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Federal Register

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 37

[Docket No. DHS–2021–0019]

RIN 1601–AB03

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes

AGENCY: Office of the Secretary, DHS.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule delays the date for card-based enforcement of the REAL ID regulations from October 1, 2021 until May 3, 2023. Beginning on that date, federal agencies may not accept a state-issued driver's license or identification card for official purposes from any individual unless such license or card is a REAL ID compliant driver's license or identification card issued by a state that DHS has determined is in full compliance as defined under this part. The regulations also permit federal agencies to accept for official purposes non-compliant driver's licenses and identification cards until September 30, 2021. This rule also extends that date, authorizing federal agencies to continue to accept non-compliant driver's licenses and identification cards until the end of May 2, 2023.

DATES: This rule is effective on May 3, 2021. Interested persons are invited to submit comments before the end of July 2, 2021.

ADDRESSES: Interested persons may comment on any aspect of this rulemaking rule by submitting written comments via the *Federal e-Rulemaking Portal* at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Director, REAL ID Program Office; telephone (202) 447–3274; email steve.yonkers@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

DHS invites interested persons to comment on any aspect of this rulemaking rule by submitting written comments via the *Federal e-Rulemaking Portal* at <https://www.regulations.gov>. Use the Search bar to find the docket, using the docket number associated with this rulemaking. Comments received, including any personal information you have provided, may be posted without change. Whenever possible, please provide citations and copies of any relevant studies or reports on which you relies, as well as any additional data which support your comment. It is also helpful to explain the basis and reasoning underlying any views expressed.

II. Background

A. The REAL ID Act, Implementing Regulations, and Phased Enforcement

The REAL ID Act (the Act) sets minimum security requirements for the issuance and production of driver's licenses and identification cards issued by the states, territories, and the District of Columbia in order for federal agencies to accept these documents for official purposes.¹ Official purposes include: (1) Accessing federal facilities, (2) boarding federally regulated commercial aircraft, (3) entering nuclear power plants, and (4) any other purposes that the Secretary of Homeland Security shall determine.²

On January 29, 2008, DHS published a final rule implementing the Act's requirements.³ The regulation includes both a deadline for state compliance with the REAL ID requirements and a deadline by which individuals must obtain a REAL ID compliant license or identification card in order to use that document for official purposes.⁴ DHS refers to these deadlines as “state-based” and “card-based” enforcement, respectively.

For state-based enforcement, the Act and regulation prohibit federal agencies from accepting licenses and cards

issued by states that are not compliant with the REAL ID standards as determined by DHS. On March 7, 2011, DHS changed the state-based enforcement deadline from May 11, 2011 to January 15, 2013.⁵

DHS then incrementally enforced this deadline through a phased-enforcement schedule, pursuant to which enforcement began at DHS headquarters, followed by enforcement at federal facilities and nuclear power plants.⁶ On January 8, 2016, DHS announced that the final phase of the enforcement schedule, applicable to individuals boarding federally-regulated commercial aircraft, would begin on January 22, 2018.⁷ Thus, since January 22, 2018, the Transportation Security Administration (TSA) has accepted driver's licenses and identification cards only if issued by compliant states (or states with an extension or under compliance review from DHS) at screening checkpoints.

Under existing regulations, card-based enforcement is scheduled to begin on October 1, 2021.⁸ Beginning on the card-based enforcement date, federal agencies are prohibited from accepting for official purposes a license or identification card issued by a state unless the license or card itself was issued in accordance with the REAL ID standards by a REAL ID compliant jurisdiction.

In addition to compliant licenses and identification cards, states may issue, to individuals who are unable or unwilling to present the documents and information necessary to obtain a REAL ID compliant license, licenses and cards that are not acceptable by federal agencies for official purposes. These non-compliant licenses and cards must (1) clearly state that the card is not acceptable for official purposes, and (2) have a unique design or color indicator that clearly distinguishes them from compliant licenses and identification cards.⁹ The REAL ID regulations

⁵ 76 FR 12269 (Mar. 7, 2011) (codified as amended at 6 CFR 37.51(a)).

⁶ Cf. 6 CFR 37.51(a); DHS Releases Phased Enforcement Schedule for REAL ID (Dec. 20, 2013), available at <https://www.dhs.gov/news/2013/12/20/dhs-releases-phased-enforcement-schedule-real-id>.

