on or after March 18, 2020, and during the duration of the PHE for COVID–19. Under the FFCRA, plans and issuers must provide this coverage without imposing any cost-sharing requirements (including deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements. Section 3201 of the CARES Act, enacted on March 27, 2020, amended section 6001 of the FFCRA to include a broader range of diagnostic tests that plans and issuers must cover without any cost-sharing requirements or prior authorization or other medical management requirements.

Section 3202(a) of the CARES Act provides that a plan or issuer providing coverage of items or services described in section 6001(a) of the FFCRA shall reimburse the provider of the diagnostic testing at a rate negotiated with the provider, or if there is no negotiated rate, at an amount that equals the cash price for such service as listed by the provider on a public internet website. As previously articulated in guidance, the Departments interpret the requirement to provide coverage without cost sharing in section 6001 of the FFCRA, together with section 3202(a) of the CARES Act, as establishing a process for setting reimbursement rates and protecting participants, beneficiaries, and enrollees from being balance billed for an applicable COVID–19 test.[53] These provisions help ensure consumers can be tested for COVID–19 without barriers related to cost, and are critical to the ability to detect the virus and stop its spread. However, testing efforts have continued to be hampered by challenges, such as delays in obtaining results, issues with test accuracy, and supply shortages.[54]

The Departments encourage group health plans and issuers of group or individual health insurance coverage to consider market-driven approaches to addressing these continued challenges surrounding COVID–19 diagnostic testing. The Departments encourage plans and issuers to explore using payment arrangements that create incentives for providers to reduce the time it takes to provide results for diagnostic testing for COVID–19, while maintaining the accuracy rates of their test results in instances where it is within the ability of providers to address a delay.

At certain points in this PHE, there have been wide variations in the time it takes providers to make test results available to consumers. These delays in obtaining test results increase the risk that infected individuals may unknowingly infect others. These delays could be caused by large volumes of tests to process and/or inadequate resources. Pay-for-performance arrangements, where reimbursement rates are based on the time it takes to make test results available, could encourage innovative approaches by providers to reduce the turnaround time. The Departments encourage group health plans and issuers of group or individual health insurance coverage to consider developing such arrangements with providers, and strongly encourage plans and issuers that do so to incorporate safeguards to ensure that the payment arrangements are not structured in a way that prioritizes speed over accuracy or that result in unintended consequences, such as reduction in access to COVID–19 diagnostic testing or non-compliance with balance billing restrictions.

IV. Provisions of the Interim Final Rule Regarding State Innovation Waivers—Department of the Treasury and Health and Human Services

A. State Innovation Waivers Policy and Regulatory Revisions in Response to the PHE for COVID–19 Public Health Emergency

1. Background

Section 1332 of the PPACA permits states to apply for a State Innovation Waiver (also referred to as ''section 1332 waivers'' or ''State Relief and Empowerment Waivers'') to pursue innovative strategies for providing their residents with access to higher value, more affordable health coverage. The overarching goal of section 1332 waivers is to give all Americans the opportunity to obtain high value and affordable health coverage regardless of income, geography, age, sex, or health status,

[52] HHS reminds states that the HHS Office for Civil Rights enforces applicable Federal civil rights laws as described above, as well as laws protecting the exercise of conscience and religious freedom, including the Religious Freedom Restoration Act (42 U.S.C. 2000bb through 2000bb–4). HHS's requirements are subject to these laws, and states may have obligations under these laws to protect conscience, prohibit coercion, and to ensure the free exercise of religion. U.S. Department of Health & Human Services, Office for Civil Rights, Conscience and Religious Freedom, *https://www.hhs.gov/conscience/index.html* (last visited Aug. 20, 2020).

[53] FAQs About Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 43 (June 23, 2020), available at *https://www.cms.gov/files/document/FFCRA-Part-43-FAQs.pdf* and *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-43.pdf.*

[54] American Society for Microbiology, ''Supply Shortages Impacting COVID–19 and Non-COVID Testing'' (Oct. 15, 2020), available at *https://asm.org/Articles/2020/September/Clinical-Microbiology-Supply-Shortage-Collecti-1.*

while simultaneously empowering states to develop health coverage strategies that best meet the needs of their residents. Section 1332 waivers provide states an opportunity to promote a stable health insurance market that offers more choice and affordability to their residents. Under section 1332 of the PPACA, a State Innovation Waiver can be approved by HHS and the Department of the Treasury if it provides access to quality health coverage that is at least as comprehensive and affordable as would be provided absent the waiver, provides coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and does not increase the Federal deficit. To date, HHS and the Department of the Treasury have approved 15 state waiver requests, 14 of which implement state-based reinsurance programs.[55] As noted in a recent data brief issued by CMS, section 1332 state-based reinsurance waivers have resulted in a statewide average premium reduction ranging from four to 37 percent in calendar year 2020 for residents in states with approved waivers.[56] Reinsurance provides a direct benefit to consumers by paying a portion of provider claims that would otherwise be paid by consumers through higher premiums and lowering premiums for people in the individual health insurance market. HHS and the Department of the Treasury continue to encourage states to take advantage of the flexibilities available through section 1332 waivers in order to pursue solutions to help lower costs and increase coverage choices for Americans faced with unaffordable premiums and reduced competition in the insurance market both during and after the PHE for COVID–19.

Section 1332(a)(4)(B) of the PPACA requires the Secretary of HHS and the Secretary of the Treasury (the Secretaries) to issue regulations regarding procedures for State Innovation Waivers. On March 14, 2011, HHS and the Department of the Treasury published the ''Application, Review, and Reporting Process for Waivers for State Innovation'' proposed rule (76 FR 13553) to implement section 1332(a)(4)(B) of the PPACA.[57] On February 27, 2012, HHS and the Department of the Treasury published the ''Application, Review, and Reporting Process for Waivers for State Innovation'' final rule (77 FR 11700) (hereinafter referred to as the ''2012 Final Rule'').[58] On October 24, 2018, HHS and the Department of the Treasury issued the ''State Relief and Empowerment Waivers'' guidance (83 FR 53575) (hereinafter referred to as the ''2018 Guidance''), which superseded the previous guidance published on December 16, 2015 (80 FR 78131), and provided additional information about the requirements that states must meet regarding section 1332 waiver proposals, the Secretaries' application review procedures, pass-through funding determinations, certain analytical requirements, and operational considerations.[59] [60]

Section 1332(a)(4)(B) of the PPACA also directs HHS and the Department of the Treasury to issue regulations that provide for state and Federal public notice and comment sufficient to ensure a meaningful level of public input regarding a state's section 1332 waiver plan, both during the application process and after a waiver is implemented. Current regulations and guidance address how states may apply for a waiver, information states must include in an application, public notice and comment requirements, and HHS' and the Department of the Treasury's monitoring and compliance activities, including state reporting requirements (collectively referred to as public notice procedures).

The Secretaries are setting forth a process for states to request modifications to the public notice procedures during the PHE for COVID–19 prior to and after approval of a section 1332 waiver that continue to meet the statutory and regulatory requirements that the public has an opportunity to provide meaningful input. Further the Secretaries are promulgating this rule so that HHS and the Department of the Treasury do not impose requirements that are unreasonable or unnecessarily burdensome regarding state compliance consistent with section 1332(a)(4)(B)(iii) of the PPACA during the PHE for COVID 19. This IFC promulgates rules to establish a framework for the Secretaries to modify some of the existing regulatory public notice procedures to expedite a decision on a proposed waiver request during the PHE for COVID–19 when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. The Secretaries will also make available such flexibility regarding public notice procedures should any state with an approved section 1332 waiver request an extension or amendment of an approved section 1332 waiver during the PHE for COVID–19.

Similarly, this IFC also establishes a framework for the Secretaries to modify, in part, post award public notice procedures for an approved waiver request that would otherwise take place or become due during the PHE for COVID–19. The Secretaries will also make available such flexibility for post award public notice procedures for approved waiver extensions, amendments, or phase-out for a waiver should those otherwise take place or become due during the PHE for COVID–19. HHS and the Department of the Treasury are of the view that section 1332 waivers are a critical tool for states to ensure patients have stable access to health care coverage, including during the PHE for COVID–19. These interim final provisions are effective immediately for the duration of the PHE for COVID–19. HHS and the Department of the Treasury note that existing threats to consumers' access to health coverage or care—such as in geographic areas in which issuer participation has been low for some time—would not be considered emergency situations for purposes of applying the flexibilities adopted in this rulemaking.

2. Public Notice Procedures and Approval Processes During the PHE (31 CFR 33.118 and 45 CFR 155.1318)

Section 1332(a)(4)(B) of the PPACA provides that the Secretary of HHS and the Secretary of the Treasury shall issue regulations providing a process for public notice and comment at the state level, including public hearings, and a process for providing public notice and comment after the application is received by the Secretaries, that are both sufficient to ensure a meaningful level of public input. Current regulations at §§ 33.112 and 155.1312 specify state public notice and participation requirements for proposed waiver requests, and §§ 33.116(b) and 155.1316(b) specify the accompanying public notice and comment period requirements under the Federal public notice and approval process.

[55] More information on section 1332 waivers that are approved is available online: *https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.*

[56] CCIIO Data Brief Series: State Relief and Empowerment Waives: State-based Reinsurance Programs. June 2020. Available online: *https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-Data-Brief-June2020.pdf.*

[57] *https://www.govinfo.gov/content/pkg/FR-2011-03-14/pdf/2011-5583.pdf.*

[58] *https://www.govinfo.gov/content/pkg/FR-2012-02-27/pdf/2012-4395.pdf.*

[59] *https://www.govinfo.gov/content/pkg/FR-2018-10-24/pdf/2018-23182.pdf.*

[60] *https://www.govinfo.gov/content/pkg/FR-2015-12-16/pdf/2015-31563.pdf.*

Under the current regulations at §§ 33.112 and 155.1312, states are required to provide a public notice and comment period prior to submitting an application for a new section 1332 waiver. The notice must include a comprehensive description of the section 1332 waiver application; information about where the application is available for public review; where the written comments may be submitted; and the location, date, and time of public hearings that will be convened by the state to seek public input on the application for a section 1332 waiver.[61] After issuing the public notice and prior to submitting an application for a section 1332 waiver, the state must hold public hearings to allow the public to learn about and comment on the state's application, and must publish the date, time, and location of the hearings in a prominent location on the state's public website.[62] As set forth in §§ 33.112(a)(2) and 155.1312(a)(2), as part of the public notice and comment period, a state with one or more federally recognized tribes must conduct a separate process for meaningful consultation with such tribes, if applicable. As HHS and the Department of the Treasury explained in the 2012 Final Rule preamble, this tribal consultation must be conducted in accordance with Executive Order (E.O.) 13175, and, as E.O. 13175 also applies to Medicaid, a state may use a Medicaid consultation process to satisfy the consultation needed for a section 1332 waiver (77 FR 11700, 11706). Furthermore, the state should include in its section 1332 waiver application a description of issues raised and comments received.

In addition, under section 1332(a)(4)(B)(iii) of the PPACA and the existing implementing regulations at §§ 33.116(b) and 155.1316(b), the Secretary of HHS and the Secretary of the Treasury are required to provide a Federal public notice and comment period following their preliminary determination that a state's section 1332 waiver application is complete.

Section 1332 waivers may vary significantly in their complexity and breadth. The existing regulations generally provide states and the Federal Government flexibility in determining and/or extending the length of the comment periods. Both the state and the Federal public notice and comment periods must be sufficient to ensure a meaningful level of public input. The 2018 Guidance[63] further specifies that the state comment period should be no less than 30 days, and explains that consistent with HHS regulations, waiver applications must be posted online in a manner that meets technical standards for website accessibility similar to applicable national standards[64] to ensure access for individuals with disabilities.

HHS and the Department of the Treasury recognize that the current section 1332 regulations regarding state and Federal public notice procedures and comment period requirements may impose barriers for states pursuing a proposed waiver request during the PHE for COVID–19.[65] It is the mission of HHS to enhance and protect the health and well-being of all Americans. As such, HHS and the Department of the Treasury are issuing this guidance to protect public health and to prevent the spread of COVID–19 by limiting the need for in-person gatherings related to section 1332 waivers during the PHE. Additionally, states may face uncertainty as to whether their waiver request will be approved in time, given the state and Federal public notice procedures or other public participation requirement associated with state procedures that would otherwise require an in-person gathering, to expeditiously reform their health insurance markets and to protect consumers from the effects of the PHE for COVID–19. Some states may not consider more robust changes because they are concerned that the current section 1332 waiver application requirements are too time-consuming or burdensome to pursue during the PHE for COVID–19. Therefore, HHS and the Department of the Treasury are of the view that having the flexibility to modify certain public notice procedures and participation requirements during the PHE for COVID–19 will protect public health and health insurance markets, and will increase flexibility and reduce burdens for states seeking to use section 1332 waivers as a means of innovation for providing coverage, lowering premiums, and improving their health care markets.

Section 1332 waivers are a critical tool for states to ensure patients across the country have access to health care coverage. About 10.7 million individuals on average rely on the Exchanges to purchase individual health insurance coverage throughout the year.[66] [67] Although recently there have been positive premium stabilization and insurer participation trends, the COVID–19 pandemic has introduced new uncertainties in the individual and small group markets such that past trends resulting in limited access and affordability may return in some areas. For example, in response to the uncertainty created by the PHE for COVID–19 regarding health care utilization rates and claims costs, such as those associated with testing and treatment for COVID–19, premiums may increase and issuers may reduce their presence or coverage options in the individual and small group markets. Additionally, due to the PHE for COVID–19, some issuers may have difficulty predicting the composition of their risk pools given uncertainty about

[61] 31 CFR 33.112(b); 45 CFR 155.1312(b).

[62] In response to a question from a commenter, the 2012 Final Rule states that ''hearings,'' as used in 31 CFR 33.112(c)(1) and 45 CFR 155.1312(c)(1), means no less than two hearings. (77 FR 11700, 11706). The HHS and the Department of Treasury continue to interpret the regulatory requirement that a State shall hold ''hearings'' to refer to at least two hearings, except as otherwise provided by the amendments made in this IFC. The existing regulation does not expressly rely on the statutory requirement that the Secretaries of HHS and Treasury establish ''a process for public notice and comment at the State level, including public hearings . . . '' and HHS and the Department of the Treasury are of the view that language, by itself, does not require a particular state to hold more than one hearing. Rather, the statutory language describes a process applicable across multiple states, which will, in the aggregate, necessarily involve multiple hearings.

[63] 83 FR 53575 (*https://www.govinfo.gov/content/pkg/FR-2018-10-24/pdf/2018-23182.pdf*).

[64] ''National standards'' refers to standards issued by the Architectural and Transportation Barriers Compliance Board (often referred to as ''section 508'' standards), or alternatively, the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA standards. *See* 83 FR 53575, 53583 (Oct. 24, 2018).

[65] During the PHE for COVID–19, under the Secretaries' discretion, HHS and the Department of the Treasury have allowed states to conduct their public forums virtually, both prior to application submission and post award. For example, following the scheduling and notice of the hearings, and in consultation with CMS, the New Hampshire Insurance Department rescheduled planned in-person public hearings to an online webinar format in response to social distancing guidance provided by New Hampshire Governor Chris Sununu and the Federal government. (*https://www.nh.gov/insurance/lah/documents/nh-section-1332-waiver-draft.pdf).* Georgia also offered public hearings virtually because of public health concerns regarding large, in-person gatherings during the COVID–19 pandemic. In addition, as of July 13, 2020, several states with approved waivers conducted their post award forum virtually due to COVID–19, including Alaska, Colorado, Delaware, Maine, Maryland, Minnesota, Montana, Oregon, North Dakota, Rhode Island, and Wisconsin. In this IFC, the Secretaries expand and build upon this approach by providing more flexibility to allow HHS and the Department of the Treasury to expedite a decision on a proposed waiver request. (*https://medicaid.georgia.gov/document/document/georgia1332waiverapplicationfinal07312020vfpdf/download).*

[66] American Health Benefit Exchanges, or ''Exchanges,'' are entities established under PPACA through which qualified individuals and qualified employers can purchase health insurance coverage in qualified health plans (QHPs).

[67] First Half of 2020 Average Effectuated Enrollment Data, available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Early-2020-2019-Effectuated-Enrollment-Report.pdf.*

the risk profiles of many new enrollees coming from employer-sponsored coverage and the potential transition of other enrollees to Medicaid due to income loss. Therefore, HHS and the Department of the Treasury are concerned that past trends that threaten the stability of the individual market risk pool may return, leading some issuers to cease offering coverage on the Exchanges in some states and counties and leading other issuers to increase their rates, leaving some geographic areas with limited or no affordable Exchange coverage options. Permitting the Secretary of HHS and the Secretary of the Treasury to modify the public notice procedures, in part, will help states seeking section 1332 waivers to address such circumstances more quickly and develop innovative ways to ensure consumers have access to affordable health care coverage. As such, HHS and the Department of the Treasury are of the view that, if certain safeguards are met, it is in the best interest of the public to provide states applying for section 1332 waivers with the option to request to modify public notice procedures during the PHE for COVID–19.

This IFC adds the new §§ 33.118 and 155.1318 and provides that the Secretary of HHS and the Secretary of the Treasury may modify, in part, the state public notice requirements specified in §§ 33.112 and 155.1312 and the Federal public notice requirements specified at §§ 33.116(b) and 155.1316(b) to expedite a decision on a proposed waiver request during the PHE for COVID–19 when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. Examples of the public notice procedures that currently apply under the aforementioned regulations that a state may seek to have waived or modified include the requirement that states notify the public and hold hearings prior to submitting an application, that the state hold more than one public hearing in more than one location and that HHS and the Department of the Treasury provide for public notice and comment after an application is determined to be complete. States may also seek to modify the state and/or Federal comment periods to be less than 30 days and to host public hearings virtually rather than in-person.

For a state to qualify for modification of the state or Federal public notice requirements to expedite a decision on a proposed waiver request during the PHE for COVID–19, a delay must undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. During the PHE for COVID–19, the Secretary of HHS and the Secretary of the Treasury (the Secretaries) may modify the Federal and/or state public notice procedures, in part, if the state meets all of the following:

- The state requests a modification in the form and manner specified by the Secretaries.
- The state acted in good faith, and in a diligent, timely, and prudent manner in the preparation of the request for the modification for the waiver, and the waiver application request.
- The state details in its request for a modification, as applicable, the reason(s) the state seeks a modification from the state public notice procedures, describes how the state meets the modification criteria, and describes the alternative public notice procedures it proposes to implement at the state level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the state's request for a modification.
- The state details in its request for a modification, as applicable, the justification for the request and the alternative public notice procedures it requests to be implemented at the Federal level.
- The state must, as applicable, implement the alternative public notice procedures at the state level if the state's modification request is approved and, if required, amend the waiver application to specify that it is the state's intent to comply with those alternative public notice procedures in the state's modification request.

Any state submitting a proposed waiver request during the PHE for COVID–19 can submit a request to the Secretary of HHS and the Secretary of the Treasury for this modification from the state and/or Federal public notice procedures or include such a request in its section 1332 waiver application request.

The Secretary of HHS and the Secretary of the Treasury's review and consideration of a modification request will vary based on the state's circumstances, its modification request, and the complexity and breadth of the state's proposed section 1332 waiver request. For example, during the PHE for COVID–19, many states are prohibiting in-person public gatherings or establishing stay-at-home orders due to the public health threat.[68] States seeking new section 1332 waiver(s) that have such prohibitions in effect at the time they would have otherwise have to conduct public notice would most likely be unable to comply with the public notice requirements to hold two in-person public hearings prior to submission of their section 1332 waiver applications in accordance with the 2018 Guidance addressing requirements under §§ 33.112(b) and 155.1312(b). In such cases, this IFC will allow the Secretaries to grant the state's request to hold the two public hearings virtually, rather than in-person, or to hold one public hearing at the state level, rather than two public hearings at the state level. As another example, the Secretaries may agree with a state that, due to emergency circumstances that have arisen related to the PHE for COVID–19, there is insufficient time for the state to provide public notice and hold any public hearings at the state level prior to submitting its section 1332 waiver application as required by §§ 33.112(a) and 155.1312(a), and grant the state's request to provide public notice and hold public hearings at the state level after the state submits its section 1332 waiver application.

In situations where HHS and the Department of the Treasury determine that public notice and hearings are warranted on a different timeframe and may occur after the submission of a state's waiver application request, the state will be required to amend the application request as necessary to reflect public comments or other relevant feedback received during the alternative public notice procedures. HHS and the Department of the Treasury will evaluate a state's request for a modification and issue their modification determination within approximately 15 calendar days after the request is received. In assessing whether a state acted in good faith, and in a diligent, timely, and prudent manner in the preparation of the modification request for the waiver, and for the waiver application, HHS and the Department of the Treasury will evaluate whether the relevant circumstances constitute an emergency.

HHS and the Department of the Treasury remind states that any public participation processes must continue to comply with applicable Federal civil rights laws, including taking reasonable steps to provide meaningful access for individuals with limited English

[68] *https://khn.org/morning-breakout/states-declare-emergencies-ban-large-gatherings-as-coronavirus-sweeps-the-nation/. https://www.axios.com/states-shelter-in-place-coronavirus-66e9987a-a674-42bc-8d3f-070a1c0ee1a9.html.*

proficiency and taking appropriate steps to ensure effective communication with individuals with disabilities, including accessibility of information and communication technology. Please note that virtual meetings may present additional accessibility challenges for people with communications and mobility disabilities, as well as to those who lack broadband access. Ensuring effective communication may include providing American Sign Language interpretation and real-time captioning, and ensuring that the platform is interoperable with assistive technology for those with mobility difficulties. HHS and the Department of the Treasury especially encourage states to strive to obtain meaningful input from potentially affected populations, including low-income residents, residents with high expected health care costs, persons less likely to have access to care, and members of federally-recognized tribes, if applicable, as part of any alternative public participation process.[69]

The Secretary of HHS will publish on the CMS website any modification determinations within 15 calendar days of the Secretary of HHS and the Secretary of the Treasury making such a determination, as well as the approved revised timeline for public comment at the state and Federal level, as applicable. In addition, under the new §§ 33.118 and 155.1318, the state will be required to publish on its website any modification requests and determinations within 15 calendar days of receipt of the determination, as well as the approved revised timeline for public comment at the state and Federal level, as applicable.

3. Monitoring and Compliance (31 CFR 33.120 and 45 CFR 155.1320)

As section 1332 waivers are likely to a have a significant impact on individuals, states, and the Federal Government, the 2012 Final Rule established processes and methodologies to ensure that the Secretary of HHS and the Secretary of the Treasury receive adequate and appropriate information regarding section 1332 waivers (consistent with section 1332(a)(4)(B)(iv) of the PPACA). Under §§ 33.120(c) and 155.1320(c), to ensure continued public input within at least 6 months after the implementation date, and annually thereafter, states are required to hold a public forum at which members of the public have an opportunity to provide comments on the progress of the program authorized by the section 1332 waiver and to provide a summary of this forum to the Secretary of HHS as part of the quarterly and annual reports required under §§ 33.124 and 155.1324. Under §§ 33.120(c)(1) and 155.1320(c)(1), states are required to publish the date, time, and location of the public forum in a prominent location on the state's public website at least 30 days prior to the date of the planned public forum.

This IFC adds new §§ 33.120(c)(2) and 155.1320(c)(2), which provide that the Secretary of HHS and the Secretary of the Treasury (the Secretaries) may waive, in part, post award public notice requirements for an approved waiver outlined in §§ 33.120(c) and 155.1320(c) during the PHE for COVID–19 when the application of the post award public notice procedures would be contrary to the interests of consumers during the PHE for COVID–19.

The Secretaries may modify the post award public notice procedures, in part, when the state meets all of the following:

- The state requests a modification in the form and manner specified by the Secretaries.
- The state acts in good faith, and in a diligent, timely, and prudent manner to comply with the monitoring and compliance requirements under the regulations and specific terms and conditions of the waiver and to submit and prepare the request for a modification.
- The state details in its request for a modification the reason(s) the state seeks a modification from the state post award public notice procedures, describes how the state meets the modification criteria, and describes the alternative post award public notice procedures it proposes to implement at the state level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the state's request for a modification.

As part of HHS and the Department of the Treasury's monitoring and oversight of approved section 1332 waivers, the Secretary of HHS and the Secretary of the Treasury, at their discretion, monitor the state's compliance with the specific terms and conditions of the waiver including, but not limited to, compliance with the guardrails, reporting requirements, and the post award forum requirements. Under the flexibilities provided in this IFC, the Secretaries may, for example, allow the public forum for an approved waiver that would take place or become due during the PHE for COVID–19 to be held virtually rather than as an in person gathering. HHS and the Department of the Treasury will work closely with states that have these approved flexibilities through oversight and monitoring activities to ensure open communication with states during the PHE for COVID–19. HHS and the Department of the Treasury also will remain focused on ensuring the public is informed about the implementation of programs authorized by section 1332 waivers and have a meaningful opportunity to comment on the implementation.

The Secretary of HHS and the Secretary of the Treasury will evaluate a state's request for a modification and issue their modification determination within approximately 15 calendar days after the request is received. The state is required to publish on its website any modification requests and determinations by HHS and the Department of the Treasury within 15 calendar days of receipt of the determination, as well as information on the approved revised timeline for the state's post award public notice procedures, as applicable. Since the state is already required to post materials as part of post award annual reporting requirements, such as the notice for the public forum and annual report, states will be responsible for ensuring that the public is aware of the determination to modify the public notice procedures and must include this information along with the information required under §§ 33.120(c)(1) and 155.1320(c)(1) in a prominent location on the state's public website.

HHS and the Department of the Treasury are of the view that post award forums are critical to ensure that the public has a regular opportunity to learn about and comment on the progress of section 1332 waivers. States that receive approval, to modify, in part, these post award public notice procedures would still need to meet all other requirements specified in §§ 33.112(b) and 155.1312(b). For example, should the state receive a modification approval that permits it to hold the post award public forum virtually instead of in person, the state must still publish the notice of its post award public notice on

[69] As noted above, the HHS Office for Civil Rights enforces applicable Federal civil rights laws as described above, as well as laws protecting the exercise of conscience and religious freedom, including the Religious Freedom Restoration Act (42 U.S.C. 2000bb through 2000bb–4). HHS's requirements are subject to these laws, and states may have obligations under these laws to protect conscience, prohibit coercion, and to ensure the free exercise of religion. U.S. Department of Health & Human Services, Office for Civil Rights, Conscience and Religious Freedom, *https://www.hhs.gov/conscience/index.html* (last visited Aug. 20, 2020).

the state's public website and use other effective means to communicate the required information to the public. The public notice must include the website, date, and time of the public forum that will be convened by the state, information related to the timeframe for comments, and how comments from the public on the section 1332 waiver must be submitted. HHS and the Department of the Treasury remind states that they still must also comply with Federal civil rights requirements, including laws pertaining to accessibility, if the Secretary of HHS and the Secretary of the Treasury approve a modification from all or a portion of the post award public notice procedures. In such a circumstance, the state would need to ensure these virtual public hearings are as accessible as possible during the PHE for COVID–19 so members of the public can participate and submit comments. The state should also track how many people are attending these forums, if possible.

V. Waiver of Proposed Rulemaking

Section 553(b) of the APA requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Section 553(c) further requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment before the provisions of the rule take effect. Section 553(b)(B) authorizes the agency to waive these procedures, however, if the agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Section 553(d) ordinarily requires a 30-day delay in the effective date of a final rule from the date of its publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause to support an earlier effective date. Finally, the Congressional Review Act (CRA) requires a delay in the effective date for major rules unless an agency finds good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, in which case the rule shall take effect at such time as the agency determines. 5 U.S.C. 801(a)(3), 808(2).

As noted earlier in this preamble, on January 30, 2020, the International Health Regulations Emergency Committee of the WHO declared the outbreak a ''Public Health Emergency of international concern.'' On January 31, 2020, pursuant to section 319 of the PHS, the HHS Secretary determined that a PHE exists for the United States to aid the nation's health care community in responding to COVID–19. On March 11, 2020, the WHO publicly declared COVID–19 a pandemic. On March 13, 2020, the President declared the COVID–19 pandemic a national emergency. Effective October 23, 2020, the HHS Secretary renewed the January 31, 2020 determination, which was previously renewed on April 21, 2020 and July 25, 2020, that a PHE exists and has existed since January 27, 2020. This declaration, along with the HHS Secretary's January 30, 2020 declaration of a PHE, conferred on the HHS Secretary certain waiver authorities under section 1135 of the Act. On March 13, 2020, the HHS Secretary authorized waivers under section 1135 of the Act, effective March 1, 2020.[70]

It is critically important that the Departments implement the policies in this IFC as quickly as possible. As the United States is in the midst of the PHE for COVID–19, the Departments find good cause to waive notice of proposed rulemaking under the APA, 5 U.S.C. 553(b)(B). For those same reasons, as authorized by section 808(2) of the CRA, the Departments find it is impracticable and contrary to the public interest not to waive the delay in effective date of this IFC under section 801 of the CRA. Therefore, the Departments find there is good cause to waive the CRA's delay in effective date pursuant to section 808(2) of the CRA. Thus, the Departments find good cause to waive the applicable delays in the effective date and, moreover, to establish these policies in this IFC applicable as of the date of display at the Office of the Federal Register.

In this IFC, consistent with section 1902(a)(4) and (a)(19) of the Act, the Department adds a new subpart G to 42 CFR part 433 to provide states with more flexibility, subject to certain safeguards, in implementing the requirement in section 6008(b)(3) of the FFCRA that states maintain Medicaid beneficiary enrollment in order to receive the temporary increase in Federal funding in the FFCRA. This temporary funding increase is effective beginning January 1, 2020 and could extend through the last day of the calendar quarter in which the PHE for COVID–19, including any extensions, terminates, if the state claims the temporary funding increase in that quarter. This provision of the IFC is immediately necessary to ensure that states can determine eligibility and provide care and services during the PHE in a manner that is consistent with simplicity of administration and the best interests of beneficiaries and also claim the temporary funding increase.

In this IFC, HHS and the Department of the Treasury are setting forth flexibilities in the public notice and post award public participation requirements for a State Innovation Waiver described in section 1332 of PPACA during the PHE for COVID–19. HHS and the Department of the Treasury recognize that following the normal state and Federal public notice procedures and the state post award requirements for section 1332 waivers may impose barriers for states pursuing a proposed waiver request during the PHE for COVID–19. This guidance is intended to protect public health and prevent the spread of COVID–19 by limiting the need for in-person gatherings related to a section 1332 waiver. Additionally, states may face uncertainty as to whether their waiver requests will be approved in time to expeditiously reform their health insurance markets and to protect consumers from the effects of the PHE for COVID–19. Some states may not consider more robust changes because they were concerned that the current section 1332 waiver application requirements are too time-consuming or burdensome to be helpful during the PHE for COVID–19. HHS and the Department of the Treasury are of the view that the flexibility to modify certain public notice procedures and participation requirements will increase flexibility and reduce burden for states seeking to use section 1332 waivers as a means of innovation for providing coverage, lowering premiums, and improving their health care markets during the PHE for COVID–19. As such, these flexibilities are immediately necessary to provide states applying for a section 1332 waiver or during the post award period with the option to request a modification from the state and/or Federal public notice requirements when a delay would undermine or compromise the purpose of the waiver and be contrary to the interests of consumers. HHS and the Department of the Treasury are of the view that it could be contrary to the public interest to require full notice and comment during the current PHE for COVID–19 because following the normal timeframes and requirements could result in waiver approvals for

[70] *https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx.*

innovative waivers taking effect after issuers have already made their decisions regarding issuer participation in the individual market and after rates for the upcoming plan year have been submitted. A modification from the public participation requirements would be beneficial to the public interest by providing states and the Federal Government the flexibilities necessary to review and approve, as appropriate, section 1332 waivers that expand access to coverage on a faster timeframe.

In this IFC, the Departments amend the regulations under section 2713 of the PHS Act to implement the requirement in section 3203 of the CARES Act that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage without cost sharing for qualifying coronavirus preventive services. This coverage must be provided within 15 business days after the date on which a recommendation is made by the USPSTF or ACIP. The Departments also establish in this IFC that this coverage must be provided regardless of whether the service is delivered by an in-network or out-of-network provider.

The Departments are issuing these amendments under the authority of section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act. These sections authorize the Secretaries of the Treasury, Labor, and HHS to promulgate any interim final rules that the Secretaries determine are appropriate to carry out the provisions of chapter 100 of the Code, part 7 of subtitle B of title I of ERISA, and part A of title XXVII of the PHS Act, which include PHS Act sections 2701 through 2728 and the incorporation of those sections into ERISA section 715 and Code section 9815. In addition, section 7805(e) of the Code restricts any temporary regulation issued by Treasury and the IRS under the Code, such as interim final regulations, to a duration of 3 years.

Several COVID–19 vaccine candidates are currently in late-stage development. Once a vaccine is authorized or approved by FDA, the Departments expect that ACIP may move expeditiously to recommend the immunization. In addition, unlike other preventive items and services typically provided according to regularly scheduled intervals, items and services intended to prevent or mitigate COVID–19 will not, in the immediate future, be provided as part of a usual course of preventive care. Instead, the Departments expect consumers to receive these services once they are recommended for the general public or specific high-risk or high-priority populations. To help ensure full access to and the widespread use of qualifying coronavirus preventive services to mitigate the PHE for COVID 19, it is critical that individuals be able to receive such services from any provider authorized to provide the service. This is consistent with the objectives of Operation Warp Speed, which, as mentioned above, is a partnership among components of the Federal Government that engages with private firms to accelerate the development, manufacture, and distribution of a COVID–19 vaccine to the American people.

The provisions of this IFC therefore are immediately necessary to ensure group health plan and group and individual health insurance coverage of these items and services is prompt and broad, to ensure timely access to combat the pandemic. In this IFC, the Department adds a requirement at § 417.454 to require section 1876 cost plans to cover without cost sharing the COVID 19 vaccine and its administration described in section 1861(s)(10)(A) of the Act without cost sharing for the duration of the PHE for the COVID–19 pandemic, specifically the end of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Act, which is the PHE declared by the Secretary on January 31, 2020 and any renewals thereof. While section 1876(c)(2) of the Act ensures that enrollees in Medicare cost plans will have coverage of a COVID–19 vaccine and its administration, section 3713 of the CARES Act did not amend section 1876 of the Act to provide similar cost-sharing protections for enrollees in cost plans who receive the vaccine from an in-network provider. Currently, there is no requirement for cost plans to cover the COVID–19 vaccine and its administration without cost sharing (that is, with cost sharing that is the same as original Medicare) when the vaccine is furnished by an in-network health care provider. This provision of the IFC is immediately necessary to ensure that cost plan enrollees, like other Medicare beneficiaries, are provided access to the COVID–19 vaccine and its administration without cost sharing. This immediate action will ensure that cost is not a barrier for beneficiaries to get the vaccine, particularly during the public health emergency when ensuring access is paramount importance. The delay necessary for notice and comment rulemaking is both contrary to the public interest and impractical here as it would delay access to a COVID–19 vaccine without cost sharing and be contrary to the need to ensure access to a COVID–19 vaccine for enrollees in cost plans on the same basis as is ensured for other Medicare beneficiaries.

Further, as underscored by the timeline for coverage Congress established in section 3203 of the CARES Act, the need to provide coverage of qualifying coronavirus preventive services is urgent. Following a recommendation of the USPTF or ACIP, the requirement to provide coverage without cost sharing of qualifying coronavirus preventive services, which are expected to include immunizations, takes effect within 15 business days. Plans and issuers need immediate guidance to understand their obligations under section 3203 of the CARES Act and to take steps that will enable them to comply with those requirements as soon as the coverage requirement goes into effect. Delaying these provisions would likewise delay plans' and issuers' ability to prepare for the availability of a COVID–19 vaccine, resulting in barriers in access to coverage of these critical services during the PHE for COVID–19. As of the date of display of this regulation, there are not any coronavirus preventive services including vaccines for coronavirus that are required to be covered. However, because emergency use authorization or approval of a COVID–19 vaccine may be imminent, the Departments are of the view it is critical that these regulations under section 2713 of the PHS Act be issued and effective prior to such authorization or approval. The Departments are of the view that it would be impracticable and contrary to the public interest to undertake normal notice and comment rulemaking procedures in light of the urgent need to ensure coverage of and access to qualifying coronavirus preventive services to protect the public health as well as the health and safety of individuals and communities to prevent the spread of COVID–19. For these same reasons, the Departments are of the view a delayed effective date would also be contrary to the public interest. Ensuring individuals have access to a COVID–19 vaccine as soon as it becomes available is critical to ending the PHE for COVID–19, and therefore it is imperative that these regulations are in effect on the date such a vaccine becomes available and recommended by ACIP. Undertaking the standard rulemaking process of publishing a proposed rule, seeking public comment, carefully

analyzing those public comments, and subsequently publishing a final rule would possibly and perhaps likely jeopardize such an effective date.

The Departments are of the view that it would be impracticable and contrary to the public interest to undertake normal notice and comment procedures and to thereby delay the effective date of this IFC. The Departments find good cause to waive notice of proposed rulemaking under the APA, 5 U.S.C. 553(b)(B). For those same reasons, as authorized by section 808(2) of the CRA, the Departments find it is impracticable and contrary to the public interest not to waive the delay in effective date of this IFC under section 801 of the CRA. Therefore, the Departments find there is good cause to waive the CRA's delay in effective date pursuant to section 808(2) of the CRA. The provisions in this IFC will go into effect on the date of display.

This IFC implements the requirement that providers of diagnostic tests for COVID–19 make public their cash prices for COVID–19 diagnostic tests and specifies the COVID–19 diagnostic tests to which this requirement applies. This IFC further defines ''provider of a diagnostic test for COVID–19'' (referred to as ''provider'') as any facility that performs one or more COVID–19 diagnostic tests. In addition, this IFC defines ''cash price'' as the charge that applies to an individual who pays cash (or cash equivalent) for a COVID–19 diagnostic test. This IFC gives CMS discretion to take any of the following actions if CMS determines a provider is noncompliant with the requirements of new 45 CFR 182.50:

- Provide a written warning notice to the provider of the specific violation(s).
- Request that a provider submit and comply with a CAP.
- Impose a CMP on the provider if the provider fails to respond to CMS' request to submit a CAP or to comply with the requirements of a CAP approved by CMS.

As indicated above, these requirements are applicable during the PHE for COVID–19 (and any extensions to the PHE for COVID–19); therefore, it is critically important that we implement the policies in this IFC as quickly as possible in order for stakeholders to know with certainty during the PHE for COVID–19 how to comply with the law and what penalties they will face for noncompliance during the PHE for COVID–19. Moreover, these rules are necessary for CMS to enforce section 3202(b) of the CARES Act and to ensure plans, issuers, and consumers know in advance the price for a diagnostic test for COVID–19 during the PHE for COVID–19. For these reasons, we believe it would be impracticable and contrary to the public interest to undertake normal notice and comment rulemaking procedures and to delay the effective date of the new requirements being adopted at 45 CFR part 182.

In this IFC, the Department creates a New COVID–19 Treatments Add-on Payment (NCTAP) under the Inpatient Prospective Payment System (IPPS) for COVID–19 cases that meet certain criteria. The Department is of the view that it would be impracticable and contrary to the public interest to undertake normal notice and comment procedures and to thereby delay the effective date of this IFC. As drug and biological products become available and are authorized or approved by FDA for the treatment of COVID–19 in the inpatient setting, there may be potential financial disincentives for hospitals to provide these new COVID–19 treatments to Medicare inpatients during the PHE because the costs of these new treatments are not yet reflected in Medicare payment rates and there are no new technology add-on payments for these treatments. The delay necessary for notice and comment rulemaking is both contrary to the public interest and impracticable because of the urgency in ensuring there are not financial disincentives for hospitals to provide COVID–19 treatments to beneficiaries during the PHE. We expect that increasing the current IPPS payment amounts for sufficiently costly cases to mitigate potential financial disincentives for hospitals to provide new COVID–19 treatments during the PHE will potentially improve and speed access to these treatments for Medicare patients. We also believe that the establishment of the NCTAP provides greater transparency and predictability to the public, including innovators that are developing new COVID–19 treatments, as to how Medicare payments for cases involving these treatments will be determined when those treatments become available.

In this IFC, the Department assures separate payment for new COVID–19 treatments provided in the outpatient setting for the remainder of the Public Health Emergency for COVID–19. The Department is of the view that it would be impracticable and contrary to the public interest to undertake normal notice and comment procedures and to thereby delay the effective date of this IFC. We anticipate that most drugs and biological products authorized or approved for use in treating COVID–19 in the outpatient setting would be separately paid under our standard OPPS payment policy; however, these products could be packaged into a Comprehensive Ambulatory Payment Classification (C–APC) payment when provided on the same claim as a C–APC service, in which case separate payment would not be made for these products. Although we do not expect that many beneficiaries would both receive a primary C–APC service and a drug or biological for treating COVID–19, we nonetheless believe that as drugs or biologicals become available and are authorized or approved for the treatment of COVID–19 in the outpatient setting, it would be appropriate to mitigate any potential financial disincentives for hospitals to provide these new treatments during the PHE for COVID–19. The delay necessary for notice and comment rulemaking to address this issue is both contrary to the public interest and impracticable because of the urgency in ensuring there are not financial disincentives for hospitals to provide COVID–19 treatments to beneficiaries. Therefore, effective for services furnished on or after the effective date of this rule and until the end of the PHE for COVID–19, CMS is creating an exception to its OPPS C–APC policy to ensure separate payment for new COVID–19 treatments that meet certain criteria.

In this IFC, the Department adds changes to the CJR model that are immediately necessary to continue the CJR model consistent with model goals to, cover inpatient major lower joint replacements without interruption, and to reduce operational and financial uncertainty for CJR hospital participants during and beyond the PHE. Ending on March 31, 2021 would be disruptive to hospitals and patient care during the PHE. The end date of March 31, 2021, means hospitals stop initiating episodes under the model after January 2, 2021, before the end of the public health emergency as renewed on October 23, 2020.[71] Extending the model through an additional six months of performance year (PY) 5, so that PY 5 now ends on September 30, 2021, provides participant hospitals with greater certainty in model operations during the remainder of the PHE.