⁷ See Statement By Secretary Jeh C. Johnson on the Final Phase of REAL ID Act Implementation (Jan. 8, 2016), available at <https://www.dhs.gov/news/2016/01/08/statement-secretary-jeh-c-johnson-final-phase-real-id-act-implementation>.

⁸ 6 CFR 37.5(b).

⁹ 6 CFR 37.71; REAL ID Act section 202(d)(11).

¹ Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109–13, Div. B, title II, §§ 201 to 207, May 11, 2005, as amended (codified at 49 U.S.C. 30301 note).

² *Id.*

³ See 73 FR 5272 (Jan. 29, 2008) (codified as amended at 6 CFR part 37).

⁴ 6 CFR 37.51(a) and 37.5.

authorize, but do not require, federal agencies to accept these non-compliant cards until the end of May 2, 2023.¹⁰

B. Progress Towards Full Implementation

Since its enactment in 2005, DHS has worked with the states to implement the requirements of the REAL ID Act. DHS has provided funding, technical assistance, outreach, and engagement. DHS has awarded over \$263 million in grant funding to assist in enhancements to driver's license security programs.¹¹ Additionally, technical infrastructure to support systems to verify applicant information is being used by the states, which is a key security component of the Act and regulation. DHS, the states, and other stakeholders have conducted broad outreach and engagement to inform the public of REAL ID requirements and upcoming enforcement deadlines. A central and continuing goal has been to simplify the process and to make the various requirements easier to navigate, with the aim of reducing all relevant burdens and of promoting equity.¹²

These efforts have yielded significant progress towards full REAL ID implementation. Fifty-five of the 56 jurisdictions subject to REAL ID have achieved compliance with the REAL ID standards and are currently issuing REAL ID-compliant licenses and identification cards. Based on REAL ID data compiled by compliant states, DHS estimates that compliant states, territories and the District of Columbia have issued approximately 119 million compliant licenses and cards, which represent approximately 43 percent of the population eligible for these documents.¹³ Data from the states also indicates that states have issued approximately 90 million non-compliant marked licenses and identification cards and approximately 64 million individuals still have legacy licenses without any markings that were issued before a state's compliance determination. At the current 0.5 percent REAL ID issuance rate, DHS estimates that approximately 46 percent

of the population eligible for a REAL ID license will have one by the current October 1, 2021 full enforcement date. The remainder of the population would need another acceptable form of identification, where identification is required for REAL ID official purposes, including for use as identification at TSA airport security checkpoints.¹⁴

DHS has increased its level of outreach and engagement to the public and other REAL ID stakeholders, including airlines, airports, and others in the travel industry. Through these engagements, DHS has received useful feedback regarding the challenges of fully implementing REAL ID ahead of the October 1, 2021, card-based enforcement deadline.

DHS also has been working with the states and other stakeholders to identify ways to modernize the REAL ID application process and to reduce complexity and burdens. For example, DHS issued a request for information (RFI) on November 7, 2019, seeking input from the public, states, private sector entities and other interested stakeholders on ways to improve, streamline, and reduce burdens associated with the current application process through the use of new capabilities and technologies in addition to other modifications to existing application requirements.¹⁵ The RFI yielded more than 100 proposals that included suggestions for streamlining the application and issuance process by authorizing the submission of REAL ID applications and identity information through secure electronic or digital transmission methods. Following consideration of these proposals, DHS worked with Congress to enact the REAL ID Modernization Act, which includes a provision that would authorize states to accept REAL ID applicant information through electronic transmission methods following the issuance of regulations by DHS.¹⁶

¹⁴ Although a significant segment of the population may not currently possess a REAL ID, they may have other forms of identification acceptable for official purposes (e.g., a U.S. passport, U.S. passport card, or military identification).

¹⁵ 84 FR 60104 (Nov. 7, 2019). This RFI is unrelated to a subsequent RFI issued on April 19, 2021, which seeks information to inform a rulemaking to amend the REAL ID implementing regulation, 6 CFR part 37, to address security standards and requirements for the issuance of mobile or digital driver's licenses and identification cards to enable Federal agencies to accept these credentials for official purposes as defined in the REAL ID Act and regulation. 86 FR 20320 (Apr. 19, 2021).