Through this IFC we are implementing four changes to the CJR model needed to extend PY 5. These are: (1) Extending PY 5 an additional 6 months to provide for continuity of model operations with the same scope while we continue to consider comments received on our proposal to extend the model to PYs 6 through 8 and adopt other changes to the model

[71] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-2Oct2020.aspx*

(42 CFR 510.2 and 510.200(a)); (2) making changes to the reconciliation process for PY 5 to allow for two periods and to enable more frequent receipt of reconciliation reports by participants (42 CFR 510.2, 42 CFR 510.200, 42 CFR 510.305(b), (d)(1), (e), (i)(1) and (2), and (j)(1) and (2), and 42 CFR 510.400(b)(3)(v), and adding 42 CFR 510.400(b)(3)(vi)); (3) making a technical change, retroactive to October 1, 2020, to ensure that the model continues to include the same inpatient Lower Extremity Joint Replacement (LEJR) procedures, despite the adoption of new MS–DRGs to describe those procedures (42 CFR 510.300(a)(1)(i) and (iii)); and (4) making changes to the extreme and uncontrollable circumstances policy for COVID–19 to adapt to an increase in CJR episode volume and renewal of the PHE, while providing protection against financial consequences of COVID–19 after the extreme and uncontrollable circumstances policy no longer applies (42 CFR 510.300).

Implementing an additional six months of PY 5, so that PY 5 now ends on September 30, 2021 (hospitals stop initiating new episodes under the model after July 2, 2021) provides participant hospitals additional relief and stability in model operations while the end of the PHE remains unknown. We have modified the reconciliation process to provide payments consistent with the current annual reconciliation schedule for hospitals for greater stability. Absent modification to the reconciliation process, the extension of PY 5 to a total of 21 months, from January 1, 2020 through September 30, 2021 would mean that participant hospitals would experience a 21-month gap between the PY4 final reconciliation in June of 2020 and initial PY 5 reconciliation in early 2022. In the FY 2021 IPPS/LTCH final rule, we stated that because the CJR model would continue until at least March 31, 2021, we intended to adopt a policy in the CJR final rule that incorporates new MS–DRGs for the same procedures currently included in the CJR model, under prior MS–DRGs, as of their effective date to avoid disruption to the model for the remainder of PY5 (as extended) and thereafter, if our proposal to extend the CJR model through PY8 were finalized (85 FR 58502). We are adopting the change in this IFC, retroactive to October 1, 2020 because without a change the model ceases to continue as a comprehensive joint replacement model. Not making this change would have a significant impact on operational stability. Finally, this interim final rule with comment specifies an end for the current extreme and uncontrollable adjustment in 42 CFR 510.300(k)(4). In order to provide participant hospitals continuing financial protection from the effect of COVID–19 on the CJR model that may continue beyond the end of the PHE for COVID–19 or March 31, 2021, whichever occurs earlier, we are implementing that actual episode payments are capped at the quality adjusted target price determined for that episode under § 510.300 for episodes with actual episode payments that include a claim with a COVID–19 diagnosis code and initiate after the earlier of March 31, 2021 or the last day of the emergency period. This policy is consistent with flexibilities and protections for impact of COVID–19 in other Innovation Center models. For all of these revisions, we believe it is contrary to the public interest to undertake traditional notice and comment rulemaking to adopt these regulatory changes because they preserve the model's scope and operations at current levels, fostering model stability now and in the future for hospital operations during and beyond the PHE.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, the Departments are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to OMB for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that the Departments solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the agency.
- The accuracy of the estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The Departments are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs). The requirements and burden will be submitted to under OMB Control Number 0938–NEW.

A. ICRs for Price Transparency for COVID–19 Diagnostic Tests

As discussed in section II.C of this IFC, section 3202(b) of the CARES Act establishes a requirement to publicize cash prices for COVID–19 diagnostic tests during the PHE. For purposes of implementing section 3202(b) of the CARES Act, we are adding new 45 CFR part 182, ''Price Transparency for COVID–19 Diagnostic Tests,'' that will codify price transparency requirements for the performance of a COVID–19 diagnostic test.

There are several types of COVID–19 tests designed to detect SARS-CoV–2 or to diagnose a possible case of COVID–19, including: molecular (RT–PCR) tests, which are used to detect the virus's genetic material; antigen tests, which are used to detect specific proteins on the surface of the virus; and serology testing, which is used to look for the presence of antibodies produced by the body in response to infections.

For purposes of 45 CFR part 182, we are defining ''provider of a diagnostic test for COVID–19'' as any facility that performs one or more COVID–19 diagnostic tests. In order to perform a diagnostic test for COVID–19 and report patient-specific results, a facility (whether that be a primary care provider's office, urgent care center, outpatient hospital site or stand-alone laboratory) is required to hold a CLIA certificate based on the complexity of the testing performed by the facility. Therefore, we expect that any ''provider of a COVID–19 diagnostic test'' would hold a CLIA certificate (including a certificate of waiver or certificate of registration) and that such testing would occur in facilities ranging from primary care provider offices to urgent care centers to stand-alone national laboratories.

As explained in section VIII.B of this IFC, we estimate that approximately 83,309 CLIA providers could potentially be performing COVID–19 diagnostic tests and need to publicize their cash prices. For purposes of this IFC, we are estimating it will take a business operations specialist (13–1000), on average 1 hour for a total of 83,309 burden hours to compile and make public the cash prices for COVID–19 diagnostic tests, at an hourly wage of $36.31 as published by the BLS in 2019.[72] We estimate the overhead and fringe benefit cost to be 100 percent of wages. Therefore, we estimate a one-time cost per provider to be $72.62

[72] Bureau of Labor Statistics. National Occupational Employment and Wage Estimates, May 2019. Available at: *https://www.bls.gov/oes/current/oes_nat.htm#13-0000.*

($36.31 × 2) and the total cost estimated to be $6,049,900 (83,309 hours × $72.62) to collect, compile and post the required information.

B. ICRs for State Innovation Waivers Policy and Regulatory Revision in Response to COVID–19 Public Health Emergency

This IFC provides that states are required to submit modification requests to the Secretary of HHS and the Secretary of the Treasury in order to obtain approval for the modifications made available by this IFC. Any state can submit a request to the Secretaries for a modification from the state and/or Federal public notice procedures or include such a request in their section 1332 waiver application if the waiver application is submitted during the PHE for COVID–19. The request must describe the reason the state seeks a modification from the state public notice procedures, describe how the state meets the modification criteria, describe the alternative public notice procedures it proposes to implement at the state level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the state's request for a modification. The request must describe the reason the state seeks a modification from the Federal public notice procedures and the alternative public notice procedures it requests to be implemented at the Federal level, as applicable.

A state with an approved section 1332 waiver can submit a request to HHS and the Department of Treasury for a modification from post award public notice procedures. The request must specify the reason the state seeks a modification from the post award public notice procedures, describe how the state meets the modification criteria, and describe the alternative procedures it proposes to implement at the state level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the state's request for a modification.

While HHS and the Department of Treasury do not have data available to predict the number of states that will likely request a modification of either the waiver application or the post award public notice procedures, HHS and the Department of Treasury estimate it will take a senior manager 1 hour to prepare a state's request, with an equivalent cost of approximately $118.[73] In addition, if HHS and the Department of Treasury approve a state's modification request, the state will have to post the determination on their website within 15 days of the approval. HHS and the Department of Treasury estimate that for each state, it will take a network and computer systems administrator 15 minutes to post the approval with an equivalent cost of approximately $21.[74] Assuming that approximately 15 states will submit a modification request, the total burden hours for all states will be 15 hours, with an equivalent cost of approximately $1,775. HHS and the Department of Treasury have assumed that 15 states will submit a request because, as of display of this IFC, 15 states have an approved 1332 waiver. This is an upper bound, since some states may not need to request the available modification for their waivers, and therefore, will incur no burden. Furthermore, assuming that approximately 15 states receive approval of the modification request and then must post the approval, the total burden hours for all states will be approximately 3.75 hours, with an equivalent cost of approximately $319. This is an upper bound, since some states may not receive approval, and therefore, will incur a lower (or no) burden. The total estimated burden hours assuming approximately 15 states apply for and receive approval of the modification request is 18.75 hours, with an equivalent cost of approximately $2,094.

TABLE 3—ESTIMATED COST AND BURDEN HOURS PER RESPONDENT

BLS occupation	Average burden hour per respondent (in hours)	Hourly wage rates	Total cost per respondent
Senior Manager	1	$118.30	$118.30
Network and Computer Systems Administrator	0.25	85.02	21.26
Total	1.25		139.56

TABLE 4—ESTIMATED TOTAL COST AND BURDEN FOR ALL RESPONDENTS

	Number of respondents	Number of responses	Burden hours per respondent	Total burden hours	Total cost
Modification Request	15	15	1	15	$1,775
Posting modification approval	15	15	0.25	3.75	319
Total	15		1.25	18.75	2,094

[73] Using data from the Bureau of Labor Statistics (BLS) for General and Operations Managers (Code 11–1020), we estimate that the average hourly labor cost will be $118.30, including 100 percent increase for overhead and fringe benefits. *https://www.bls.gov/oes/current/oes_stru.htm.*

[74] Using data from the BLS for Network and Computer Systems Administrators (Code 15–1244), we estimate that the average hourly labor cost will be $85.02, including 100 percent increase for overhead and fringe benefits. *https://www.bls.gov/oes/current/oes_stru.htm.*

C. ICRs Regarding the Comprehensive Joint Replacement (CJR) Model

Section 1115A(d)(3) of the Social Security Act exempts the Center for Medicare and Medicaid Innovation (CMMI) model tests and expansions, from the PRA. The section provides that Chapter 35 of title 44, United States Code, which includes such provisions as the PRA, shall not apply to the testing and evaluation of CMMI models or expansion of such models.

D. ICRs Regarding Enrollment as Mass Immunization Roster Biller

As discussed in section II.A.1. of this IFC, a mass immunizer may be enrolled in Medicare as another type of provider or supplier such as a physician, non-physician practitioner, hospital outpatient department, home health agency, or skilled nursing facility. However, an entity that does not otherwise qualify as a Medicare provider or supplier but wishes to furnish mass immunization services may be eligible to enroll in Medicare as a ''Mass Immunization Roster Biller'' via the Form CMS–855B enrollment application (Medicare Enrollment Application: Clinics/Group Practices and Certain Other Suppliers; OMB Control No.: 0938–0685; Expires 12/21).

This section discusses our burden estimates for the enrollment of mass immunization roster billers via the Form CMS–855B application as well as the PRA exemption we are claiming for the appeals process.

1. Cost of Completing Form CMS–855B

Using our internal data, we generally estimate that approximately 60,000 entities (the preponderance of which will be pharmacies) will seek to enroll as mass immunization roster billers pursuant to the IFC, all of whom will attempt enrollment in the 12-month period following the IFC's display. According to the most recent wage data provided by the Bureau of Labor Statistics (BLS) for May 2019 (see *http://www.bls.gov/oes/current/oes_nat.htm*), the mean hourly wages for the following categories are:

TABLE 5—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Healthcare Diagnosing or Treating Practitioners	29–1000	49.26	49.26	98.52
Medical Secretaries and Administrative Assistants	43–6013	18.31	18.31	36.62

Consistent with Form CMS–855B projections made in recent rulemaking efforts, it will take each entity an average of 2.5 hours to obtain and furnish the information on the Form CMS–855B. Per our experience, the entity's medical secretary will secure and report this data, a task that would take approximately 2 hours. Additionally, a health diagnosing and treating practitioner of the entity will review and sign the form, a process we estimate takes 30 minutes. We therefore project a total burden of 150,000 hours (60,000 suppliers × 2.5 hrs) at a cost of $7,350,000 (60,000 suppliers × ((2 hrs × $36.62/hr) + (0.5 hrs × $98.52/hr)). When averaged over the typical 3-year OMB approval period, we estimate an annual burden of 50,000 hours (150,000 hrs/3) at a cost of $2,450,000 ($7,350,000/3).

2. Appeals

Pursuant to 42 CFR part 498, a mass immunization roster biller may appeal the denial or revocation of its enrollment. While there are information collection requirements associated with the appeals process, we believe they are exempt from the PRA. In accordance with the implementing regulations of the PRA at 5 CFR 1320.4(a)(2), the information collection requirements associated with the appeals process are subsequent to an administrative action (specifically, the denial or revocation of a mass immunization roster biller's enrollment). Therefore, we have not developed burden estimates. We also believe that any costs associated with mass immunization roster biller enrollment will, in any event, be *de minimis;* this is because we anticipate, based on past experience, there would be comparatively few denials and revocations of such enrollments.

Response to Comments

Because of the large number of public comments normally received on **Federal Register** documents, the Departments are not able to acknowledge or respond to them individually. All comments received by the date and time specified in the **DATES** section of this preamble will be considered, and, when the Departments proceed with a subsequent document, the Departments will respond to the comments in the preamble to that document.

Regulatory Impact Analysis

A. Statement of Need

The flexibilities and changes contained within this IFC are responsive to the PHE for COVID–19. The policies implemented in this IFC will provide flexibilities, during the PHE for COVID–19, to states pursuing waivers under section 1332 of the PPACA and to states with approved section 1332 waivers. Additionally, the policies and regulatory updates implemented in this IFC will increase the affordability with regards to section 1332 waiver applications and support continuity of health insurance coverage for consumers in the individual and small group (or merged) market during the PHE for COVID–19. This IFC also implements section 3202(b) of the CARES Act, which requires that providers of COVID–19 diagnostic tests make public their cash prices for those tests and establishes an enforcement scheme to enforce those requirements during the PHE for COVID–19.

In section 3203 of the CARES Act, Congress required group health plans and issuers of group or individual health insurance coverage to cover without cost sharing qualifying coronavirus preventive services, and required such coverage to be provided within 15 business days after the date on which an applicable recommendation is made relating to such service. The Departments codify these requirements in this IFC, and finalize amendments to the regulations implementing section 2713 of the PHS Act at 26 CFR 54.9815–2713; 29 CFR 2590.715–2713; and 45 CFR 147.130 that are intended to help ensure full access to and the widespread use of qualifying coronavirus preventive services to mitigate the public health emergency.

B. Overall Impact

The Departments have examined the potential impacts of this 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 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), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

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). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year), and a ''significant'' regulatory action is subject to review by the OMB. The Departments have determined that these rules are likely to have economic impacts of $100 million or more in at least one year, and thus, meet the definition of ''economically significant'' under Executive Order 12866 and a major rule under the Congressional Review Act. Therefore, the Departments have provided an assessment of the potential costs, benefits, and transfers associated with this rule. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

C. Detailed Economic Analysis

1. Effect of Price Transparency for COVID–19 Diagnostic Tests During the PHE

As discussed in section II.C of this IFC, Section 3202(b) of the CARES Act establishes a requirement to publicize cash prices for COVID–19 diagnostic tests during the PHE. For purposes of implementing section 3202(b) of the CARES Act, we are adding new 45 CFR part 182, ''Price Transparency for COVID–19 Diagnostic Tests,'' that will codify price transparency requirements for the actual performance of a COVID–19 diagnostic test. At § 182.20, we are defining a ''COVID–19 diagnostic test'' as a COVID–19 *in vitro* diagnostic test described in section 6001 of the FFCRA, as amended by section 3201 of the CARES Act.

This IFC defines a ''provider of a diagnostic test for COVID–19'' (referred to as ''provider'') as any facility that performs one or more COVID–19 diagnostic tests. In order to perform a COVID–19 diagnostic tests and report patient-specific results, a facility is required to hold a CLIA certificate based on the complexity of the testing performed by the facility. This IFC requires providers of COVID–19 diagnostic tests to make public the cash price for such tests on a public internet website of such provider during the emergency period declared under section 319 of the PHS Act. In the event that a provider does not have its own website on which to post this cash price information, § 182.40(b) states that the provider would be required to make public its cash price information in writing, within two business days upon request, and by posting signage prominently at the provider's COVID–19 diagnostic testing location, if such location is accessible to the public.

We anticipate that price transparency has potential beneficial marketplace benefits generally, as discussed in detail in the CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates, Price Transparency Requirements for Hospitals To Make Standard Charges Public Final Rule (84 FR 65524) and the Transparency in Coverage Proposed Rule (84 FR 65464). As noted in section II.C of this IFC, section 3202 of the CARES Act addresses reimbursement of COVID–19 diagnostic tests. Section 3202(a) of the CARES Act requires group health plans and issuers that provide coverage for items and services described in section 6001(a) of the FFCRA to reimburse any provider of a COVID–19 diagnostic test an amount that equals the negotiated rate, or, if the plan or issuer does not have a negotiated rate with the provider, the cash price for such service that is listed by the provider on a public website. We anticipate that price transparency in COVID–19 diagnostic testing, in particular, will help improve clarity for consumers and the plans and issuers that are required to cover the cost of performing a COVID–19 diagnostic test when there is no negotiated rate between the plan or issuer and the provider. For individuals without insurance and for health plans and health insurance issuers attempting to negotiate a rate for performance of a COVID–19 diagnostic test with a provider that has posted its cash price, that cash price could provide some context and a baseline against which those negotiations can occur. Moreover, price transparency in COVID–19 diagnostic tests will assist the uninsured in determining the cash price at various providers when price shopping for COVID–19 diagnostic tests.

Assessments of broader transparency policies yield per-capita estimates of annual expenditure reductions ranging from between $3 and $5 (= $2.8 million + $1.3 million + $7.0 million + $2.3 million two-year savings, across 1.3 million California public employees and their family members, per Boynton and Robinson (2015)), to $6.50 (= $7.9 million + $36 million five-year savings found by Brown (2018), divided across the 1.36 million residents of New Hampshire), to $17 (= $13.2 million three-year savings across 0.26 million beneficiaries, per Rhoads (2019)).[75] If the $6.50 median result is extrapolated from the context of general health spending—which is approximately $10,000 per capita in the United States—to a range of between $60 and $1,200 in COVID–19 diagnostic testing (= $60 per test, across between one and 20 tests), the estimate of rule-induced reductions in annual consumer expenditures could range from $13 million to $254 million. (This expenditure change combines transfers (to patients or insurers from providers)

[75] Boynton, A., and Robinson, J. ''Appropriate Use of Reference Pricing Can Increase Value.'' Health Affairs Blog. July 7, 2015. Available at: *https://www.healthaffairs.org/do/10.1377/hblog20150707.049155/full/*. Brown, Z. Y. ''Equilibrium Effects of Health Care Price Information.'' 100 Rev. of Econ. and Stat. 1. July 16, 2018. Available at: *http://www-personal.umich.edu/~zachb/zbrown_eqm_effects_price_transparency.pdf*. Rhoads, J. ''Right to Shop for Public Employees: How health care incentives are saving money in Kentucky.'' The Dartmouth Institute for Health Policy and Clinical Practice. March 8, 2019. Available at: *https://thefga.org/wp-content/uploads/2019/03/RTS-Kentucky-HealthCareIncentivesSavingMoney-DRAFT8.pdf*.

with potential societal resource cost savings; only the latter portion should be compared against estimates of the provision's administrative and paperwork costs.) We note, however, that this estimate is based on annual expenditure reductions; because this requirement is only applicable for the remainder of the PHE, which may be less than a year, the saving impact is likely to be lower.

To comply with the regulatory updates in this IFC, providers would need to review their billing practices and determine their ''cash price'' for COVID–19 diagnostic tests. They would further need to publicly post the cash prices for all COVID–19 diagnostic tests along with associated plain language descriptions and HCPCS or CPT billing codes. The provider would be required to make all of this information public on the provider's internet website. As discussed in section VI.C, we estimate it would take a Business Operations Specialist, on average 1 hour to compile and make public the cash prices for the COVID–19 diagnostic tests that the facility offers at an hourly wage of $36.31 as published by the 2019 Bureau of Labor Statistics.[76] We estimate the overhead and fringe benefit cost to be 100 percent of wages. Therefore, we estimate a one-time cost per provider to be $72.62 (36.31 × 2).

We expect that approximately 30 percent[77] (n = 83,309) of the total CLIA-certified laboratories (n = 277,699[78]) could potentially be performing COVID–19 diagnostic tests and need to publicize their cash prices in such form and manner as prescribed in new 45 CFR part 182 during the PHE for COVID–19, including any subsequent renewals. The total cost is estimated to be $ $6,049,900 (83,309 hours × $72.62) to collect, compile and post the required information.

We seek comment on the burden estimate for providers of a diagnostic test for COVID–19, specifically the number of burden hours estimated to post their cash price for COVID–19 diagnostic test.

[76] Bureau of Labor Statistics. National Occupational Employment and Wage Estimates, May 2019. Available at: *https://www.bls.gov/oes/current/oes_nat.htm#13-0000*.

[77] Consistent with the percent of laboratories required to report COVID–19 diagnostic test results in CMS–3401–IFC.

[78] As of October 11, 2020, according to the Certification and Survey Provider Enhanced Reporting system this includes Certificate of Waiver (210,669), Certificate of Provider-Performed Microscopy (31,992), Certificate of Compliance (19,044) and Certificate of Accreditation (15,994). Available at: *https://qcor.cms.gov/CLIA_wizard.jsp?which=4&report=active_CLIA.jsp*.

2. Effects of Medicare Inpatient Prospective Payment System (IPPS) New COVID–19 Treatments Add-on Payment (NCTAP) for the Remainder of the Public Health Emergency (PHE)

As drug and biological products become available and are authorized or approved by FDA for the treatment of COVID–19 in the inpatient setting, there may be potential financial disincentives for hospitals to provide these new COVID–19 treatments to Medicare inpatients during the PHE because the costs of these new treatments are not yet reflected in Medicare payment rates and there are no new technology add-on payments for these treatments. We expect that increasing the current IPPS payment amounts for sufficiently costly cases to mitigate potential financial disincentives for hospitals to provide new COVID–19 treatments during the PHE will potentially improve and speed access to these treatments for Medicare patients. We also believe that the establishment of the NCTAP provides greater transparency and predictability to the public, including innovators that are developing new COVID–19 treatments, as to how Medicare payments for cases involving these treatments will be determined when those treatments become available.