¹⁶ The REAL ID Modernization Act, Title X, Div. U of the Consolidated Appropriations Act, 2021, Public Law 116–260 (Dec. 27, 2020).

C. Coronavirus Disease 2019 (COVID-19)

Coronavirus Disease 2019 (COVID-19), a communicable disease caused by a new (novel) coronavirus named SARS-CoV-2, is a respiratory disease that can cause fever, cough, and difficulty breathing, with reported illnesses ranging from mildly symptomatic to severe illness and death. DHS continues to monitor and respond to the COVID-19 pandemic. As of April 19, 2021, there have been over 140 million confirmed cases globally, with over 3 million confirmed deaths.¹⁷ In the United States, there have been over 31 million reported cases with over 563,000 reported deaths.¹⁸

On January 31, 2020, the Secretary of the Department of Health and Human Services declared a nationwide “public health emergency” under section 319 of the Public Health Service Act, 42 U.S.C. 274d, as a result of confirmed cases of COVID-19.¹⁹ On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic. On March 13, 2020, the President determined that the ongoing COVID-19 pandemic is of sufficient severity and magnitude to warrant an emergency determination under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207. In addition, on March 13, 2020, the President declared a national emergency under sections 201 and 301 of the National Emergencies Act, 50 U.S.C. 1601 *et seq.*²⁰ More recently, on January 27, 2021, the Acting Secretary of Homeland Security issued a Secretarial Determination of National Emergency. Moreover, state and local jurisdictions throughout the United States continue to engage in various social distancing practices and other efforts to reduce and mitigate against further spread of COVID-19, including closing or reducing service times at government offices and by accepting in-person visits by appointment only.

¹⁷ WHO, Coronavirus disease 2019 (COVID-19) Weekly Epidemiological Update (March 3, 2021), available at <https://covid19.who.int>.

¹⁸ CDC, COVID Data Tracker (accessed March 3, 2021), available at <https://covid.cdc.gov/covid-data-tracker/>.

¹⁹ HHS, “Determination that a Public Health Emergency Exists,” <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

²⁰ Proclamation 9994 of Mar. 13, 2020 on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

¹⁰ See 84 FR 55017 (Oct. 15, 2019) and 85 FR 23205 (Apr. 27, 2020) (codified at 6 CFR 37.5) (clarifying that the October 1, 2021 deadline by which Federal agencies may no longer accept non-compliant driver's licenses and identification cards for official purposes applies to all non-compliant cards, including state-issued driver's licenses and identification cards marked to indicate that they may not be used for official Federal purposes).

¹¹ Secure Identification State Progress Report-Fiscal Year 2012 Report to Congress.

¹² See E.O. 13707, Using Behavioral Science Insights to Better Serve the American People, 80 FR 56365 (published Sept. 18, 2015).

¹³ Based on REAL ID issuance data voluntarily submitted monthly to DHS by the compliant states.

D. DHS Final Rule Extending the Card-Based Deadline

Considering the impact of the COVID-19 pandemic on state and local government operations and the desire to reduce further spread by encouraging continued social distancing, in April 2020 DHS issued a final rule extending the REAL ID card-based enforcement date for one year until October 1, 2021.²¹ DHS took this action to assist the states in avoiding in-person driver's licensing agency visits and in recognition of the fact that, as a result of the pandemic, most if not all states severely curtailed driver's licensing agency operations and service hours and authorized extensions for expiring driver's licenses.

III. Further Extending the Card-Based Enforcement Deadline

Notwithstanding the substantial progress made towards full REAL ID implementation, the Secretary recognizes that significant challenges persist with full REAL ID enforcement in the current environment. The outbreak and continued spread of COVID-19 has significantly disrupted the daily lives and activities of all Americans. It has shifted priorities and severely curtailed daily interactions. In important respects, it has had an especially severe impact on low-income communities, those in ill health, and the elderly. To limit exposure and reduce the chance of transmission, state and local government offices continue to operate at limited capacity, provide remote services, or, in some cases, remain temporarily closed to the public.²² Additionally, some states continue to authorize grace periods and extensions to those with expiring licenses as a further way to avoid in-person contact and mitigate risks to the health and safety of the public and state government employees.