Given it is unknown what the cost and utilization of inpatient stays using these new treatments will be, the net overall cost of the NCTAP policy is not estimable. On one extreme, if all of the new COVID–19 treatments decrease the net cost of hospitalizations (for example, due to shortened lengths of stay), including the cost of the new treatment, below the Medicare payment as increased by section 3710 of the CARES Act then there would be no NCTAP payments made and no additional cost to the Medicare program as a result of this policy. On the other extreme, if all of the new COVID–19 treatments result in the net cost of hospitalizations that exceed the outlier threshold (for example, due to the cost of the new treatment), the cost to the Medicare program would be the sum over all NCTAP cases of 0.65 times the outlier threshold for each case.

3. Effects of the Medicare Outpatient Prospective Payment System (OPPS) Separate Payment for New COVID–19 Treatments Policy for the Remainder of the Public Health Emergency (PHE) for COVID–19

This IFC provides for separate payment for New COVID–19 Treatments under the Outpatient Prospective Payment System (OPPS) for the remainder of the PHE for COVID–19 when these treatments are provided at the same time as a Comprehensive Ambulatory Payment Classification (C–APC) service. As we noted in Section II.E.2, we believe it would be a fairly rare occurrence that an outpatient department would perform a C–APC procedure on a beneficiary being treated for COVID–19 because most C–APCs are for surgical or other intensive procedures and we would expect most hospital outpatients departments would not perform outpatient surgery on a patient that has an active case of COVID–19. While it is possible that future COVID–19 treatments that are authorized or approved for use in the outpatient setting might be administered to patients under observation while the provider determines if the patient needs to be admitted to the hospital for COVID–19, it is our expectation that this hypothetical situation would not happen frequently. Because we believe a new COVID–19 treatment will rarely be provided on the same claim as a primary C–APC service, we believe new COVID–19 treatments used in the outpatient setting will be separately paid under current policy the vast majority of the time. As a result, we believe any budgetary effect of this new exception is likely to be de minimis.

4. Effects of Temporary Increase in Federal Medicaid Funding

This IFC interprets the requirement in section 6008(b)(3) of the FFCRA that states maintain Medicaid beneficiary enrollment as a condition of receiving the temporary FMAP increase described at section 6008(a) of the FFCRA. This IFC provides states with greater flexibility than current CMS guidance to transition beneficiaries between eligibility groups, to modify the amount, duration, and scope of coverage available to beneficiaries, and to make changes to applicable cost sharing and beneficiary liability. At the same time, this IFC protects beneficiary access to medical assistance by requiring states to maintain each beneficiary's coverage in one of three tiers, thereby protecting access to the basic coverage a beneficiary was receiving as of or after March 18, 2020.

We anticipate that this IFC will result in lessened financial burden on state Medicaid agencies and the Federal Government as compared to CMS's existing interpretation of the FFCRA 6008(b)(3) requirement. It would be highly challenging to estimate specific cost savings resulting from this IFC because such an estimate would be almost entirely dependent on state behavior under the unique circumstances of the PHE for COVID–

19. First, we believe that some savings may result from transitioning beneficiaries to different eligibility groups with greater cost sharing or beneficiary liability. However, we know that states have faced both system and operational constraints that may prevent them from processing routine actions, such as transitioning a beneficiary from one group to another following a change in circumstances. A state that has been processing eligibility renewals and redeterminations during the PHE may be able to make such transitions relatively quickly, while a state that has been unable to process changes without violating the requirements for receiving the temporary FMAP increase may need more time to begin transferring beneficiaries between groups.

Second, we anticipate that states will implement the new flexibilities offered by this rule in a variety of ways and to different degrees. States may, for example, look for cost savings through the elimination of an optional benefit, establishing new copayments for services that are unrelated to the PHE, or increasing beneficiary liability for institutional care through a reduction to the personal needs allowance. Because each state's financial situation is unique and the characteristics of each Medicaid program are different, it is difficult to predict how states will respond to this IFC. While one state may elect to implement just one cost saving flexibility, another state may utilize all available options, and yet another state may elect not to make any program changes. Based on the recent feedback we have received from states, we do anticipate that some states will implement some of these cost saving measures, which will result in decreased financial burden for states and cost savings for the Federal Government.

While our current interpretation of section 6008(b)(3) of the FFCRA provides the strongest protections for beneficiary access to coverage, the safeguards established by this IFC will ensure that all beneficiaries maintain the same basic level of access to coverage that they were receiving as of or after March 18, 2020. All beneficiaries who had access to minimum essential coverage will maintain access to such coverage, and every beneficiary who had access to testing services and treatment for COVID–19, including vaccines, will retain such access. Individual beneficiaries may be required to pay cost sharing that they were not previously charged (except with respect to testing and treatment services related to COVID–19, which states cannot charge under section 6008(b)(4) of the FFCRA if they are claiming the temporary FMAP increase), or they may need to meet additional prior authorization or medical necessity requirements.

5. Effects of Updates to the Comprehensive Care for Joint Replacement (CJR) Model, Performance Year (PY) 5 During the PHE

The evolving impact of the PHE for the COVID–19 has created difficulties in forecasting the state of the LEJR market for 2021. For example, Table 1 indicates CJR episode volume increasing and moving back toward traditional levels from April to June, but then decreasing again in July and August. It is difficult to predict the impact of extending PY 5 an additional 6 months with the amended policies described above because there exists a potential for variation between PY 5 target prices and PY 5 actual episode costs (as a result of COVID–19) which creates uncertainty in calculating anticipated net reconciliation amounts for PY 5. As a result, the Office of the Actuary was unable create projections regarding Medicare program spending in 2021 for MS–DRGs 469, 470, 521, or 522 or discrete impact estimates regarding the effect of extending CJR PY 5 an additional 6 months with the amended policies described above. In assessing the potential cost or savings for this extension, CMMI internal analysis considered the following data points. First, the Second Annual CJR Evaluation Report,[79] indicates participant hospitals reduced spending by 3.7 percent (difference in claims) during the first 2 years of the CJR model. Additionally, if the episode definition policy were not amended to include the new MS–DRGs and fracture episodes were no longer included in the CJR episode definition October 1, 2020—March 31, 2021, episode volume would decrease significantly and the cost saving effect of the CJR model would be limited to only non-fracture episodes, which are generally the less costly episodes. We also know that while the CJR model achieves program savings, this observation is not net of reconciliation payments and administrative costs. Further, our February 2020 proposed rule (85 FR 10516) proposes payment methodology revisions to the target price methodology to improve payment accuracy as the current methodology tends to excessive payment. Given the confluence of factors affecting payments, including episode volume, actual episode costs, and even target prices, we cannot confidently estimate cost or savings associated with the CJR model changes in this final rule, specifically, the provisions: to add reconciliation periods to PY 5, to add MS–DRGs 521 and 522 to the episode definition, to change the extreme and uncontrollable circumstances policy, and to extend PY5 6 months. We will continue to refine this analysis. If the February 2020 proposed rule is finalized after review and response to comment, we will strive to provide a more detailed estimate for future model performance years.

[79] CMS Comprehensive Care for Joint Replacement Model: Performance Year 2 Evaluation Report Available at *https://innovation.cms.gov/files/reports/cjr-secondannrpt.pdf.*

6. Effects of Rapid Coverage of Preventative Services for Coronavirus

This IFC requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage for qualifying coronavirus preventive services, including recommended COVID–19 immunizations and their administration, without any cost sharing. It also requires plans and issuers to provide coverage within 15 business days after the date on which an applicable recommendation is made by USPSTF or ACIP relating to such a service. In addition, it requires that during the PHE for COVID–19 a group health plan or issuer that has a network of providers to provide coverage without cost sharing regardless of whether the service is delivered by an in-network or out-of-network provider. Making these qualifying coronavirus preventive services, including COVID–19 immunizations, available without any delay is in the interest of public health, as making these services available as quickly as possible may encourage individuals to take advantage of these services and therefore may slow the transmission of COVID–19. Access to qualifying coronavirus preventive services without cost sharing will encourage more individuals to obtain them. Increased use of qualifying coronavirus preventive services may reduce the transmission and spread of the disease and thus potentially result in better overall health outcomes. In the immediate term, newly developed qualifying coronavirus preventive services might be available from a narrower range of providers than other, more established recommended preventive items and services. If COVID–19 immunizations require specialized storage and administration services, only a limited number of

providers may be able to offer them at first. If consumers have to incur additional burdens, long wait times, and increased travel times to find an in-network provider that can provide such services, it will limit access and discourage them from obtaining such services. Therefore, the Departments are of the view that requiring out-of-network coverage without cost sharing for qualifying coronavirus preventive services will help ensure that consumers are able to obtain the preventive services without cost sharing as soon as possible.

Plans and issuers will incur the cost of the qualifying coronavirus preventive services and administration of such services. Providing coverage within 15 business days after a recommendation is made relating to such services is likely to impose significant administrative costs on issuers, group health plans, and other service providers to update systems to include billing codes for the preventive services, negotiate prices with network providers, determine reimbursements for out-of-network providers, and conduct outreach to providers, participants, beneficiaries, and enrollees in a very short time period. Depending on the magnitude of the costs of qualifying coronavirus preventive services and administration of such services relative to the potential cost of treatment for the disease, this may have an impact on premiums. There are uncertainties regarding the price of potential qualifying coronavirus preventive services, including COVID–19 immunizations. If the prices are high and there is widespread use of such services, premiums may increase. If the timing of availability of the preventive services is such that plans and issuers are unable to take them into account when setting premiums, it may result in lower profits or losses for plans and issuers. The costs to plans and issuers will be lower if a third party, such as the Federal Government, covers the cost of the immunizations. In addition, the costs associated with providing coverage for qualifying coronavirus preventive services may be offset by savings from avoidance of treatment for COVID–19.

During the PHE for COVID–19, costs to group health plans or issuers that have networks of providers will be higher if a significant number of participants, beneficiaries, or enrollees go to out-of-network providers, and the issuers and plans reimburse those out-of-network providers at higher levels than their negotiated rate with in-network providers. However, if consumers can obtain the qualifying coronavirus preventive services where they usually obtain health care services, consumers are likely to receive the services from an in-network provider. Plans and issuers may also wish to educate participants, beneficiaries, or enrollees about the availability of the services from in-network providers and encourage them to obtain these services from their usual providers. This approach could limit the number of participants, beneficiaries, or enrollees going to out-of-network providers instead of staying in network, but there will be associated administrative burdens and costs.

The total cost to plans and issuers related to qualifying coronavirus preventive services that are immunizations will depend on the cost and number of required immunization doses to be administered, the number of people who will choose to get immunized against COVID–19 and which providers will be able to provide the preventive services. For the 2018–19 influenza season, 62.6 percent of children 6 months through 17 years and 45.3 percent of adults 18 years and older obtained the influenza vaccine.[80] Given the severity of COVID–19, the Departments anticipate the immunization rates for COVID–19 are likely to ultimately be higher than for influenza, although initial rates may be lower until an adequate supply is available. Total costs to plans and issuers will depend on the cost of covering qualifying coronavirus preventive services, the number of people choosing to obtain such services, and whether a third party such as the Federal Government covers the costs of any immunizations.

The Departments seek comment on any potential costs and burdens that may be incurred by plans and issuers due to the requirements to cover the costs and administration of such qualifying coronavirus preventive services without any cost sharing regardless of whether the service is delivered by an in-network or out-of-network provider. The Departments also seek comment on the potential effects and costs consumers may face as a result of this provision.

7. Effects of Changes to State Innovation Waivers Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency

This IFC establishes a framework for states to request the Secretary of HHS and the Secretary of the Treasury to modify, in part, the public notice procedures outlined in 31 CFR 33.112 and 33.116 and 45 CFR 155.1312 and 155.1316 to expedite a decision on a proposed section 1332 waiver request during the PHE for COVID–19. Regulations at §§ 33.112 and 155.1312 require a state to provide a public notice and comment period at the state level prior to submitting an application for a section 1332 waiver. The regulations at §§ 33.116 and 155.1316 establish Federal public notice requirements for state section 1332 waiver applications. This IFC also establishes a framework at the new 31 CFR 33.120(c)(2) and 45 CFR 155.1320(c)(2) for states to request the Secretaries to modify, in part, the post award public notice procedures outlined in §§ 33.120(c) and 155.1320(c) for an approved waiver that would otherwise take place or become due during the PHE for COVID–19. As stated above, HHS and the Department of the Treasury are of the view that requiring states that meet the criteria outlined in this IFC to comply with the full public notice procedures during the PHE for COVID–19 could cause undue harm to the public. Allowing the Secretaries to modify, in part, these requirements will enable states to request and receive approval for waiver requests more quickly and also implement changes that will provide consumers with access to affordable health insurance coverage during the current PHE for COVID–19. States that request modifications from the public notice procedures will incur some burden, as discussed in the Collection of Information Requirements section. For a state that requests and receives a modification of the public notice procedures, we acknowledge that consumers may receive less prior notice than would occur without the modification. Through this IFC, the HHS and the Department of Treasury intend to provide an appropriate balance and permit flexibility where a state can ensure a sufficient opportunity for meaningful public input given the circumstances in the PHE for COVID–19 while also ensuring the safety of the public. If a state's modification request is approved there may be a shorter comment period at the state or Federal level, or the comment periods may be the same number of days (for example 30 days) but perhaps on a different timeframe. For example, a state may conduct the state public comment period concurrently with the Federal public comment period instead of before. States with approved modification requests may experience a reduction in costs related to post award public notice procedures. However, if

[80] *See* Flu Vaccination Coverage, United States, 2018–19 Influenza Season. Center for Disease Control and Prevention, available at *https://www.cdc.gov/flu/fluvaxview/coverage-1819estimates.htm.*

the state's modification request is approved, the state must also implement alternative public notice procedures and, if required, amend the waiver application to specify that it is the state's intent to comply with those alternative public notice requirements in the state's modification request. States may also need to employ additional technologies to host virtual hearings instead of in person gatherings. In this case, there may be no reduction in costs related to public notice procedures.

HHS and the Department of the Treasury seek comment on any potential costs and burdens that may be incurred by states due to the flexibilities afforded in this IFC. HHS and the Department of the Treasury also seek comment on the potential effects and costs consumers may face as a result of a state's action taken as a result of the flexibilities in this IFC.

8. Effects of Medicare Coding and Payment for COVID–19 Vaccine

This IFC discusses CMS's implementation of section 3713 of the CARES Act (Pub. L. 116–136), which established Medicare Part B coverage and payment for a COVID–19 vaccine and its administration. This IFC requires that Medicare provide coverage for qualifying COVID–19 vaccines administration, without any cost sharing. Making COVID–19 vaccines, available without any delay is in the interest of public health, as making these services available as quickly as possible may encourage individuals to take advantage of these services and therefore may slow the transmission of COVID–19. Access to COVID–19 vaccines without cost sharing will encourage more individuals to obtain them. In the immediate term, any newly developed COVID–19 vaccines might be available from a narrower range of providers than other, more established recommended preventive items and services. If COVID–19 vaccines require specialized storage and administration services, only a limited number of providers may be able to offer them at first. If beneficiaries have to incur additional burdens, long wait times, and increased travel times to find Medicare providers and suppliers that can provide such services, it will limit access and discourage them from obtaining such services. Medicare providers and suppliers will incur costs for providing COVID–19 vaccines and administration of such services. There are uncertainties regarding the cost to the Medicare program for COVID–19 vaccines and administration at this time. The total cost to Medicare related to COVID–19 vaccines and administration cost are dependent on and the number of required immunization doses to be administered, the number of people who will choose to get immunized against COVID–19 and which providers and suppliers will be able to provide the preventive services.

9. Effects of Application Fee as Part of Form CMS–855B Enrollment as Mass Immunization Roster Biller

Consistent with § 424.514, an entity enrolling in Medicare as a mass immunization roster biller via the Form CMS–855B must pay an application fee at the time of enrollment. The application fees for each of the past 3 calendar years were or are $569 (CY 2018), $586, (CY 2019), and $595 (CY 2020). The differing fee amounts are predicated on changes/increases in the Consumer Price Index (CPI) for all urban consumers (all items; United State city average, CPI–U) for the 12-month period ending on June 30 of the previous year. Although we cannot predict future changes to the CPI, the fee amounts between 2018 and 2020 increased by an average of $13 per year. We believe this is a reasonable barometer with which to establish a CY 2021 fee estimate (strictly for purposes of this IFC) of $608.

Applying this prospective fee amount to the previously mentioned 60,000 projected mass immunization roster biller applicants in the first year of this rule, we estimate a total application fee cost to enrollees of $36,400,000 (or $60{,}000 \times \$608$). This represents a transfer from mass immunizer suppliers to the Federal Government.

D. Regulatory Alternatives Considered

The Department considered not implementing the changes to the CJR model but determined the effect of the changes, particularly relief from financial risk for COVID–19 cases and stability in model operations, to be very important for participant hospitals during the PHE. Further, if the three-year extension of the CJR model is finalized, it would be much more difficult for participant hospitals to stop model value-based operations, and then restart value operations when hospitals already have significant burden managing COVID–19 treatment and under COVID–19 safety protocols and utilization changes.

The Departments considered not requiring plans and issuers to provide coverage for qualifying coronavirus preventive services without cost sharing from out-of-network providers. However, in the near term, newly developed qualifying coronavirus preventive services might be available from a narrower range of providers than other, more established recommended preventive services because of specialized storage and administration requirements. If there are only a limited number of in-network providers that can administer these services, consumers may incur additional burden related to travel and long wait times to obtain these services, which can result in lower utilization. The Departments are concerned that allowing plans and issuers to impose cost sharing for COVID–19 immunizations provided by out-of-network providers would discourage individuals from seeking immunization, potentially leading to reduced administration of any COVID–19 vaccine and prolonging the PHE for COVID–19, contrary to the intent of the CARES Act. In order to ensure that the immunization services will be available to all consumers enrolled in non-grandfathered group health plans and non-grandfathered group and individual health insurance coverage, the Departments are therefore requiring such plans and issuers to cover without cost sharing a qualifying coronavirus preventive service, regardless of whether such service is delivered by an in-network or out-of-network provider. The Departments anticipate that as such services become more widely available over time, consumers will be able to obtain them more easily from in-network providers.

HHS and the Department of the Treasury considered providing states with the flexibility to waive all of the public notice procedures outlined in 31 CFR 33.112 and 33.116 and 45 CFR 155.1312 and 155.1316 to expedite a decision on a proposed section 1332 waiver request during the PHE for COVID–19. This approach would have allowed a state to request to completely eliminate a public notice or reporting requirement pre- or post-award. However, HHS and the Department of the Treasury were concerned that that this would violate the statutory requirements regarding a meaningful level of input from the public. In addition, HHS and the Department of Treasury are committed to transparency and value public input on waiver proposals and value public feedback to ensure consumers are aware of waiver proposals that may affect them. HHS and the Department of the Treasury anticipate working with states on their modification request to ensure the public is provided the opportunity to provide feedback on waiver proposals and the progress of the program authorized by the section 1332 waiver.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, (5 U.S.C. 601, *et seq.*), requires agencies to analyze options for regulatory relief of small entities to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and states are not included in the definition of a small entity. This IFC is not preceded by a general notice of proposed rulemaking, and thus the requirements of RFA do not apply.

In addition, section 1102(b)(2) of the Act provides that whenever the Secretaries promulgate a final version of a rule or regulation with respect to which an initial regulatory impact analysis is required, the Secretaries shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis is required to set forth, with respect to small rural hospitals, the matters required under section 604 of title 5, United States Code, to be set forth with respect to small entities. The Departments are not required to prepare a final regulatory impact analysis, because this regulatory action is being issued as an interim final rule without being preceded by a general notice of proposed rulemaking.

F. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing any proposed rule or any final rule for which a general notice of proposed rulemaking was published that includes any Federal mandate that may result in expenditures in any 1 year by a state, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This IFC was not preceded by a general notice of proposed rulemaking, and thus the requirements of UMRA do not apply.

G. Federalism

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. Since this rule aims to alleviate burden on State and local governments, the requirements of Executive Order 13132 are not applicable.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the states, the Departments have engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the NAIC, and consulting with state insurance officials on an individual basis.

While developing this rule, the Departments attempted to balance the states' interests in regulating health insurance issuers with the need to ensure market stability. By doing so, the Departments complied with the requirements of Executive Order 13132.

H. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This IFC's designation under Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339), which was issued on January 30, 2017, will be informed by public comments received.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Employee benefit plans, Health care, Health insurance, Penalties, Pensions, Privacy, Reporting and recordkeeping requirements.

31 CFR Part 33

Health care, Health insurance, Reporting and recordkeeping requirements.

42 CFR Part 410

Diseases, Health facilities, Health professions, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 510

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirement.

45 CFR Part 147

Age discrimination, Citizenship and naturalization, Civil rights, Health care, Health insurance, Individuals with disabilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sex discrimination.

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interests, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State flexibility, Technical assistance, Women and youth.

45 CFR Part 182

COVID–19 diagnostic testing, Reporting and recordkeeping requirements.

Dated: October 21, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 26, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

Sunita Lough,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: October 28, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

Signed at Washington DC, this 29th day of October, 2020.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Amendments to the Regulations

For the reasons set forth in the preamble, the Department of the Treasury amends 26 CFR part 54 as set forth below:

PART 54—PENSION EXCISE TAXES

■ **Par. 1.** The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

Section 54.9815–2713T also issued under 26 U.S.C. 9833.