DHS recognizes the continuing impact these disruptions are creating on the ability of many individuals to obtain a REAL ID compliant license or identification card before October 1, 2021. DHS also recognizes that these disruptions have had a particularly severe effect on some vulnerable subpopulations. Moreover, the Secretary recognizes the importance of social distancing, and with the commitments to fairness and equity in mind,²³ is

taking this action to assure the public that there is no need to visit a state driver's licensing agency to obtain a REAL ID document at this time.

Accordingly, the Secretary is extending the date by which individuals must obtain a REAL ID license or identification card to use that document for official purposes until May 3, 2023. This extension is intended to provide sufficient time for DMVs across the country to fully reopen in-person services. A safe and sustained reopening of in-person services is necessary to meaningfully improve upon the current 0.5 percent REAL ID issuance rate. As noted above, at the current 0.5 percent REAL ID issuance rate, DHS estimates that approximately 46 percent of the population eligible for a REAL ID license will have one by the current October 1, 2021 full enforcement date. DHS believes that such an outcome would result in lengthy delays at airport security checkpoints and significant inconvenience to the traveling public.

Moreover, DHS anticipates that the additional time provided by this extension should be sufficient for states to implement and benefit from recent and potential future changes to the REAL ID issuance process. For instance, a provision of the REAL ID Modernization Act allows states to immediately stop requiring applicants to provide separate physical documentation of a Social Security account number. This flexibility, which would reduce the burden on applicants and may in some cases help applicants avoid return trips to the DMV, has yet to be implemented in all states. In addition, also consistent with the REAL ID Modernization Act, DHS is considering issuing regulations authorizing new procedures for the electronic presentation of documents, which may allow for a more rapid and socially distanced issuance process. DHS requires time to develop such regulations, and states would require time for implementation.

Finally, to avoid any confusion about the ability of federal agencies to continue to accept certain non-compliant licenses and identification cards issued under § 37.71, DHS also is extending the date by which federal agencies may continue to accept these licenses and identification cards for official purposes until the end of May 2, 2023. Although some agencies, including TSA, accept these licenses and identification cards for official

purposes, others may decide not to accept, or currently do not accept, non-compliant marked cards for official purposes. Individuals who need to visit a federal facility, building, or office should check in advance whether the agency requires identification for access purposes and, if they do, the forms of identification they accept.

IV. Regulatory Analysis

A. Administrative Procedure Act

DHS takes this action without prior notice and public comment, but welcomes comment on all aspects of the action.

Sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. 553) authorize agencies to dispense with certain rulemaking procedures when they find good cause to do so. Under section 553(b), the requirements of notice and opportunity to comment do not apply when the agency for good cause finds that these procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

This interim final rule recognizes the need to extend the card-based enforcement deadline in light of the significant disruption and uncertainty in government operations now being caused by the COVID-19 virus, as well as the need to encourage appropriate social distancing behavior. October 1, the previous deadline, is merely five months away, and a notice-and-comment process would mean continuing uncertainty for state and local governments, for airlines, for travelers, and for numerous others. As also noted, many state and local government offices are operating at limited capacity. Some of them are providing remote services; some of them are closed to the public. In addition, many states are continuing to curtail driver's licensing agency operations and service hours and have authorized extensions for expiring driver's licenses. These restrictions are making it unusually difficult for many people (especially those in certain regions or in vulnerable groups, including those who are in poor health) to do what is required to obtain REAL-ID.

In these circumstances, delaying the change to the regulation's enforcement date by first undergoing notice and comment would impede planning, would lead to undue uncertainty, and could produce serious unfairness. It would be contrary to the public interest,

²¹ 85 FR 23205 (Apr. 27, 2020).

²² Individuals should check with their state DMV for policies and guidance on license issuance and renewals and other services during the disruption caused by COVID-19.

²³ See E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the

Federal Government, 86 FR 7009 (published Jan. 25, 2021); E.O. 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (published Jan. 21, 2011).

as an expeditious regulatory announcement of the new deadline is necessary for state and individual planning purposes. These factors suggest that delays associated with notice and comment rulemaking would potentially undermine critical public health efforts at the federal, state, territorial, or local level. DHS therefore has good cause to bypass such procedures, while also welcoming comments on all aspects of this action.