* * * * *

■ 2. Section 54.9815–2713T is added to read as follows:

§ 54.9815–2713T Coverage of preventive health services (temporary).

(a) *Services*—(1) *In general.* Beginning at the time described in paragraph (b) of this section and subject to § 54.9815–2713A, a group health plan, or a health insurance issuer offering group health insurance coverage, must provide coverage for and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for—

(i) Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual involved (except as otherwise provided in paragraph (c) of this section);

(ii) Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved (for purposes of this paragraph (a)(1)(ii), a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention, and a recommendation is considered to be for routine use if it is listed on the Immunization Schedules of the Centers for Disease Control and Prevention);

(iii) With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration;

(iv) With respect to women, such additional preventive care and screenings not described in paragraph (a)(1)(i) of this section as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of section 2713(a)(4) of the Public Health Service Act, subject to 45 CFR 147.131, 147.132, and 147.133; and

(v) Any qualifying coronavirus preventive service, which means an item, service, or immunization that is intended to prevent or mitigate coronavirus disease 2019 (COVID–19) and that is, with respect to the individual involved—

(A) An evidence-based item or service that has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force; or

(B) An immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (regardless of whether the immunization is recommended for routine use). For purposes of this paragraph (a)(1)(v)(B), a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention.

(2) *Office visits.* (i) If an item or service described in paragraph (a)(1) of this section is billed separately (or is tracked as individual encounter data separately) from an office visit, then a plan or issuer may impose cost-sharing requirements with respect to the office visit.

(ii) If an item or service described in paragraph (a)(1) of this section is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is the delivery of such an item or service, then a plan or issuer may not impose cost-sharing requirements with respect to the office visit.

(iii) If an item or service described in paragraph (a)(1) of this section is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is not the delivery of such an item or service, then a plan or issuer may impose cost-sharing requirements with respect to the office visit.

(iv) The rules of this paragraph (a)(2) are illustrated by the following examples:

(A) *Example 1*—(*1*) *Facts.* An individual covered by a group health plan visits an in-network health care provider. While visiting the provider, the individual is screened for cholesterol abnormalities, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit and for the laboratory work of the cholesterol screening test.

(*2*) *Conclusion.* In paragraph (a)(2)(iv)(A)(*1*) of this section, the plan may not impose any cost-sharing requirements with respect to the separately-billed laboratory work of the cholesterol screening test. Because the office visit is billed separately from the cholesterol screening test, the plan may impose cost-sharing requirements for the office visit.

(B) *Example 2*—(*1*) *Facts.* Same facts as in paragraph (a)(2)(iv)(A)(*1*) of this section (*Example 1*). As the result of the screening, the individual is diagnosed with hyperlipidemia and is prescribed a course of treatment that is not included in the recommendations under paragraph (a)(1) of this section.

(*2*) *Conclusion.* In paragraph (a)(2)(iv)(B)(*1*) of this section, because the treatment is not included in the recommendations under paragraph (a)(1) of this section, the plan is not prohibited from imposing cost-sharing requirements with respect to the treatment.

(C) *Example 3*—(*1*) *Facts.* An individual covered by a group health plan visits an in-network health care provider to discuss recurring abdominal pain. During the visit, the individual

has a blood pressure screening, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit.

(*2*) *Conclusion.* In paragraph (a)(2)(iv)(C)(*1*) of this section, the blood pressure screening is provided as part of an office visit for which the primary purpose was not to deliver items or services described in paragraph (a)(1) of this section. Therefore, the plan may impose a cost-sharing requirement for the office visit charge.

(D) *Example 4*—(*1*) *Facts.* A child covered by a group health plan visits an in-network pediatrician to receive an annual physical exam described as part of the comprehensive guidelines supported by the Health Resources and Services Administration. During the office visit, the child receives additional items and services that are not described in the comprehensive guidelines supported by the Health Resources and Services Administration, nor otherwise described in paragraph (a)(1) of this section. The provider bills the plan for an office visit.

(*2*) *Conclusion.* In paragraph (a)(2)(iv)(D)(*1*) of this section, the service was not billed as a separate charge and was billed as part of an office visit. Moreover, the primary purpose for the visit was to deliver items and services described as part of the comprehensive guidelines supported by the Health Resources and Services Administration. Therefore, the plan may not impose a cost-sharing requirement with respect to the office visit.

(3) *Out-of-network providers.* (i) Subject to paragraphs (a)(3)(ii) and (iii) of this section, nothing in this section requires a plan or issuer that has a network of providers to provide benefits for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider, or precludes a plan or issuer that has a network of providers from imposing cost-sharing requirements for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider.

(ii) If a plan or issuer does not have in its network a provider who can provide an item or service described in paragraph (a)(1) of this section, the plan or issuer must cover the item or service when performed by an out-of-network provider, and may not impose cost-sharing with respect to the item or service.

(iii) A plan or issuer must provide coverage for and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for any qualifying coronavirus preventive service described in paragraph (a)(1)(v) of this section, regardless of whether such service is delivered by an in-network or out-of-network provider. For purposes of this paragraph (a)(3)(iii), with respect to a qualifying coronavirus preventive service and a provider with whom the plan or issuer does not have a negotiated rate for such service (such as an out-of-network provider), the plan or issuer must reimburse the provider for such service in an amount that is reasonable, as determined in comparison to prevailing market rates for such service.

(4) *Reasonable medical management.* Nothing prevents a plan or issuer from using reasonable medical management techniques to determine the frequency, method, treatment, or setting for an item or service described in paragraph (a)(1) of this section to the extent not specified in the relevant recommendation or guideline. To the extent not specified in a recommendation or guideline, a plan or issuer may rely on the relevant clinical evidence base and established reasonable medical management techniques to determine the frequency, method, treatment, or setting for coverage of a recommended preventive health service.

(5) *Services not described.* Nothing in this section prohibits a plan or issuer from providing coverage for items and services in addition to those recommended by the United States Preventive Services Task Force or the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, or provided for by guidelines supported by the Health Resources and Services Administration, or from denying coverage for items and services that are not recommended by that task force or that advisory committee, or under those guidelines. A plan or issuer may impose cost-sharing requirements for a treatment not described in paragraph (a)(1) of this section, even if the treatment results from an item or service described in paragraph (a)(1) of this section.

(b) *Timing*—(1) *In general.* A plan or issuer must provide coverage pursuant to paragraph (a)(1) of this section for plan years that begin on or after September 23, 2010, or, if later, for plan years that begin on or after the date that is one year after the date the recommendation or guideline is issued, except as provided in paragraph (b)(3) of this section.

(2) *Changes in recommendations or guidelines.* (i) A plan or issuer that is required to provide coverage for any items and services specified in any recommendation or guideline described in paragraph (a)(1) of this section on the first day of a plan year, or as otherwise provided in paragraph (b)(3) of this section, must provide coverage through the last day of the plan or policy year, even if the recommendation or guideline changes or is no longer described in paragraph (a)(1) of this section, during the applicable plan or policy year.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, to the extent a recommendation or guideline described in paragraph (a)(1)(i) of this section that was in effect on the first day of a plan year, or as otherwise provided in paragraph (b)(3) of this section, is downgraded to a ''D'' rating, or any item or service associated with any recommendation or guideline specified in paragraph (a)(1) of this section is subject to a safety recall or is otherwise determined to pose a significant safety concern by a Federal agency authorized to regulate the item or service during a plan or policy year, there is no requirement under this section to cover these items and services through the last day of the applicable plan or policy year.

(3) *Rapid coverage of preventive services for coronavirus.* In the case of a qualifying coronavirus preventive service described in paragraph (a)(1)(v) of this section, a plan or issuer must provide coverage for such item, service, or immunization in accordance with this section by the date that is 15 business days after the date on which a recommendation specified in paragraph (a)(1)(v)(A) or (B) of this section is made relating to such item, service, or immunization.

(c) *Recommendations not current.* For purposes of paragraph (a)(1)(i) of this section, and for purposes of any other provision of law, recommendations of the United States Preventive Services Task Force regarding breast cancer screening, mammography, and prevention issued in or around November 2009 are not considered to be current.

(d) *Applicability date.* The provisions of paragraphs (a)(1)(i) through (iv), (a)(2), (a)(3)(i) and (ii), (a)(4) through (5), (b)(1) and (2), and (c) of this section are applicable as of April 16, 2012.

(e) *Sunset date.* The provisions of paragraphs (a)(1)(v), (a)(3)(iii), and (b)(3) of this section will not apply with respect to a qualifying coronavirus preventive service furnished on or after the expiration of the public health emergency determined on January 31, 2020, to exist nationwide as of January 27, 2020, by the Secretary of Health and

Human Services pursuant to section 319 of the Public Health Service Act, as a result of COVID–19, including any subsequent renewals of that determination.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

For the reasons set forth in the preamble, the Department of Labor amends 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 3. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

■ 4. Section 2590.715–2713 is amended—

■ a. In paragraph (a)(1)(iii) by removing ''and'' after the semicolon;

■ b. In paragraph (a)(1)(iv) by removing the period at the end of the paragraph and adding ''; and'' in its place;

■ c. By adding paragraph (a)(1)(v);

■ d. By revising paragraph (a)(3)(i);

■ e. By adding paragraph (a)(3)(iii);

■ f. By revising paragraphs (b)(1) and (b)(2)(i) and (ii); and

■ g. By adding paragraphs (b)(3) and (e).

The revisions and additions read as follows:

§ 2590.715–2713 Coverage of preventive health services.

(a) * * *

(1) * * *

(v) Any qualifying coronavirus preventive service, which means an item, service, or immunization that is intended to prevent or mitigate coronavirus disease 2019 (COVID–19) and that is, with respect to the individual involved—

(A) An evidence-based item or service that has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force; or

(B) An immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (regardless of whether the immunization is recommended for routine use). For purposes of this paragraph (a)(1)(v)(B), a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention.

* * * * *

(3) * * *

(i) Subject to paragraphs (a)(3)(ii) and (iii) of this section, nothing in this section requires a plan or issuer that has a network of providers to provide benefits for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider, or precludes a plan or issuer that has a network of providers from imposing cost-sharing requirements for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider.

* * * * *

(iii) A plan or issuer must provide coverage for and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for any qualifying coronavirus preventive service described in paragraph (a)(1)(v) of this section, regardless of whether such service is delivered by an in-network or out-of-network provider. For purposes of this paragraph (a)(3)(iii), with respect to a qualifying coronavirus preventive service and a provider with whom the plan or issuer does not have a negotiated rate for such service (such as an out-of-network provider), the plan or issuer must reimburse the provider for such service in an amount that is reasonable, as determined in comparison to prevailing market rates for such service.

* * * * *

(b) * * *

(1) *In general.* A plan or issuer must provide coverage pursuant to paragraph (a)(1) of this section for plan years that begin on or after September 23, 2010, or, if later, for plan years that begin on or after the date that is one year after the date the recommendation or guideline is issued, except as provided in paragraph (b)(3) of this section.

(2) * * *

(i) A plan or issuer that is required to provide coverage for any items and services specified in any recommendation or guideline described in paragraph (a)(1) of this section on the first day of a plan year, or as otherwise provided in paragraph (b)(3) of this section, must provide coverage through the last day of the plan or policy year, even if the recommendation or guideline changes or is no longer described in paragraph (a)(1) of this section, during the applicable plan or policy year.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, to the extent a recommendation or guideline described in paragraph (a)(1)(i) of this section that was in effect on the first day of a plan year, or as otherwise provided in paragraph (b)(3) of this section, is downgraded to a ''D'' rating, or any item or service associated with any recommendation or guideline specified in paragraph (a)(1) of this section is subject to a safety recall or is otherwise determined to pose a significant safety concern by a Federal agency authorized to regulate the item or service during a plan or policy year, there is no requirement under this section to cover these items and services through the last day of the applicable plan or policy year.

(3) *Rapid coverage of preventive services for coronavirus.* In the case of a qualifying coronavirus preventive service described in paragraph (a)(1)(v) of this section, a plan or issuer must provide coverage for such item, service, or immunization in accordance with this section by the date that is 15 business days after the date on which a recommendation specified in paragraph (a)(1)(v)(A) or (B) of this section is made relating to such item, service, or immunization.

* * * * *

(e) *Sunset date.* The provisions of paragraphs (a)(1)(v), (a)(3)(iii), and (b)(3) of this section will not apply with respect to a qualifying coronavirus preventive service furnished on or after the expiration of the public health emergency determined on January 31, 2020, to exist nationwide as of January 27, 2020, by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act, as a result of COVID–19, including any subsequent renewals of that determination.

DEPARTMENT OF THE TREASURY

Office of the Secretary

Amendments to the Regulations

For the reasons set forth in the preamble, the Department of Treasury amends 31 CFR part 33 as set forth below:

PART 33—WAIVERS FOR STATE INNOVATION

■ 5. The authority citation for part 33 continues to read as follows:

Authority: Sec. 1332, Pub. L. 111–148, 124 Stat. 119.

■ 6. Section 33.118 is added to read as follows:

§ 33.118 Modification from the normal public notice requirements during the public health emergency.

(a) The Secretary and the Secretary of Health and Human Services may modify, in part, the State public notice requirements under § 33.112 and the Federal public notice procedures under § 33.116 to expedite a decision on a proposed waiver request during the public health emergency for COVID–19, as defined in 42 CFR 400.200, when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. These flexibilities are limited to event-triggered, emergent situations, and the flexibilities outlined in this section will not be available for States seeking to address a threat to consumers' access to health coverage or care that existed prior to the public health emergency for COVID–19.

(b) A State must meet all of the following criteria to request a modification under paragraph (a) of this section:

(1) The State must request a modification under paragraph (a) of this section, in the form and manner specified by the Secretaries.

(2) The State must have acted in good faith, and in a diligent, timely, and prudent manner in the preparation of the request for a modification under paragraph (a) of this section, and the waiver application request, as applicable.

(3) The State must, as applicable, detail in its request for a modification from State-level notice procedures under paragraph (a) of this section the justification for the request and the alternative public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification. As a condition of receiving a modification approval, a State must implement public notice procedures, including public hearings, at the State level and, if required, amend the waiver application request.

(4) The State must, as applicable, detail in its request for a modification from Federal-level notice procedures under paragraph (a) of this section the justification for the request as it relates to the public health emergency and the alternative public notice procedures it requests to be implemented at the Federal level.

(c) The Secretary and the Secretary of Health and Human Services will evaluate a State's request for a modification under paragraph (a) of this section and issue their exemption determination within approximately 15 calendar days after the request is received.

(d) The Secretary of Health and Human Services will publish on the Centers for Medicare and Medicaid Services (CMS) website any modification determinations within 15 calendar days of the Secretary and the Secretary of Health and Human Services making such a determination, as well as the approved revised timeline for public comment under the approved alternative State or Federal public notice procedures, as applicable.

(e) The State must publish on its website any modification requests and determinations within 15 calendar days of receipt of the determination, as well as the approved revised timeline for public comment under the alternative State or Federal public notice procedures, as applicable.

(f) The State must, as applicable, implement the alternative public notice procedures at the State level if the State's exemption request is approved and, if required, amend the waiver application request.

■ 7. Section 33.120 is amended—

■ a. In paragraph (c)(1) by adding a paragraph heading; and

■ b. By adding paragraph (c)(2).

The additions read as follows:

§ 33.120 Monitoring and compliance.

* * * * *

(c) * * *

(1) *Notification requirements for public forum.* * * *

(2) *Modification from the normal post-award requirements during the public health emergency.* (i) The Secretary and the Secretary of Health and Human Services may modify, in part, State post-award requirements under this paragraph (c)(2) for an approved waiver request during the public health emergency for COVID–19, as defined in 42 CFR 400.200, when the application of the post award public notice requirements would be contrary to the interests of consumers during the public health emergency. These flexibilities are limited to event-triggered, emergent situations, and the flexibilities outlined in this section will not be available for States seeking to address a threat to consumers' access to health coverage or care that existed prior to the public health emergency for COVID–19.

(ii) A State must meet all of the following criteria to request a modification under paragraph (c) of this section:

(A) The State must request a modification under this paragraph (c)(2), in the form and manner specified by the Secretaries.

(B) The State must have acted in good faith, and in a diligent, timely, and prudent manner to comply with the monitoring and compliance requirement under the waiver and the terms and conditions of the agreement between the Secretary and the Secretary of Health and Human Services, as applicable, and the State to implement a section 1332 waiver and to submit and prepare the request for a modification under this paragraph (c)(2).

(C) The State must detail in its request for a modification under this paragraph (c)(2) the alternative post award public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification.

(D) The Secretary and the Secretary of Health and Human Services will evaluate a State's request for a modification under this paragraph (c)(2) and issue their modification determination within approximately 15 calendar days after the request is received.

(E) The State must publish on its website any modification requests and determinations within 15 calendar days of the receipt of the determination as well as information on the approved revised timeline for the state's post award public notice procedures, as applicable.

* * * * *

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 8. The authority citation part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395m, 1395hh, 1395rr, and 1395ddd.

■ 9. Section 410.57 is amended by adding paragraph (c) to read as follows:

§ 410.57 Pneumococcal vaccine, flu vaccine, and COVID–19 vaccine.

* * * * *

(c) Medicare Part B pays for the COVID–19 vaccine and its administration.

■ 10. Section 410.152 is amended by revising paragraph (l)(1) to read as follows:

§ 410.152 Amounts of payment.

* * * * *

(l) * * *

(1) Pneumococcal (as specified in paragraph (h) of this section), influenza, hepatitis B, and COVID–19 vaccine and administration.

* * * * *

■ 11. Section 410.160 is amended by revising paragraph (b)(2) to read as follows:

§ 410.160 Part B annual deductible.

* * * * *

(b) * * *

(2) Pneumococcal, influenza, and hepatitis b, and COVID–19 vaccines and their administration.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 12. The authority citation part 411 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395w-101 through 1395w–152, 1395hh, and 1395nn.

■ 13. Section 411.15 is amended by:

■ a. Removing ''and'' at the end of paragraph (e)(3);

■ b. Removing the period at the end of paragraph (e)(4) and adding ''; and'' in its place; and

■ c. Adding paragraph (e)(5).

The addition reads as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(e) * * *

(5) COVID–19 vaccinations that are reasonable and necessary for the prevention of illness.

* * * * *

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 14. The authority citation part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l).

■ 15. Section 414.701 is revised to read as follows:

§ 414.701 Purpose.

This subpart implements section 1842(o) of the Act by specifying the methodology for determining the payment allowance limit for drugs and biologicals covered under Part B of Title XVIII of the Act (hereafter in this subpart referred to as the ''program'') that are not paid on a cost or prospective payment system basis. Examples of drugs that are subject to the rules contained in this subpart are: Drugs furnished incident to a physician's service; durable medical equipment (DME) drugs; separately billable drugs at independent dialysis facilities not under the ESRD composite rate; statutorily covered drugs, for example, influenza, pneumococcal, hepatitis, and COVID–19 vaccines, antigens, hemophilia blood clotting factor, immunosuppressive drugs and certain oral anti-cancer drugs.

■ 16. Section 414.707 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 414.707 Basis of payment.

(a) * * *

(2) * * *

(iii) Pneumococcal, influenza, and COVID–19 vaccines as well as hepatitis B vaccine that is furnished to individuals at high or intermediate risk of contracting hepatitis B (as determined by the Secretary).

* * * * *

■ 17. Section 414.900 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 414.900 Basis and scope.

* * * * *

(b) * * *

(3) * * *

(ii) Pneumococcal, Hepatitis B, and COVID–19 vaccines.

* * * * *

■ 18. Section 414.904 is amended by revising paragraph (e)(1) to read as follows:

§ 414.904 Average sales price as the basis for payment.

* * * * *

(e) * * *

(1) *Vaccines.* The payment limits for hepatitis B vaccine furnished to individuals at high or intermediate risk of contracting hepatitis B (as determined by the Secretary), pneumococcal vaccine, influenza vaccine, and COVID–19 vaccine are calculated using 95 percent of the average wholesale price.

* * * * *

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

■ 19. The authority citation for part 417 is revised to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh, and 300e, 300e–5, and 300e–9, and 31 U.S.C. 9701.

■ 20. Section 417.454 is amended by adding paragraph (e)(4) to read as follows:

§ 417.454 Charges to Medicare enrollees.

* * * * *

(e) * * *

(4) A COVID–19 vaccine and its administration described in section 1861(s)(10)(A) for the duration of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Act.

PART 433—STATE FISCAL ADMINISTRATION

■ 21. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

■ 22. Subpart G, consisting of § 433.400, is added to read as follows:

Subpart G—Temporary FMAP Increase During the Public Health Emergency for COVID–19

§ 433.400 Continued Enrollment for Temporary FMAP Increase.

(a) *Statutory basis.* This subpart interprets and implements section 6008(b)(3) of the Families First Coronavirus Response Act (FFCRA) and section 1902(a)(4) and (a)(19) of the Social Security Act.

(b) *Definitions.* For purposes of this subpart—

COVID–19 means Coronavirus Disease 2019.

Medicare Savings Program means the coverage of Medicare premiums and cost sharing furnished to individuals described in, and determined by the state to be eligible under, section 1902(a)(10)(E)(i), 1902(a)(10)(E)(iii), or 1902(a)(10)(E)(iv) of the Act.