B. Paperwork Reduction Act

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

C. Executive Orders 12866 and 13563 Assessment

This rule constitutes a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563, and therefore has been reviewed by the Office of Management and Budget (OMB). Executive Order 12866 defines “significant regulatory action” as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. DHS is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the urgent needs described above.

D. Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules. This rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. See 5 U.S.C. 603, 604.

E. Executive Order 13132 (Federalism)

A rule has federalism implications under Executive Order 13132, “Federalism,” if it has a substantial direct effect on state governments, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. DHS has analyzed this rule under that Order and has determined that although this rule affects the states, it does not impose substantial direct compliance costs or preempt state law. In fact, the rule is responsive to concerns expressed by state agencies regarding the upcoming deadlines. DHS has determined that the rule is consistent with Executive Order 13132.

F. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a state, local, or Tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. This rule will not result in such an expenditure.

G. Executive Order 13175 (Tribal Consultation)

This rule does not have Tribal Implications under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

H. Environment

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not

individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c).

The delay effectuated by this rule fits within categorical exclusion A3(a) “Promulgation of rules . . . of a strictly administrative or procedural nature.” Instruction Manual, Appendix A, Table 1. Furthermore, the rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the rule is categorically excluded from further NEPA review.

List of Subjects in 6 CFR Part 37

Document security, Driver’s licenses, Identification cards, Motor vehicle administrations, Physical security.

The Amendments

For the reasons set forth above, the Department of Homeland Security amends 6 CFR part 37 as follows:

PART 37—REAL ID DRIVER’S LICENSES AND IDENTIFICATION CARDS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

Subpart A—General

■ 2. In § 37.5, revise paragraphs (b) and (c) to read as follows:

§ 37.5 Validity periods and deadlines for REAL ID driver’s licenses and identification cards.

* * * * *

(b) On or after May 3, 2023, Federal agencies shall not accept a driver’s license or identification card for official purposes from any individual unless such license or card is a REAL ID–compliant driver’s license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(c) Through the end of May 2, 2023, Federal agencies may accept for official

purposes a driver's license or identification card issued under § 37.71. On or after May 3, 2023, Federal agencies shall not accept for official purposes a driver's license or identification card issued under § 37.71.

Alejandro N. Mayorkas,
Secretary.

[FR Doc. 2021-09219 Filed 4-30-21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 406

Office of the Secretary

14 CFR Part 383

Great Lakes St. Lawrence Seaway Development Corporation

33 CFR Part 401

Maritime Administration

46 CFR Parts 221, 307, 340, and 356

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, and 190

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, and 272

Federal Motor Carrier Safety Administration

49 CFR Part 386

National Highway Traffic Safety Administration

49 CFR Part 578

RIN 2105-AE99

Civil Penalty Amounts

AGENCY: Department of Transportation (DOT or the Department).

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2021 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In

addition, this rule amends the Federal Aviation Administration regulations to set forth the new civil penalties established in Division V, Title I of the Consolidated Appropriations Act, 2021. The rule also corrects a rounding error in an FAA penalty.

DATES: Effective May 3, 2021.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101-410, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114-74, 129 Stat. 599, codified at 28 U.S.C. 2461 note. The FCPIAA and the 2015 Act require Federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. The 2015 Act amended the formula and frequency of inflation adjustments. It required an initial catch-up adjustment in the form of an interim final rule, followed by annual adjustments of civil penalty amounts using a statutorily mandated formula. Section 4(b)(2) of the 2015 Act specifically directs that the annual adjustment be accomplished through final rule without notice and comment. This rule is effective immediately.

This rule also implements the authority to assess civil penalties for violations of requirements concerning certificates issued by the FAA and for interference with the duties of organization designation authorization unit members. These civil penalties were established in the Consolidated Appropriations Act, 2021, Public Law 116-260 (December 27, 2020), and are codified at 49 U.S.C. 44704 and 44742, respectively.

The Department's authorities over the specific civil penalty regulations being amended by this rule are provided in the preamble discussion below.

I. Background

On November 2, 2015, the President signed into law the 2015 Act, which amended the FCPIAA, to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires Federal agencies to: (1) Adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rule

(IFR); and (2) make subsequent annual adjustments for inflation.

The 2015 Act directed the Office of Management and Budget (OMB) to issue guidance on implementing the required annual inflation adjustment no later than December 15 of each year.¹ On December 23, 2020, OMB released this required guidance, in OMB Memorandum M-21-10, which provides instructions on how to calculate the 2021 annual adjustment. To derive the 2021 adjustment, the Department must multiply the maximum or minimum penalty amount by the percent change between the October 2020 Consumer Price Index for All Urban Consumers (CPI-U) and the October 2019 CPI-U. In this case, as explained in OMB Memorandum M-21-10, the percent change between the October 2020 CPI-U and the October 2019 CPI-U is 1.01182.

II. Issuance of a Final Rule

This final rule is being published without notice and comment and with an immediate effective date.

The 2015 Act provides clear direction for how to adjust the civil penalties, and clearly states at section 4(b)(2) that this adjustment shall be made "notwithstanding section 553 of title 5, United States Code." By operation of the 2015 Act, DOT must publish an annual adjustment by January 15 of every year, and the new levels take effect upon publication of the rule. In addition, as noted previously in the discussion of the authority for this rulemaking, Division V, Title I of the Consolidated Appropriations Act, 2021 provides explicit authority to assess civil penalties for violations of 49 U.S.C. 44704 and 44742. The rule also corrects a rounding error in an FAA penalty. DOT does not have discretion with regard to effectuating the updates resulting from the changes to its authority, and the mathematical correction simply fixes a *de minimis* error of \$3 for the maximum penalty.

Accordingly, DOT is publishing this final rule without prior notice and comment, and with an immediate effective date.

III. Discussion of the Final Rule

In 2016, OST and DOT's operating administrations with civil monetary penalties promulgated the "catch up" IFR required by the 2015 Act. All DOT operating administrations have already finalized their "catch up" IFRs and this rule makes the annual inflation adjustment required by the 2015 Act.

¹ 28 U.S.C. 2461 note.

The Department emphasizes that this rule adjusts penalties prospectively, and therefore the penalty adjustments made by this rule will apply only to violations that take place after this rule becomes

effective. This rule also does not change previously assessed or enforced penalties that DOT is actively collecting or has collected.

A. OST 2021 Adjustments

OST's 2021 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
General civil penalty for violations of certain aviation economic regulations and statutes.	49 U.S.C. 46301(a)(1)	\$34,777	\$35,188
General civil penalty for violations of certain aviation economic regulations and statutes involving an individual or small business concern.	49 U.S.C. 46301(a)(1)	1,530	1,548
Civil penalties for individuals or small businesses for violations of most provisions of Chapter 401 of Title 49, including the anti-discrimination provisions of sections 40127 and 41705 and rules and orders issued pursuant to these provisions.	49 U.S.C. 46301(a)(5)(A)	13,910	14,074
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41719 and rules and orders issued pursuant to that provision.	49 U.S.C. 46301(a)(5)(C)	6,955	7,037
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41712 or consumer protection rules and orders issued pursuant to that provision.	49 U.S.C. 46301(a)(5)(D)	3,478	3,519

B. FAA 2021 Adjustments

On December 27, 2020, a new statute amended 49 U.S.C. 44704 to add new civil penalty provisions. Subsection (d) imposes a penalty for a holder of a production certificate who knowingly presents a nonconforming aircraft for issuance of an initial airworthiness certificate.² Subsection (e) allows for the assessment of a civil penalty against an applicant for or holder of a type certificate for knowing violations of § 44704(e)(1)–(3).³ The maximum penalty amount for both of these violations is \$1,000,000. In accordance

with OMB Memorandum M–16–06, these penalty levels will not be adjusted because they have been in effect for less than a year.

The new statute also authorized civil penalties against individuals acting on behalf of an applicant for or holder of a type certificate for knowingly making a false statement with respect to any of the matters described in § 44704(e)(1)(A)–(E).⁴ Here, however, the statute used the preexisting civil penalty authority in 49 U.S.C. 46301 rather than creating a new maximum civil penalty. The adjustment of the

penalties in § 46301 thus covers this amendment to § 44704.

Moreover, the new law authorized civil penalties for any supervisor of an organization designation authorization (“ODA”) holder who interferes with any ODA unit member’s performance of authorized functions.⁵ This new law imposes the civil penalty under the authority of 49 U.S.C. 46301(a)(1), so the applicable maximum civil penalty is already included in the FAA’s adjustments in this final rule.