Minimum essential coverage (MEC) has the meaning provided under section 5000A(f)(1) of the Internal Revenue Code and implementing regulations at 26 CFR 1.5000A–2 and includes minimum essential coverage determined by the Secretary under 26 CFR 1.5000A–2(f).

Public Health Emergency for COVID–19 has the same definition provided in § 400.200 of this chapter.

Temporary FMAP increase means the 6.2 percentage point increase in the

State's Federal medical assistance percentage (FMAP) that is authorized under section 6008(a) of the FFCRA through the end of the fiscal quarter in which the Public Health Emergency for COVID–19 ends.

Validly enrolled means that the beneficiary was enrolled in Medicaid based on a determination of eligibility. A beneficiary is not validly enrolled if the agency determines the eligibility was erroneously granted at the most recent determination, redetermination, or renewal of eligibility (if such last redetermination or renewal was completed prior to March 18, 2020) because of agency error or fraud (as evidenced by a fraud conviction) or abuse (as determined following the completion of an investigation pursuant to §§ 455.15 and 455.16 of this chapter) attributed to the beneficiary or the beneficiary's representative, which was material to the determination of eligibility. Individuals receiving medical assistance during a presumptive eligibility period in accordance with part 435, subpart L, of this chapter have not received a determination of eligibility by the state under the state plan and are not considered validly enrolled beneficiaries for purposes of this section.

(c) *General requirements.* (1) In order to claim the temporary FMAP increase for:

(i) The quarter in which November 2, 2020, falls, a state must meet the requirements described in paragraph (c)(2) of this section from November 2, 2020, through the end of the quarter.

(ii) Any quarter beginning after November 2, 2020, through the quarter in which the public health emergency for COVID–19, including any extensions, ends, a state must meet the requirements described in paragraphs (c)(2) of this section.

(2) Except as provided in paragraph (d) of this section, for all beneficiaries validly enrolled for benefits under the state plan, a waiver of such plan, or a demonstration project under section 1115(a) of the Act as of or after March 18, 2020, the state must maintain the beneficiary's enrollment as follows, through the end of the month in which the public health emergency for COVID–19 ends:

(i)(A) For beneficiaries whose Medicaid coverage meets the definition of MEC in paragraph (b) of this section as of or after March 18, 2020, the state must continue to provide Medicaid coverage that meets the definition of MEC, except as provided in paragraph (c)(2)(i)(B) of this section.

(B) For beneficiaries described in paragraph (c)(2)(i)(A) whom the state subsequently determines are eligible for coverage under a Medicare Savings Program eligibility group, the state satisfies the requirement described in paragraph (c)(2) of this section if it furnishes the medical assistance available through the Medicare Savings Program.

(ii) For beneficiaries whose Medicaid coverage as of or after March 18, 2020 does not meet the definition of MEC in paragraph (b) of this section but does include coverage for testing services and treatments for COVID–19, including vaccines, specialized equipment, and therapies, the state must continue to provide Medicaid coverage that includes such testing services and treatments.

(iii) For beneficiaries not described in paragraph (c)(2)(i) or (ii) of this section, the state must continue to provide at least the same level of medical assistance as was provided as of or after March 18, 2020.

(iv) If a state determines that a validly enrolled beneficiary is no longer eligible for Medicaid, including on a procedural basis, the state meets the requirements described in paragraph (c)(2)(i), (ii), or (iii) of this section by continuing to provide the same Medicaid coverage that the beneficiary would have received absent the determination of ineligibility.

(3) Otherwise permissible changes to beneficiary coverage, cost sharing, and post-eligibility treatment of income, including both changes affecting an individual beneficiary and approved changes to the state plan, a section 1115 demonstration and/or a waiver authorized under section 1915 of the Act impacting multiple beneficiaries, will not impact a state's ability to claim the temporary FMAP increase provided that any such changes do not violate the requirement to maintain beneficiary enrollment described at paragraph (c)(2) of this section or the requirement in section 6008(b)(4) of the FFCRA.

(d) *Exceptions.* (1) Consistent with the condition to claim the temporary FMAP increase described in paragraph (c)(2) of this section, a state may terminate a beneficiary's Medicaid enrollment prior to the first day of the month after the public health emergency for COVID–19 ends in the following circumstances:

(i) The beneficiary or the beneficiary's representative requests a voluntary termination of eligibility;

(ii) The beneficiary ceases to be a resident of the state; or

(iii) The beneficiary dies.

(2) States which have elected the option under section 1903(v)(4) of the Act to provide full benefits to lawfully residing children or pregnant women must limit coverage for such beneficiaries if they no longer meet the definition of a lawfully residing child or pregnant woman under such section to services necessary for treatment of an emergency medical condition, as defined in section 1903(v)(3) of the Act.

(3)(i) For purposes of paragraph (d)(1)(i) of this section, a beneficiary may request a voluntary termination of eligibility from the Medicaid coverage in which the beneficiary is enrolled to transition to other Medicaid coverage for which the beneficiary is eligible, even if the transition to the new Medicaid coverage would not be consistent with paragraph (c)(2) of this section.

(ii) For purposes of paragraph (d)(1)(ii) of this section, beneficiaries who were identified through a data match with the Public Assistance Reporting Information System in accordance with § 435.945(d) of this chapter indicating simultaneous enrollment in two or more states, and who fail to respond to a request for information to verify their residency, may be treated as not being a state resident for purposes of paragraph (d)(1)(ii) of this section, provided that the state takes all reasonably available measures to attempt to verify the beneficiary's state residency. If a beneficiary's enrollment is terminated under the exception at paragraph (d)(1)(ii) of this section based on a PARIS data match and the state subsequently obtains information verifying residency, the state must reinstate the beneficiary's Medicaid enrollment retroactive to the date of termination.

PART 510—COMPREHENSIVE CARE FOR JOINT REPLACEMENT MODEL

■ 23. The authority citation for part 510 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1315(a), and 1395hh.

■ 24. Section 510.2 is amended by—

■ a. Adding a definition for ''COVID–19 Diagnosis Code'' in alphabetical order; and

■ b. Revising the definitions for ''Lower-extremity joint replacement (LEJR)'', ''Performance year'', and ''Quality improvement points''.

The addition and revisions read as follows:

§ 510.2 Definitions.

* * * * *

COVID–19 Diagnosis Code means any of the following ICD–10–CM diagnosis codes:

(1) B97.29;
(2) U07.1; or
(3) Any other ICD–10–CM diagnosis code that is recommended by the Centers for Disease Control and Prevention for the coding of a confirmed case of COVID–19.
* * * * *

Lower-extremity joint replacement (LEJR) means any procedure that is within MS–DRG 469 or 470, or, on or after October 1, 2020, MS–DRG 521 or 522, including lower-extremity joint replacement procedures or reattachment of a lower extremity.
* * * * *

Performance year means one of the years in which the CJR model is being tested. Performance years for the model correlate to calendar years with the exceptions of performance year 1, which is April 1, 2016 through December 31, 2016 and performance year 5, which is January 1, 2020 through September 30, 2021. For reconciliation purposes, performance year 5 is divided into two subsets, performance year subset 5.1 (January 1, 2020 through December 31, 2020) and performance year subset 5.2 (January 1, 2021 through September 30, 2021).
* * * * *

Quality improvement points are points that CMS adds to a participant hospital's composite quality score for a measure if the hospital's performance percentile on an individual quality measure for performance years 2 through 4 and for performance year subsets 5.1 and 5.2, increases from the previous performance year or performance year subset by at least 2 deciles on the performance percentile scale, as described in § 510.315(d). For performance year 1, CMS adds quality improvement points to a participant hospital's composite quality score for a measure if the hospital's performance percentile on an individual quality measure increases from the corresponding time period in the previous year by at least 2 deciles on the performance percentile scale, as described in § 510.315(d).
* * * * *

■ 25. Section 510.200 is amended by revising paragraphs (a) and (d)(6) to read as follows:

§ 510.200 Time periods, included and excluded services, and attribution.

(a) *Time periods.* All episodes must begin on or after April 1, 2016 and end on or before September 30, 2021.
* * * * *

(d) * * *

(6) For performance years 1 through 4 and for performance year subsets 5.1 and 5.2, payments for otherwise included items and services in excess of 2 standard deviations above the mean regional episode payment in accordance with § 510.300(b)(5).
* * * * *

■ 26. Section 510.300 is amended by revising paragraphs (a) introductory text, (a)(1)(i), (a)(1)(iii), (a)(2) and (3), (b)(1)(iii), (b)(2)(iii), (b)(8), (c)(1) and (2), and (c)(3)(iii) to read as follows:

§ 510.300 Determination of episode quality-adjusted target prices.

(a) *General.* CMS establishes episode quality-adjusted target prices for participant hospitals for each performance year or performance year subset of the model as specified in this section. Episode quality-adjusted target prices are established according to the following:

(1) * * *

(i)(A) MS–DRG 469 with hip fracture; or

(B) For episodes beginning on or after October 1, 2020, MS–DRG 521;
* * * * *

(iii)(A) MS–DRG 470 with hip fracture; or

(B) For episodes beginning on or after October 1, 2020, MS–DRG 522; or
* * * * *

(2) *Applicable time period for performance year or performance year subset episode quality-adjusted target prices.* Episode quality-adjusted target prices are updated to account for Medicare payment updates no less than 2 times per year, for updated quality-adjusted target prices effective October 1 and January 1, and at other intervals if necessary.

(3) *Episodes that straddle performance years or performance year subsets or payment updates.* The quality-adjusted target price that applies to the type of episode as of the date of admission for the anchor hospitalization is the quality-adjusted target price that applies to the episode.
* * * * *

(b) * * *

(1) * * *

(iii) Episodes beginning in 2016 through 2018 for each of performance year subsets 5.1 and 5.2.

(2) * * *

(iii) Regional historical episode payments for performance year 4 and each of performance year subsets 5.1 and 5.2.
* * * * *

(8) *Inclusion of reconciliation payments and repayments.* For performance years 3, 4, and each of performance year subsets 5.1 and 5.2 only, reconciliation payments and repayment amounts under § 510.305(f)(2) and (3) and from LEJR episodes included in the BPCI initiative are included in historical episode payments.

(c) * * *

(1) *Discount factors affected by the quality incentive payments and the composite quality score.* In all performance years and performance year subsets, the discount factor may be affected by the quality incentive payment and composite quality score as provided in § 510.315 to create the effective discount factor or applicable discount factor used for calculating reconciliation payments and repayment amounts. The quality-adjusted target prices incorporate the effective or applicable discount factor at reconciliation.

(2) *Discount factor for reconciliation payments.* The discount factor for reconciliation payments in all performance years and performance year subsets is 3.0 percent.

(3) * * *

(iii) In performance year 4 and each of performance year subsets 5.1 and 5.2, 3.0 percent.
* * * * *

■ 27. Section 510.305 is amended by revising paragraphs (b), (d)(1) introductory text, (e) introductory text, (e)(1) introductory text, (e)(1)(i), (ii), and (iii), (e)(1)(v)(A) introductory text, (e)(1)(v)(A)(*3*), (e)(1)(v)(B) introductory text, (e)(1)(v)(B)(*3*), (e)(1)(v)(C), (f)(1)(ii), (g)(1) and (3), (h) introductory text, (h)(5) and (6), (i), (j), and (k)(4) to read as follows:

§ 510.305 Determination of the NPRA and reconciliation process.
* * * * *

(b) *Reconciliation.* CMS uses a series of reconciliation processes, which CMS performs as described in paragraphs (d) and (f) of this section, after the end of each performance year 1 through 4 to establish final payment amounts to participant hospitals for CJR episodes for a given performance year. Following the end of each performance year 1 through 4, CMS determines actual episode payments for each episode for the performance year (other than episodes that have been canceled in accordance with § 510.210(b)), and determines the amount of a reconciliation payment or repayment amount. Within performance year 5, CMS separately performs the reconciliation processes described in paragraphs (d) and (f) of this section for performance year subsets 5.1 and 5.2 and following the end of each performance year subset 5.1 and 5.2, CMS separately determines the actual

episode payment for each episode for the subset of the performance year (other than episodes that have been canceled in accordance with § 510.210(b)) and determines the amount of a reconciliation payment or repayment for each of performance year subsets 5.1 and 5.2.

* * * * *

(d) * * *

(1) Beginning 2 months after the end of each of performance years 1 through 4 and performance year subset 5.1 and 5 months after the end of performance year subset 5.2, CMS does all of the following:

* * * * *

(e) *Calculation of the NPRA.* By comparing the quality-adjusted target prices described in § 510.300 and the participant hospital's actual episode spending for each of performance years 1 through 4 and each of performance year subsets 5.1 and 5.2 and applying the adjustments in paragraph (e)(1)(v) of this section, CMS establishes an NPRA for each participant hospital for each such performance year or performance year subset.

(1) *Initial calculation.* In calculating the NPRA for each participant hospital for each of performance years 1 through 4 and each of performance year subsets 5.1 and 5.2, CMS does the following:

(i) Determines actual episode payments for each episode included in the performance year or performance year subset (other than episodes that have been canceled in accordance with § 510.210(b)) using claims data that is available 2 months after the end of the performance year or performance year subset. Actual episode payments are capped, as applicable, at the amount determined in accordance with § 510.300(b)(5) for the performance year or performance year subset at the amount determined in paragraph (k) of this section for episodes affected by extreme and uncontrollable circumstances, or at the quality adjusted target price determined for that episode under § 510.300 for an episode with actual episode payments that include a claim with a COVID–19 diagnosis code and initiate after the earlier of March 31, 2021 or the last day of the emergency period described in paragraph (k)(4) of this section.

(ii) Multiplies each episode quality-adjusted target price by the number of episodes included in the performance year or performance year subset (other than episodes that have been canceled in accordance with § 510.210(b)) to which that episode quality-adjusted target price applies.

(iii) Aggregates the amounts computed in paragraph (e)(1)(ii) of this section for all episodes included in the performance year or performance year subset (other than episodes that have been canceled in accordance with § 510.210(b)).

* * * * *

(v) * * *

(A) *Limitation on loss.* Except as provided in paragraph (e)(1)(v)(C) of this section, the total amount of the NPRA and subsequent reconciliation calculation for a performance year or performance year subset cannot exceed the following:

* * * * *

(*3*) For performance year 4 and each of performance year subsets 5.1 and 5.2, 20 percent of the amount calculated in paragraph (e)(1)(iii) of this section for the performance year or performance year subset.

* * * * *

(B) *Limitation on gain.* The total amount of the NPRA and subsequent reconciliation calculation for a performance year or performance year subset cannot exceed the following:

* * * * *

(*3*) For performance year 4 and each of performance year subsets 5.1 and 5.2, 20 percent of the amount calculated in paragraph (e)(1)(iii) of this section for the performance year or performance year subset.

* * * * *

(C) *Financial loss limits for rural hospitals, SCHs, MDHs, and RRCs.* If a participant hospital is a rural hospital, SCH, MDH, or RRC, then for performance year 2, the total repayment amount for which the participant hospital is responsible due to the NPRA and subsequent reconciliation calculation cannot exceed 3 percent of the amount calculated in paragraph (e)(1)(iii) of this section. For performance years 3 and 4 and for performance year subsets 5.1 and 5.2, the amount cannot exceed 5 percent of the amount calculated in paragraph (e)(1)(iii) of this section.

(f) * * *

(1) * * *

(ii) Subject to paragraph (f)(1)(iii) of this section, for performance years 2 through 4 and for each of performance year subsets 5.1 and 5.2, results from the subsequent reconciliation calculation for a prior year's reconciliation as described in paragraph (i) of this section and the post-episode spending and ACO overlap calculations as described in paragraph (j) of this section are added to the current year's NPRA in order to determine the reconciliation payment or repayment amount.

* * * * *

(g) * * *

(1) CMS assesses each participant hospital's performance on quality metrics, as described in § 510.315, to determine whether the participant hospital is eligible to receive a reconciliation payment for a performance year or performance year subset.

* * * * *

(3) If the hospital's composite quality score described in § 510.315 is below acceptable, defined as less than 4.00 for a performance year or performance year subset, the hospital is not eligible for a reconciliation payment.

* * * * *

(h) *Reconciliation report.* CMS issues each participant hospital a CJR reconciliation report for the performance year or performance year subset. Each CJR reconciliation report contains the following:

* * * * *

(5) As applicable, the NPRA and subsequent reconciliation calculation amount for the previous performance year or performance year subset.

(6) As applicable, the post-episode spending amount and ACO overlap calculation for the previous performance year or performance year subset.

* * * * *

(i) *Subsequent reconciliation calculation.* (1) Fourteen months after the end of each of performance years 1 through 4 and performance year subset 5.1 and seventeen months after the end of performance year subset 5.2, CMS performs an additional calculation, using claims data available at that time, to account for final claims run-out and any additional episode cancelations due to overlap between the CJR model and other CMS models and programs, or for other reasons as specified in § 510.210(b).

(2) The subsequent calculation for each of performance years 1 through 4 and performance year subset 5.1 occurs concurrently with the first reconciliation process for the following performance year (or in the case of performance year subset 5.1, with the first reconciliation of performance year subset 5.2) . If the result of the subsequent calculation is different than zero, CMS applies the stop-loss and stop-gain limits in paragraph (e) of this section to the aggregate calculation of the amounts described in paragraphs (e)(1)(iv) and (i)(1) of this section for that performance year or performance year subset (the initial reconciliation

and the subsequent reconciliation calculation) to ensure such amount does not exceed the applicable stop-loss or stop-gain limits. The subsequent reconciliation calculation for performance year subset 5.2 will occur independently in 2023.

(j) *Additional adjustments to the reconciliation payment or repayment amount.* (1) In order to account for shared savings payments, CMS will reduce the reconciliation payment or increase the repayment amount for the subsequent performance year (for performance years 1 through 4 and performance year subset 5.1) by the amount of the participant hospital's discount percentage that is paid to the ACO in the prior performance year as shared savings. (This amount will be assessed independently for performance year subset 5.2 in 2023.) This adjustment is made only when the participant hospital is a participant or provider/supplier in the ACO and the beneficiary in the CJR episode is assigned to one of the following ACO models or programs:

(i) The Pioneer ACO model.

(ii) The Medicare Shared Savings Program (excluding Track 3 for CJR episodes that initiate on or after July 1, 2017).

(iii) The Comprehensive ESRD Care Initiative (excluding a track with downside risk for CJR episodes that initiate after July 1, 2017).

(iv) The Next Generation ACO model (excluding CJR episodes that initiate on or after July 1, 2017).

(2) If the average post-episode Medicare Parts A and B payments for a participant hospital in the prior performance year or performance year subset is greater than 3 standard deviations above the regional average post-episode payments for the same performance year or performance year subset, then the spending amount exceeding 3 standard deviations above the regional average post-episode payments for the same performance year or performance year subset is subtracted from the net reconciliation or added to the repayment amount for the subsequent performance year for years 1 through 4 and performance year subset 5.1, and assessed independently for performance year subset 5.2.

(k) * * *

(4) For a fracture or non-fracture episode with a date of admission to the anchor hospitalization that is on or within 30 days before the date that the emergency period (as defined in section 1135(g) of the Act) begins or that occurs on or before March 31, 2021 or the last day of such emergency period, whichever is earlier, actual episode payments are capped at the quality adjusted target price determined for that episode under § 510.300.

■ 28. Section 510.315 is amended by revising paragraphs (a), (b) introductory text, and (d) to read as follows:

§ 510.315 Composite quality scores for determining reconciliation payment eligibility and quality incentive payments.

(a) *General.* A participant hospital's eligibility for a reconciliation payment under § 510.305(g), and the determination of quality incentive payments under paragraph (f) of this section, for a performance year or performance year subset depend on the hospital's composite quality score (including any quality performance points and quality improvement points earned) for that performance year or performance year subset.

(b) *Composite quality score.* CMS calculates a composite quality score for each participant hospital for each performance year or performance year subset which equals the sum of the following:

* * * * *

(d) *Quality improvement points.* For performance year 1, if a participant hospital's quality performance percentile on an individual measure described in § 510.400(a) increases from the corresponding time period in the previous year by at least 2 deciles on the performance percentile scale, then the hospital is eligible to receive quality improvement points equal to 10 percent of the total available point for that individual measure up to a maximum composite quality score of 20 points. For each of performance years 2 through 4 and for each of performance year subsets 5.1 and 5.2, if a participant hospital's quality performance percentile on an individual measure described in § 510.400(a) increases from the previous performance year or performance year subset by at least 2 deciles on the performance percentile scale, then the hospitals is eligible to receive quality improvement points equal to 10 percent of the total available point for that individual measure up to a maximum composite quality score of 20 points.

* * * * *

■ 29. Section 510.400 is amended by—

■ a. Revising paragraphs (a) introductory text, (b)(2) introductory text, (b)(2)(i), (b)(2)(ii) introductory text, and (b)(3)(v) introductory text; and

■ b. By adding paragraph (b)(3)(vi).

The revisions and addition read as follows:

§ 510.400 Quality measures and reporting.

(a) *Reporting of quality measures.* The following quality measures are used for public reporting, for determining whether a participant hospital is eligible for reconciliation payments under § 510.305(g), and whether a participant hospital is eligible for quality incentive payments under § 510.315(f) in the performance year or performance year subset:

* * * * *

(b) * * *

(2) Hospitals must also submit the amount of requested THA/TKA patient-reported outcomes data required for each performance year or performance year subset of the model in order to be considered successful in submitting voluntary data.