Other 2021 adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Violation of hazardous materials transportation law	49 U.S.C. 5123(a)(1)	\$83,439	\$84,425
Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	49 U.S.C. 5123(a)(2)	194,691	196,992
Minimum penalty for violation of hazardous materials transportation law relating to training.	49 U.S.C. 5123(a)(3)	502	508
Maximum penalty for violation of hazardous materials transportation law relating to training.	49 U.S.C. 5123(a)(3)	83,439	84,425
Operation of an unmanned aircraft or unmanned aircraft system equipped or armed with a dangerous weapon.	49 U.S.C. 44802 note	25,441	25,742
Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	49 U.S.C. 46301(a)(1)	34,777	35,188
Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)) ⁶ .	49 U.S.C. 46301(a)(1)	1,530	1,548
Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	49 U.S.C. 46301(a)(1)	1,530	1,548
Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	49 U.S.C. 46301(a)(5)(A)	13,910	14,074

² Public Law 116–260, 134 Stat. —, Div. V, Title I, Section 120 (Dec. 27, 2020).

³ Public Law 116–260, 134 Stat. —, Div. V, Title I, Section 105(a).

⁴ Public Law 116–260, 134 Stat. —, Div. V, Title I, Section 105(a).

⁵ Public Law 116–260, 134 Stat. —, Div. V, Title I, Section 107(a) (to be codified at 49 U.S.C. 44742).

⁶ Note that this entry and the entry immediately below correct a rounding error from DOT’s 2019 civil penalties adjustment rule. The 2020 penalty amounts are updated to \$1,530 from the \$1,527 specified in the 2020 adjustment.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Violation by an individual or small business concern related to the transportation of hazardous materials.	49 U.S.C. 46301(a)(5)(B)(i)	13,910	14,074
Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	49 U.S.C. 46301(a)(5)(B)(ii)	13,910	14,074
Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	49 U.S.C. 46301(a)(5)(B)(iii)	13,910	14,074
Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	49 U.S.C. 46301(a)(5)(B)(iv)	13,910	14,074
Individual who aims the beam of a laser pointer at an aircraft in the airspace jurisdiction of the United States, or at the flight path of such an aircraft.	49 U.S.C. 46301 note	26,614	26,929
Tampering with a smoke alarm device	49 U.S.C. 46301(b)	4,465	4,518
Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	49 U.S.C. 46302	24,252	24,539
Interference with cabin or flight crew	49 U.S.C. 46318	36,516	36,948
Permanent closure of an airport without providing sufficient notice	49 U.S.C. 46319	13,910	14,074
Operating an unmanned aircraft and in so doing knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort.	49 U.S.C. 46320	21,292	21,544
Violation of 51 U.S.C. 50901–50923, a regulation issued under these statutes, or any term or condition of a license or permit issued or transferred under these statutes.	51 U.S.C. 50917(c)	244,391	247,280

In addition to the civil penalties listed in the above charts, FAA regulations also provide for maximum civil penalties for violations of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.

Those civil penalties are identical to the civil penalties imposed under 49 U.S.C. 46301(a)(1) and (a)(5), which are detailed in the above chart, and therefore, the noise-level civil penalties will be adjusted in the same manner as

the § 46301(a)(1) and (a)(5) civil penalties.