(i) The amount of requested THA/TKA patient-reported outcomes data to submit, in order to be considered successful will increase each subsequent year of the model over the 5 years of the model (with the exception of performance year subset 5.2, for which CMS will request the same amount of THA/TKA patient-reported outcomes data as performance year subset 5.1, updated to reflect the timeframe applicable to performance year subset 5.2).

(ii) A phase-in approach that determines the amount of requested THA/TKA patient-reported outcomes data to submit over performance years 1 through 4 and performance year subset 5.1 (with the exception of performance year subset 5.2, for which CMS will request the same amount of THA/TKA patient-reported outcomes as performance year subset 5.1, updated to reflect the timeframe applicable to performance year subset 5.2) of the program will be applied so that in year 1 successful submission of data would mean CMS received all requested THA/TKA patient-reported outcomes and limited risk variable data on both of the following:

* * * * *

(3) * * *

(v) Year 5 (subset 5.1, January 1, 2020–December 31, 2020). Submit—

* * * * *

(vi) Year 5 (subset 5.2, January 1, 2021–September 30, 2021). Submit—

(A) Post-operative data on primary elective THA/TKA procedures for ≥80% or ≥200 procedures performed between July 1, 2019 and June 30, 2020; and

(B) Pre-operative data on primary elective THA/TKA procedures for ≥80% or ≥200 procedures performed between July 1, 2020 and June 30, 2021, unless CMS requests a more limited data set, in

which case, submit all requested data elements.

* * * * *

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR parts 147, 155, and 182 as set forth below:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 30. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92, as amended, and section 3203, Pub. L. 116–136, 134 Stat. 281.

■ 31. Section 147.130 is amended—

■ a. In paragraph (a)(1)(iii) by removing ''and'' after the semicolon;

■ b. In paragraph (a)(1)(iv) by removing the period at the end of the paragraph and adding ''; and'' in its place;

■ c. By adding paragraph (a)(1)(v);

■ d. By revising paragraph (a)(3)(i);

■ e. By adding paragraph (a)(3)(iii);

■ f. By revising paragraphs (b)(1) and (b)(2)(i) and (ii); and

■ g. By adding paragraphs (b)(3) and (e).

The revisions and additions read as follows:

§ 147.130 Coverage of preventive health services.

(a) * * *

(1) * * *

(v) Any qualifying coronavirus preventive service, which means an item, service, or immunization that is intended to prevent or mitigate coronavirus disease 2019 (COVID–19) and that is, with respect to the individual involved—

(A) An evidence-based item or service that has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force; or

(B) An immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (regardless of whether the immunization is recommended for routine use). For purposes of this paragraph (a)(1)(v)(B), a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention.

* * * * *

(3) * * *

(i) Subject to paragraphs (a)(3)(ii) and (iii) of this section, nothing in this section requires a plan or issuer that has a network of providers to provide benefits for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider, or precludes a plan or issuer that has a network of providers from imposing cost-sharing requirements for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider.

* * * * *

(iii) A plan or issuer must provide coverage for and must not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) for any qualifying coronavirus preventive service described in paragraph (a)(1)(v) of this section, regardless of whether such service is delivered by an in-network or out-of-network provider. For purposes of this paragraph (a)(3)(iii), with respect to a qualifying coronavirus preventive service and a provider with whom the plan or issuer does not have a negotiated rate for such service (such as an out-of-network provider), the plan or issuer must reimburse the provider for such service in an amount that is reasonable, as determined in comparison to prevailing market rates for such service.

* * * * *

(b) * * *

(1) *In general.* A plan or issuer must provide coverage pursuant to paragraph (a)(1) of this section for plan years (in the individual market, policy years) that begin on or after September 23, 2010, or, if later, for plan years (in the individual market, policy years) that begin on or after the date that is one year after the date the recommendation or guideline is issued, except as provided in paragraph (b)(3) of this section.

(2) * * *

(i) A plan or issuer that is required to provide coverage for any items and services specified in any recommendation or guideline described in paragraph (a)(1) of this section on the first day of a plan year (in the individual market, policy year), or as otherwise provided in paragraph (b)(3) of this section, must provide coverage through the last day of the plan or policy year, even if the recommendation or guideline changes or is no longer described in paragraph (a)(1) of this section, during the applicable plan or policy year.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, to the extent a recommendation or guideline described in paragraph (a)(1)(i) of this section that was in effect on the first day of a plan year (in the individual market, policy year), or as otherwise provided in paragraph (b)(3) of this section, is downgraded to a ''D'' rating, or any item or service associated with any recommendation or guideline specified in paragraph (a)(1) of this section is subject to a safety recall or is otherwise determined to pose a significant safety concern by a Federal agency authorized to regulate the item or service during a plan or policy year, there is no requirement under this section to cover these items and services through the last day of the applicable plan or policy year.

(3) *Rapid coverage of preventive services for coronavirus.* In the case of a qualifying coronavirus preventive service described in paragraph (a)(1)(v) of this section, a plan or issuer must provide coverage for such item, service, or immunization in accordance with this section by the date that is 15 business days after the date on which a recommendation specified in paragraph (a)(1)(v)(A) or (B) of this section is made relating to such item, service, or immunization.

* * * * *

(e) *Sunset date.* The provisions of paragraphs (a)(1)(v), (a)(3)(iii), and (b)(3) of this section will not apply with respect to a qualifying coronavirus preventive service furnished on or after the expiration of the public health emergency determined on January 31, 2020, to exist nationwide as of January 27, 2020, by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act, as a result of COVID–19, including any subsequent renewals of that determination.

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 32. The authority citation for part 155 continues to read as follows:

Authority: 42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

■ 33. Section 155.1318 is added to read as follows:

§ 155.1318 Modification from the normal public notice requirements during the public health emergency.

(a) The Secretary and the Secretary of the Treasury may modify, in part, the State public notice requirements under

§ 155.1312 and the Federal public notice procedures under § 155.1316 to expedite a decision on a proposed waiver request during the public health emergency, as defined in 42 CFR 400.200, when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. These flexibilities are limited to event-triggered, emergent situations, and the flexibilities outlined in this section will not be available for States seeking to address a threat to consumers' access to health coverage or care that existed prior to the public health emergency for COVID–19.

(b) A State must meet all of the following criteria to request a modification under paragraph (a) of this section:

(1) The State must request a modification under paragraph (a) of this section, in the form and manner specified by the Secretaries.

(2) The State must have acted in good faith, and in a diligent, timely, and prudent manner in the preparation of the request for a modification under paragraph (a) of this section, and the waiver application request, as applicable.

(3) The State must, as applicable, detail in its request for a modification from State-level notice procedures under paragraph (a) of this section the justification for the request as it relates to the public health emergency and the alternative public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification.

(4) The State must, as applicable, detail in its request for a modification from Federal-level notice procedures under paragraph (a) of this section the justification for the request and the alternative public notice procedures it requests to be implemented at the Federal level.

(c) The Secretary and the Secretary of the Treasury will evaluate a State's request for a modification under paragraph (a) of this section and issue their modification determination within approximately 15 calendar days after the request is received.

(d) The Secretary will publish on the CMS website any modification determinations within 15 calendar days of the Secretary and the Secretary of the Treasury making such a determination, as well as the approved revised timeline for public comment under the approved alternative State or Federal public notice procedures, as applicable.

(e) The State must publish on its website any modification requests and determinations within 15 calendar days of receipt of the determination, as well as the approved revised timeline for public comment under the alternative State or Federal public notice procedures, as applicable.

(f) The State must, as applicable, implement the alternative public notice procedures at the State level if the State's modification request is approved and, if required, amend the waiver application request.

■ 34. Section 155.1320 is amended—

■ a. In paragraph (c)(1) by adding a paragraph heading; and

■ b. By adding paragraph (c)(2).

The additions read as follows:

§ 155.1320 Monitoring and compliance.

* * * * *

(c) * * *

(1) *Notification requirements for public forum.* * * *

(2) *Modification from the normal post award requirements during the public health emergency.* (i) The Secretary and the Secretary of the Treasury may modify, in part, State post award requirements under this paragraph (c)(2) for an approved waiver request during the public health emergency, as defined in 42 CFR 400.200, when the application of the post award public notice requirements would be contrary to the interests of consumers during the public health emergency. These flexibilities are limited to event-triggered, emergent situations, and the flexibilities outlined in this section will not be available for States seeking to address a threat to consumers' access to health coverage or care that existed prior to the public health emergency for COVID–19.

(ii) A State must meet all of the following criteria to request a modification under paragraph (c) of this section:

(A) The State must request a modification under paragraph (c)(2) of this section, in the form and manner specified by the Secretaries.

(B) The State must have acted in good faith, and in a diligent, timely, and prudent manner to comply with the monitoring and compliance requirement under the waiver and the terms and conditions of the agreement between the Secretary and the Secretary of the Treasury, as applicable, and the State to implement a section 1332 waiver and to submit and prepare the request for a modification under paragraph (c)(2) of this section.

(C) The State must detail in its request for a modification under paragraph (c)(2) of this section the alternative post award public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification.

(D) The Secretary and the Secretary of the Treasury will evaluate a State's request for a modification under paragraph (c)(2) of this section and issue their modification determination within approximately 15 calendar days after the request is received.

(E) The State must publish on its website any modification requests and determinations within 15 calendar days of receipt of the determination, as well as information on the approved revised timeline for the State's post award public notice procedures, as applicable.

* * * * *

■ 35. Subchapter E–T, consisting of part 182, is added to subtitle A to read as follows:

Subchapter E–T—Price Transparency

PART 182—PRICE TRANSPARENCY FOR COVID–19 DIAGNOSTIC TESTS

Subpart A—General Provisions

Sec.
182.10 Basis and scope.
182.20 Definitions.
182.30 Applicability.

Subpart B—Public Disclosure Requirements

182.40 Requirements for making public cash prices for a diagnostic test for COVID–19.

Subpart C—Monitoring and Penalties for Noncompliance

182.50 Monitoring and enforcement.
182.60 Corrective action plans.
182.70 Civil monetary penalties.

Subpart D—Appeals of Civil Monetary Penalties

182.80 Appeal of penalty.
182.90 Failure to request a hearing.

Authority: Section 3202(b), Pub. L. 116–136, 134 Stat. 281.

Subpart A—General Provisions

§ 182.10 Basis and scope.

This part implements section 3202(b)(1) of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116–136, March 27, 2020) (CARES Act), which requires that during the emergency period declared under section 319 of the PHS Act (42 U.S.C.

247d), providers of diagnostic tests for COVID–19 make public the cash price for such tests on a public internet website of such provider. This part also implements section 3202(b)(2) of the CARES Act, which authorizes the Secretary to impose a civil monetary penalty (CMP) on any provider of a diagnostic test for COVID–19 that does not comply with section 3202(b)(1) of the CARES Act and that has not completed a corrective action plan to comply with that section, in an amount that does not exceed $300 per day that the violation is ongoing.

§ 182.20 Definitions.

The following definitions and abbreviated terms apply to this part:

Cash price means the charge that applies to an individual who pays cash (or cash equivalent) for a COVID–19 diagnostic test.

COVID–19 for purposes of this part is the abbreviated term for the virus called SARS-CoV–2 and the disease it causes, called coronavirus disease 2019.

Diagnostic test for COVID–19 (''COVID–19 diagnostic test'') means a COVID–19 *in vitro* diagnostic test described in section 6001 of the Families First Coronavirus Response Act (Pub. L. 116–127, March 18, 2020), as amended by section 3201 of the CARES Act (Pub. L. 116–136, March 27, 2020).

Provider of a diagnostic test for COVID–19 (''provider'') means any facility that performs one or more COVID–19 diagnostic tests.

§ 182.30 Applicability.

(a) *General applicability.* The requirements of this part apply to each provider of a diagnostic test for COVID–19 as defined at § 182.20.

(b) *Duration of requirements.* The requirements of this part are applicable during the public health emergency (PHE) determined to exist nationwide as of January 27, 2020, by the Secretary of Health and Human Services pursuant to section 319 of the PHS Act on January 31, 2020, as a result of confirmed cases of COVID–19, including any subsequent renewals.

Subpart B—Public Disclosure Requirements

§ 182.40 Requirements for making public cash prices for a diagnostic test for COVID–19.

(a) *General rules.* (1) Except as provided under paragraph (b) of this section, a provider of a COVID–19 diagnostic test must make public the information described in paragraph (c) of this section electronically via the internet.

(2) The information described in paragraph (c) of this section, or a link to such information, must appear in a conspicuous location on a searchable homepage of the provider's website.

(3) The information described in paragraph (c) of this section must be displayed in a manner that is easily accessible, without barriers, and ensures that the information is accessible:

(i) Free of charge;

(ii) Without having to establish a user account or password; and

(iii) Without having to submit personal identifiable information (PII).

(4) The provider must include all of the following terms on its homepage:

(i) The provider's name;

(ii) The term ''price'';

(iii) The term ''cost'';

(iv) The term ''test'';

(v) The term ''COVID''; and

(vi) The term ''coronavirus''.

(b) *Exception.* A provider of a COVID–19 diagnostic test that does not have its own website must make public the information described in paragraph (c) of this section:

(1) In writing, within two business days upon request; and

(2) On a sign posted prominently at the location where the provider offers a COVID–19 diagnostic test, if such location is accessible to the public.

(c) *Required information.* For purposes of paragraphs (a) and (b) of this section, the provider must make public the following information:

(1) A plain-language description of each COVID–19 diagnostic test that is offered by the provider;

(2) The billing code used for each COVID–19 diagnostic test;

(3) The provider's cash price for each such COVID–19 diagnostic test; and

(4) Any additional information as may be necessary for the public to have certainty of the cash price that applies to each COVID–19 diagnostic test.

Subpart C—Monitoring and Penalties for Noncompliance

§ 182.50 Monitoring and enforcement.

(a) *Monitoring.* (1) CMS may evaluate whether a provider has complied with the requirements under § 182.40.

(2) CMS may use methods to monitor and assess provider compliance with the requirements under this part, including, but not limited to, the following, as appropriate:

(i) CMS' evaluation of complaints made to CMS.

(ii) CMS review of an individual's or entity's analysis of noncompliance as stated in the complaint.

(iii) CMS review of providers' websites.

(b) *Actions to address provider noncompliance.* If CMS concludes that the provider is noncompliant with one or more of the requirements of § 182.40, CMS may take any of the following actions:

(1) Provide a written warning notice to the provider of the specific violation(s).

(2) Request that the provider submit and comply with a corrective action plan under § 182.60.

(3) Impose a civil monetary penalty on the provider if the provider fails to respond to CMS' request to submit a corrective action plan or to comply with the requirements of a corrective action plan approved by CMS.

§ 182.60 Corrective action plans.

(a) *Violations requiring a corrective action plan.* If CMS determines a provider's noncompliance with the requirements of this part continues after a warning notice, a corrective action plan may be required. A violation may include, but is not limited to, the following:

(1) A provider's failure to make public its cash price information required by § 182.40.

(2) A provider's failure to make public its cash price information in the form and manner required under § 182.40.

(b) *Notice of violation.* CMS may request that a provider submit and comply with a corrective action plan, specified in a notice of violation issued by CMS to a provider.

(c) *Compliance with corrective action plan requests and corrective actions.* (1) A provider required to submit a corrective action plan must do so, in the form and manner, and by the deadline, specified in the notice of violation issued by CMS to the provider, and must comply with the requirements of the corrective action plan approved by CMS.

(2) A provider's corrective action plan must specify elements including, but not limited to:

(i) The corrective actions or processes the provider will take to address the deficiency or deficiencies identified by CMS.

(ii) The timeframe by which the provider will complete the corrective action.

(3) A corrective action plan is subject to CMS review and approval.

(4) After CMS' review and approval of a provider's corrective action plan, CMS may monitor and evaluate the provider's compliance with the corrective actions specified in the corrective action plan.

(d) *Noncompliance with corrective action plan requests and requirements.* (1) A provider's failure to respond to

CMS' request to submit a corrective action plan includes failure to submit a corrective action plan in the form, manner, or by the deadline, specified in a notice of violation issued by CMS to the provider.

(2) A provider's failure to comply with the requirements of a corrective action plan includes failure to correct violation(s) within the specified timeframes.

§ 182.70 Civil monetary penalties.

(a) *Basis for imposing civil monetary penalties.* CMS may impose a civil monetary penalty on a provider identified by CMS as noncompliant according to § 182.50, and that fails to respond to CMS' request to submit a corrective action plan or to comply with the requirements of a corrective action plan approved by CMS as described in § 182.60(d).

(b) *Notice of imposition of a civil monetary penalty.* (1) If CMS imposes a penalty in accordance with this part, CMS will provide a written notice of imposition of a civil monetary penalty to the provider via certified mail or another form of traceable carrier.

(2) This notice to the provider may include, but is not limited to, the following:

(i) The basis for the provider's noncompliance, including, but not limited to, the following:

(A) CMS' determination as to which requirement(s) the provider has violated.

(B) The provider's failure to respond to CMS' request to submit a corrective action plan or comply with the requirements of a corrective action plan, as described in § 182.60(d).

(ii) CMS' determination as to the effective date for the violation(s). This date is the latest date of the following:

(A) The first day the provider is required to meet the requirements of this part.

(B) A date determined by CMS, such as one resulting from monitoring activities specified in § 182.50, or development of a corrective action plan as specified in § 182.60.

(iii) The amount of the penalty as of the date of the notice.

(iv) A statement that a civil monetary penalty may continue to be imposed for continuing violation(s).

(v) Payment instructions.

(vi) A statement of the provider's right to a hearing according to subpart D of this part.

(vii) A statement that the provider's failure to request a hearing within 30 calendar days of the issuance of the notice permits the imposition of the penalty, and any subsequent penalties pursuant to continuing violations, without right of appeal in accordance with § 182.90.

(3) If the civil monetary penalty is upheld, in part, by a final and binding decision according to subpart D of this part, CMS will issue a modified notice of imposition of a civil monetary penalty, to conform to the adjudicated finding.

(c) *Amount of the civil monetary penalty.* (1) CMS may impose a civil monetary penalty upon a provider for a violation of each requirement of this part.

(2) The maximum daily dollar amount for a civil monetary penalty to which a provider may be subject is $300. Even if the provider is in violation of multiple discrete requirements of this part, the maximum total sum that a single provider may be assessed per day is $300.

(3) The maximum daily amount of the civil monetary penalty will be adjusted annually using the multiplier determined by the Office of Management and Budget for annually adjusting civil monetary penalty amounts under part 102 of this title.

(d) *Timing of payment of civil monetary penalty.* (1) A provider must pay the civil monetary penalty in full within 60 calendar days after the date of the notice of imposition of a civil monetary penalty from CMS under paragraph (b) of this section.

(2) In the event a provider requests a hearing, pursuant to subpart D of this part, the provider must pay the amount in full within 60 calendar days after the date of a final and binding decision, according to subpart D of this part, to uphold, in whole or in part, the civil monetary penalty.

(3) If the 60th calendar day described in paragraphs (d)(1) and (2) of this section is a weekend or a Federal holiday, then the timeframe is extended until the end of the next business day.

(4) In the event a civil money penalty is not paid in full within 60 days, CMS will follow the collections activities set forth in 45 CFR part 30.

(e) *Continuing violations.* CMS may issue subsequent notice(s) of imposition of a civil monetary penalty, according to paragraph (b) of this section, that result from the same instance(s) of noncompliance.

Subpart D—Appeals of Civil Monetary Penalties

§ 182.80 Appeal of penalty.

(a) A provider upon which CMS has imposed a penalty under this part may appeal that penalty in accordance with subpart D of part 150 of this title, except as specified in paragraph (b) of this section.

(b) For purposes of applying subpart D of part 150 of this title to appeals of civil monetary penalties under this part:

(1) ''Respondent'' means a provider, as defined in § 182.20 that received a notice of imposition of a civil monetary penalty according to § 182.70(b).

(2) In deciding whether the amount of a civil money penalty is reasonable, the administrative law judge (ALJ) may only consider evidence of record relating to the following:

(i) The provider's posting(s) of its cash price information, if available.

(ii) Material the provider timely previously submitted to CMS (including with respect to corrective actions and corrective action plans).

(iii) Material CMS used to monitor and assess the provider's compliance according to § 182.70(a)(2).

(3) The ALJ's consideration of evidence of acts other than those at issue in the instant case under § 150.445(g) of this title does not apply.

§ 182.90 Failure to request a hearing.

(a) If a provider does not request a hearing within 30 calendar days of the issuance of the notice of imposition of a civil monetary penalty described in § 182.70(b), CMS may impose the civil monetary penalty indicated in such notice without right of appeal in accordance with this part.

(1) If the 30th calendar day described paragraph (a) of this section is a weekend or a Federal holiday, then the timeframe is extended until the end of the next business day.

(2) [Reserved]

(b) The provider has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with § 150.405 of this title, unless the provider can show good cause, as determined at § 150.405(b) of this title, for failing to timely exercise its right to a hearing.

PART 182 [Transferred to Subchapter E]

■ 36. Effective January 1, 2021, transfer part 182 from subchapter E–T to subchapter E.

Subchapter E–T [Removed]

■ 37. Effective January 1, 2021, remove subchapter E–T.

[FR Doc. 2020–24332 Filed 11–2–20; 4:15 pm]

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FEDERAL REGISTER

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Part III

The President

Presidential Determination No. 2020–12 of September 28, 2020—Presidential Determination With Respect to the Efforts of Foreign Governments Regarding Trafficking in Persons
Memorandum of October 26, 2020—Certification Pursuant to Section 6(E) of the Comprehensive Peace in Sudan Act of 2004 (Public Law 108–497), as Amended by the Darfur Peace and Accountability Act of 2006 (Public Law 109–344)
Presidential Determination No. 2021–02 of October 27, 2020—Presidential Determination on Refugee Admissions for Fiscal Year 2021

Federal Register
Vol. 85, No. 216
Friday, November 6, 2020

Presidential Documents

Title 3—

The President

Presidential Determination No. 2020–12 of September 28, 2020

Presidential Determination With Respect to the Efforts of Foreign Governments Regarding Trafficking in Persons

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107) (the ''Act''), as amended, I hereby determine as follows:

As provided for in section 110(d)(1)(A)(i) of the Act, and subject to the determinations below regarding assistance related to the COVID–19 pandemic, the Ebola virus disease, and meeting minimum standards for the elimination of trafficking in persons, I determine that the United States will not provide nonhumanitarian, nontrade-related assistance to the Governments of Burundi, China, Cuba, the Democratic People's Republic of Korea (DPRK), Eritrea, Iran, Nicaragua, Russia, and Syria for Fiscal Year (FY) 2021 until such governments comply with the Act's minimum standards or make significant efforts to bring themselves into compliance with the minimum standards.

As provided for in section 110(d)(1)(A)(ii) of the Act, and subject to the determinations below regarding assistance related to the COVID–19 pandemic, the Ebola virus disease, and meeting minimum standards for the elimination of trafficking in persons, I determine that the United States will not provide nonhumanitarian, nontrade-related assistance to, or allow funding for participation in educational and cultural exchange programs by officials or employees of, the Governments of Cuba, the DPRK, and Syria for FY 2021 until such governments comply with the Act's minimum standards for the elimination of trafficking or make significant efforts to bring themselves into compliance with the minimum standards.

As provided for in section 110(d)(1)(B) of the Act, and subject to the determinations below regarding assistance related to the COVID–19 pandemic, the Ebola virus disease, and meeting minimum standards for the elimination of trafficking in persons, I hereby instruct the United States Executive Director of each multilateral development bank, as defined in the Act, and of the International Monetary Fund to vote against and use best efforts to deny any loan or other utilization of the funds of the respective institution (other than for humanitarian assistance; for trade-related assistance; or for development assistance that directly addresses basic human needs, is not administered by the government of such country, and confers no benefit to that government) for the Governments of Burundi, China, Comoros, Cuba, the DPRK, Eritrea, Iran, Nicaragua, Russia, and Syria for FY 2021 until such governments comply with the Act's minimum standards or make significant efforts to bring themselves into compliance with the minimum standards.

Consistent with section 110(d)(4) of the Act, I determine that a partial waiver to allow assistance described in section 110(d)(1) of the Act for programs, projects, activities, and assistance to respond to the threat posed by the COVID–19 pandemic would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, I determine that a partial waiver to allow assistance described in section 110(d)(1) of the Act for programs, projects, activities, and assistance to respond to the threat posed by the Ebola virus disease would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, I determine that a partial waiver to allow assistance described in section 110(d)(1) of the Act for programs, projects, activities, and assistance designed to meet the minimum standards for the elimination of trafficking in persons would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, I determine that a partial waiver to allow assistance described in section 110(d)(1)(A)(i) of the Act with respect to Burma—with the exception of Global Health Programs (GHP), Peacekeeping Operations (PKO), Foreign Military Financing (FMF), International Military Education and Training (IMET), Foreign Military Sales (FMS), and Excess Defense Articles—would promote the purposes of the Act or is otherwise in the national interest of the United States;

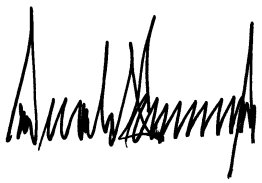
Consistent with section 110(d)(4) of the Act, I determine that a partial waiver to allow IMET assistance with respect to Comoros would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, I determine that a partial waiver to allow PKO and Development Assistance with respect to South Sudan would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, I determine that the provision of all programs, projects, and activities described in section 110(d)(1)(A)(i) of the Act with respect to the Governments of Afghanistan, Algeria, Belarus, Lesotho, Papua New Guinea, Turkmenistan, and Venezuela would promote the purposes of the Act or is otherwise in the national interest of the United States; and

Consistent with section 110(d)(4) of the Act, I determine that providing the assistance described in section 110(d)(1)(B) of the Act to Afghanistan, Algeria, Belarus, Burma, Lesotho, Papua New Guinea, South Sudan, Turkmenistan, and Venezuela would promote the purposes of the Act or is otherwise in the national interest of the United States.

You are authorized and directed to submit this determination, the certification required by section 110(e) of the Act, and the Memorandum of Justification, on which I have relied, to the Congress, and to publish the determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 28, 2020

[FR Doc. 2020–24894
Filed 11–5–20; 11:15 am]
Billing code 4710–10–P

Presidential Documents

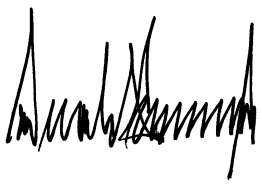
The President

Memorandum of October 26, 2020

Certification Pursuant to Section 6(E) of the Comprehensive Peace in Sudan Act of 2004 (Public Law 108–497), as Amended by the Darfur Peace and Accountability Act of 2006 (Public Law 109–344)

Pursuant to section 6(e) of the Comprehensive Peace in Sudan Act of 2004 (Public Law 108–497), as amended by the Darfur Peace and Accountability Act of 2006 (Public Law 109–344), I hereby certify that the Government of Sudan has taken demonstrable steps to: (A) ensure that the armed forces of Sudan and any associated militias are not committing atrocities or obstructing human rights monitors or the provision of humanitarian assistance; (B) demobilize and disarm militias supported or created by the Government of Sudan; (C) allow full and unfettered humanitarian assistance to all regions of Sudan, including the Darfur region; (D) allow an international commission of inquiry to conduct an investigation of atrocities in the Darfur region, in a manner consistent with United Nations Security Council Resolution 1564 (September 18, 2004), to investigate reports of violations of international humanitarian law and human rights law in the Darfur region by all parties, to determine also whether or not acts of genocide have occurred and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable; (E) cooperate fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan; (F) permit the safe and voluntary return of displaced persons and refugees to their homes and rebuild the communities destroyed in the violence; and (G) implement the final agreements reached in the Naivasha peace process and install a new coalition government based on the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004.

The Secretary of State is authorized and directed to publish this Certification in the *Federal Register*, along with the accompanying Memorandum of Justification.



THE WHITE HOUSE,
October 26, 2020.

Presidential Documents

MEMORANDUM OF JUSTIFICATION REGARDING THE PRESIDENT'S CERTIFICATION UNDER SECTION 6(E) OF THE COMPREHENSIVE PEACE IN SUDAN ACT OF 2004 (Pub.L. 108–497), AS AMENDED BY THE DARFUR PEACE AND ACCOUNTABILITY ACT OF 2006 (Pub.L. 109–344)

Pursuant to section 6(e) of the Comprehensive Peace in Sudan Act of 2004 (Pub.L. 108–497), as amended by the Darfur Peace and Accountability Act of 2006 (Pub.L. 109–344), the President has certified that the Government of Sudan has taken demonstrable steps in accordance with section 12(a)(2) of the Sudan Peace Act of 2002, as amended, (Pub.L. 107–245). While the Administration will continue to press for further progress, including with regard to human rights-related concerns involving the security services, the justification for this certification, set forth below, represents a series of demonstrable steps meeting the requirements of that provision.

The Government of Sudan, most recently under the leadership of the Civilian-Led Transitional Government (CLTG) has taken the following demonstrable steps, among others, to ensure that the armed forces of Sudan and any associated militias are not committing atrocities or obstructing human rights monitors or the provision of humanitarian assistance:

- The CLTG, through the adoption of a Constitutional Declaration on August 17, 2019, has committed to respect and promote human rights and fundamental freedoms; address the root causes of conflict; establish accountability mechanisms for the security forces; and conduct security sector reform.

- The CLTG signed an agreement on September 25, 2019, with the Office of the UN High Commissioner for Human Rights to allow the opening of a UN Human Rights Office in Khartoum and field offices in Darfur, Blue Nile, Southern Kordofan, and East Sudan. The Khartoum office was subsequently opened.

- In September 2019, the Minister of Labor and Social Affairs instructed all Sudanese government entities to remove all restrictions on humanitarian access, including any pre-approval requirements for travel.

The Government of Sudan has taken the following demonstrable steps, among others, to demobilize and disarm militias supported or created by the Government of Sudan:

- On July 14, 2011, the Government of Sudan signed a protocol agreement committing itself to the terms of the Doha Document for Peace in Darfur, which included a commitment on the part of the government to disarm and disband all militia groups in Darfur.

- In accordance with the Doha Document for Peace in Darfur, the Government of Sudan worked with the United Nations—African Union Hybrid Operation in Darfur to demobilize over 10,000 former combatants from across Darfur.

- The Government of Sudan collaborated with the United Nations—African Union Hybrid Operation in Darfur in a region-wide arms collection campaign in 2018 in line with the Doha Document for Peace in Darfur.

- The Government of Sudan created the Rapid Support Forces (RSF)—a Government of Sudan security force—into which elements of former militias supported or created by the Government of Sudan were incorporated. In 2017, the Rapid Support Forces Act integrated the RSF into the Sudan Armed Forces. The Constitutional Declaration, signed in August 2019, declares the Sovereignty Council the Supreme Commander of the RSF and describes it and the Sudanese Armed Forces (SAF) as ''national military institutions.''

- The Government of Sudan has ceased support to certain private militias, and we have no evidence of ongoing support.

The Government of Sudan has taken the following demonstrable steps, among others, to allow full and unfettered humanitarian assistance to all regions of Sudan, including the Darfur region:

- In September 2019, Prime Minister Abdalla Hamdok agreed with the United Nations that his government would ensure unfettered humanitarian access.

- The CLTG has issued directives to provide unfettered humanitarian access to all parts of Sudan. In October 2019, the Humanitarian Aid Commission informed the humanitarian community that all restrictions on humanitarian access had been lifted. The Humanitarian Aid Commission issued instructions to this effect to relevant local and provincial entities.

- Humanitarian groups report that these directives have had the net effect of easing significantly their access to many parts of Sudan, including in Darfur, and have allowed them to access areas of the country that were previously inaccessible to them.

- Prime Minister Hamdok worked with humanitarian agencies to obtain permission for the first cross-border deliveries of humanitarian assistance into armed opposition-held areas of South Kordofan.

- The CLTG has prioritized negotiation of humanitarian access in its ongoing discussions with armed opposition groups.

The Government of Sudan has taken the following demonstrable steps, among others, to allow an international commission of inquiry to conduct an investigation of atrocities in the Darfur region, in a manner consistent with United Nations Security Council Resolution 1564 (September 18, 2004), to investigate reports of violations of international humanitarian law and human rights law in the Darfur region by all parties, to determine also whether or not acts of genocide have occurred and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable:

- The Government of Sudan facilitated the work of the International Commission of Inquiry on Darfur between November 2004 and January 2005, including through regular meetings with the Commission, permitting the Commission to travel and hold meetings in Khartoum and Darfur, and permitting the work of the Commission's investigative team in Darfur from November 2004 to January 2005. The International Commission of Inquiry on Darfur presented its final report to the UN Secretary General on January 25, 2005.

- The CLTG, through the adoption of a Constitutional Declaration on August 17, 2019, has committed to holding accountable under the law those responsible for all crimes committed against the Sudanese people since 1989, and beginning the implementation of measures of transitional justice and accountability for war crimes and crimes against humanity, including bringing perpetrators before national and international courts under the principle of no impunity.

The Government of Sudan has taken the following demonstrable steps, among others, to cooperate fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan:

- The Government of Sudan engages regularly with the United Nations—African Union Hybrid Assistance Mission in Darfur (UNAMID) and is working to facilitate its operations.

- The CLTG is cooperating with the United Nations, the African Union, and the other stakeholders in the deployment of the UN Integrated Assistance Mission in Sudan, (UNITAMS), the follow-on UN Special Political Mission that will likely replace UNAMID.

The Government of Sudan has taken the following demonstrable steps, among others, to permit the safe and voluntary return of displaced persons and refugees to their homes and rebuild the communities destroyed in the violence:

- On July 14, 2011, the Government of Sudan signed a protocol agreement committing itself to the terms of the Doha Document for Peace in Darfur, which included a commitment on the part of the government to facilitate voluntary return of displaced persons and refugees to their homes, to restore their property, and to compensate them for any losses.

- The CLTG, through the adoption of a Constitutional Declaration on August 17, 2019, has committed to work to address the root causes of conflict and marginalization; to include as fundamental issues in peace negotiations with the armed opposition groups the compensation and return of property to victims, the reconstruction of areas affected by war, and the voluntary return and sustainable solutions for issues of IDPs and refugees; and to work to achieve comprehensive agreements with armed opposition groups.

- The Government of Sudan, the Government of Chad, and UNHCR signed two Tripartite Agreements in April 2018, the first of which establishes the modalities for the voluntary return of Chadian refugees in Sudan, and the second for the voluntary return of Sudanese refugees in Chad.

- The CLTG launched negotiations with armed opposition groups of the Sudan Revolutionary Front in October 2019 and has finalized seven of eight protocols of a final peace agreement and continues to work towards a comprehensive peace agreement with other armed opposition groups.

- According to a 2020 OCHA report, nearly 300,000 Sudanese refugees have returned to Sudan.

The Government of Sudan has taken the following demonstrable steps, among others, to implement the final agreements reached in the Naivasha peace process and install a new coalition government based on the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004:

- The Government of Sudan signed a Comprehensive Peace Agreement (CPA) with the Sudan People's Liberation Movement/Army (SPLM/A) on January 9, 2005.

- The Government of Sudan formed the Government of National Unity in September 2005, followed by a January 2011 referendum, leading to the creation of the independent nation of South Sudan on July 9, 2011.

[FR Doc. 2020–24901
Filed 11–5–20; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2021–02 of October 27, 2020

Presidential Determination on Refugee Admissions for Fiscal Year 2021

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, in accordance with section 207 of the Immigration and Nationality Act (the ''Act'') (8 U.S.C. 1157), after appropriate consultations with the Congress, and consistent with the Report on Proposed Refugee Admissions for Fiscal Year (FY) 2021 submitted to the Congress on September 30, 2020, I hereby determine and authorize as follows:

The admission of up to 15,000 refugees to the United States during FY 2021 is justified by humanitarian concerns or is otherwise in the national interest. This refugee admissions ceiling incorporates more than 6,000 unused places from the FY 2020 refugee admissions ceiling that might have been used if not for the COVID–19 pandemic.

Refugee admissions during FY 2021 shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following allocations:

1. Refugees who:

• have been persecuted or have a well-founded fear of persecution on account of religion;

or

• are within a category of aliens established under subsections (b) and (c) of section 599D of Title V, Public Law 101–167, as amended (the Lautenberg and Specter Amendments) 5,000

2. Refugees who are within a category of aliens listed in section 1243(a) of the Refugee Crisis in Iraq Act of 2007, Title XII, Div. A, Public Law 110–181, as amended 4,000

3. Refugees who are nationals or habitual residents of El Salvador, Guatemala, or Honduras 1,000

4. Other refugees in the following groups:

• those referred to the United States Refugee Admissions Program (USRAP) by a United States Embassy in any location;

• those who will be admitted through a Form I–730 following-to-join petition or who gain access to the USRAP for family reunification through the P–3 process;

• those currently located in Australia, Nauru, or Papua New Guinea who gain access to the USRAP pursuant to an arrangement between the United States and Australia;

• those who are nationals or habitual residents of Hong Kong, Venezuela, or Cuba; and

• those in the USRAP who were in ''Ready for Departure'' status as of September 30, 2019. 5,000

Total refugee admissions ceiling: 15,000

Additionally, after consultation with the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Attorney General,

and upon notification to the appropriate committees of the Congress, you are further authorized to transfer unused admissions from a particular allocation above to one or more other allocations, if there is a need for greater admissions for the allocation to which the admissions will be transferred.

Additionally, I specify that persons from certain high-risk areas of terrorist presence or control, including Somalia, Syria, and Yemen, shall not be admitted as refugees, except those refugees of special humanitarian concern: (1) who have been persecuted or have a well-founded fear of persecution on account of religion; (2) were referred to the USRAP by a United States Embassy in any location; or (3) who will be admitted through a Form I–730 following-to-join petition or who gain access to the USRAP for family reunification through the P–3 process. The threat to United States national security and public safety posed by the admission of refugees from high-risk areas of terrorist presence or control is significant and cannot be fully mitigated at this time.

Consistent with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), and after appropriate consultation with the Congress, I also specify that, for FY 2021, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. persons in Cuba;

b. persons in Eurasia and the Baltics;

c. persons in Iraq;

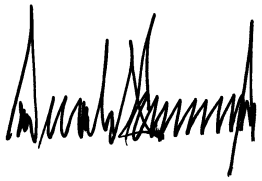
d. persons in Honduras, Guatemala, and El Salvador; and

e. in exceptional circumstances, persons identified by a United States Embassy in any location.

Consistent with section 412(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1522(a)(2)), I also specify that, for FY 2021, newly admitted refugees should be placed, to the maximum extent possible, in States and localities that have clearly expressed their willingness to receive refugees under the Department of State's Reception and Placement Program. Such cooperation ensures that refugees are resettled in communities that are eager and equipped to support their successful integration into American society and the labor force.

Consistent with section 2(b)(2) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(b)), I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States, and I accordingly designate such persons for this purpose.

You are authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, October 27, 2020

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Billing code 4710–10–P

Reader Aids

Federal Register

Vol. 85, No. 216

Friday, November 6, 2020

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

69119–69464 2
69465–70026 3
70027–70414 4
70415–70954 5
70955–71222 6

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10107 70027
10108 70415
10109 70417
10110 70419
10111 70421
10112 70423
10113 70425
10114 70427
10115 70429

Executive Orders:
13958 70951

Administrative Orders:
Memorandums:
Memorandum of October 26, 2020 71213
Memorandum of October 31, 2020 70039
Notices:
Notice of October 30, 2020 69463
Presidential Determinations:
No. 2020–12 of September 28, 2020 71209
No. 2021–02 of September 27, 2020 71219

5 CFR

Proposed Rules:
831 70502
842 70502

7 CFR

205 70431
284 70043

8 CFR

1001 69465
1003 69465
1292 69465

Proposed Rules:
214 69236

10 CFR

2 70435

Proposed Rules:
2 70507
53 71002
430 70508

12 CFR

615 70955
1003 69119
Ch. X 69482

Proposed Rules:
4 70512
262 70512
302 70512
791 70512
1074 70512
Ch. X 71003

13 CFR

124 69120
125 ..... 69120, 70050
129 69120

14 CFR

39 ..... 69126, 69129, 69131, 69134, 69138, 69140, 69142, 69144, 69485, 69488, 69492, 69493, 69496, 70051, 70439, 70442, 70955
71 ..... 69147, 69148
97 ..... 69149, 69151

Proposed Rules:
27 69265
39 ..... 69267, 69269, 69272, 69276, 69519, 69522, 70087, 70523, 70526
71 ..... 69279, 69281, 70089, 70092, 70093, 70096, 70532, 70534

15 CFR

Proposed Rules:
774 71012

17 CFR

23 69498
232 69499
240 ..... 70240, 70898
249 70898

Proposed Rules:
23 70536
200 70716
230 70716
239 70716
240 ..... 70536, 70716
270 70716
274 70716

20 CFR

655 70445

21 CFR

1301 69153
1306 69153

Proposed Rules:
6 70096
1300 69282
1301 69282

26 CFR

1 ..... 69500, 70958
54 71142

Proposed Rules:
54 71016

28 CFR
0.....69465

29 CFR
1695.....69167
2590.....71142

30 CFR
948.....70972

31 CFR
33.....71142

32 CFR
2402.....70054

33 CFR
165.....69172
Proposed Rules:
165.....69299, 69301

34 CFR
75.....70975
76.....70975
106.....70975
606.....70975
607.....70975
608.....70975
609.....70975

36 CFR
1.....69175
4.....69175
Proposed Rules:
7.....71017
222.....69303

37 CFR
6.....69501
Proposed Rules:
210.....70544

38 CFR
Proposed Rules:
17.....71020
70.....70551

39 CFR
3040.....70477

40 CFR
9.....69189
52.....69504, 70483
60.....70487
63.....69508, 70487
122.....69189
123.....69189
127.....69189
180 .....69512, 70062, 70494, 70497, 70976, 70997
403.....69189
503.....69189
Proposed Rules:
52 .....69307, 70554, 71022, 71023
81.....71023
271.....70558

42 CFR
409.....70298
410.....70298, 71142
411.....71142
414.....70298, 71142
417.....71142
424.....70298
433.....71142
484.....70298
510.....71142
Proposed Rules:
1.....70096
100.....71046
404.....70096
414.....70358
600.....69525

43 CFR
8340.....69206

45 CFR
147.....71142
155.....71142
170.....70064
171.....70064
182.....71142
Proposed Rules:
6.....70096
1635.....70564

47 CFR
2.....69515
9.....70500
90.....69515
97.....69515
Proposed Rules:
73.....69311, 70569

48 CFR
Proposed Rules:
9904.....70572

49 CFR
299.....69700
572.....69898
Proposed Rules:
192.....70124
195.....70124
571.....69388

50 CFR
17.....69778
27.....69223
216.....69515
622.....70085
679.....69517
Proposed Rules:
17.....69540
648.....70573

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 3, 2020

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