C. NHTSA 2021 Adjustments

NHTSA's 2021 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Maximum penalty amount for each violation of: 49 U.S.C. 30112, 30115, 30117–30122, 30123(a), 30125(c), 30127, 30141–30147, 30166 or 31137, or a regulation prescribed under any of these sections.	49 U.S.C. 30165(a)(1), 30165(a)(3).	\$22,723	\$22,992
Maximum penalty amount for a related series of violations of: 49 U.S.C. 30112, 30115, 30117–30122, 30123(a), 30125(c), 30127, 30141–30147, 30166 or 31137, or a regulation prescribed under any of these sections.	49 U.S.C. 30165(a)(1), 30165(a)(3).	113,611,635	114,954,525
Maximum penalty per school bus related violation of 49 U.S.C. 30112(a)(1) or 30112(a)(2).	49 U.S.C. 30165(a)(2)(A)	12,919	13,072
Maximum penalty amount for a series of school bus related violations of 49 U.S.C. 30112(a)(1) or 30112(a)(2).	49 U.S.C. 30165(a)(2)(B)	19,378,412	19,607,465
Maximum penalty per violation for filing false or misleading reports ...	49 U.S.C. 30165(a)(4)	5,562	5,628
Maximum penalty amount for a series of violations related to filing false or misleading reports.	49 U.S.C. 30165(a)(4)	1,112,518	1,125,668
Maximum penalty amount for each violation of the reporting requirements related to maintaining the National Motor Vehicle Title Information System.	49 U.S.C. 30505	1,814	1,835
Maximum penalty amount for each violation of a bumper standard under 49 U.S.C. 32506.	49 U.S.C. 32507(a)	2,976	3,011
Maximum penalty amount for a series of violations of a bumper standard under 49 U.S.C. 32506.	49 U.S.C. 32507(a)	3,313,763	3,352,932
Maximum penalty amount for each violation of 49 U.S.C. 32308(a) related to providing information on crashworthiness and damage susceptibility.	49 U.S.C. 32308(b)	2,976	3,011
Maximum penalty amount for a series of violations of 49 U.S.C. 32308(a) related to providing information on crashworthiness and damage susceptibility.	49 U.S.C. 32308(b)	1,623,024	1,642,208
Maximum penalty for each violation related to the tire fuel efficiency information program.	49 U.S.C. 32308(c)	61,586	62,314
Maximum civil penalty for willfully failing to affix, or failing to maintain, the label required in 49 U.S.C. 32304.	49 U.S.C. 32309	1,814	1,835

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Maximum penalty amount per violation related to odometer tampering and disclosure.	49 U.S.C. 32709	11,125	11,256
Maximum penalty amount for a related series of violations related to odometer tampering and disclosure.	49 U.S.C. 32709	1,112,518	1,125,668
Maximum penalty amount per violation related to odometer tampering and disclosure with intent to defraud.	49 U.S.C. 32710	11,125	11,256
Maximum penalty amount for each violation of 49 U.S.C. 33114(a)(1)–(4).	49 U.S.C. 33115(a)	2,444	2,473
Maximum penalty amount for a related series of violations of 49 U.S.C. 33114(a)(1)–(4).	49 U.S.C. 33115(a)	610,979	618,201
Maximum civil penalty for violations of 49 U.S.C. 33114(a)(5)	49 U.S.C. 33115(b)	181,484	183,629
Maximum civil penalty for violations under 49 U.S.C. 32911(a) related to automobile fuel economy.	49 U.S.C. 32912(a)	42,530	43,280
Maximum civil penalty for a violation under the medium- and heavy-duty vehicle fuel efficiency program.	49 U.S.C. 32902	41,882	42,621

D. FMCSA 2021 Adjustments

FMCSA's civil penalties affected by this rule are all located in appendices A

and B to 49 CFR part 386. The 2021 adjustments to these civil penalties are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Appendix A II Subpoena	49 U.S.C. 525	\$1,112	\$1,125
Appendix A II Subpoena	49 U.S.C. 525	11,125	11,256
Appendix A IV (a) Out-of-service order (operation of CMV by driver)	49 U.S.C. 521(b)(7)	1,928	1,951
Appendix A IV (b) Out-of-service order (requiring or permitting operation of CMV by driver)	49 U.S.C. 521(b)(7))	19,277	19,505
Appendix A IV (c) Out-of-service order (operation by driver of CMV or intermodal equipment that was placed out of service)	49 U.S.C. 521(b)(7)	1,928	1,951
Appendix A IV (d) Out-of-service order (requiring or permitting operation of CMV or intermodal equipment that was placed out of service)	49 U.S.C. 521(b)(7)	19,277	19,505
Appendix A IV (e) Out-of-service order (failure to return written certification of correction)	49 U.S.C. 521(b)(2)(B)	964	975
Appendix A IV (g) Out-of-service order (failure to cease operations as ordered)	49 U.S.C. 521(b)(2)(F)	27,813	28,142
Appendix A IV (h) Out-of-service order (operating in violation of order)	49 U.S.C. 521(b)(7)	24,441	24,730
Appendix A IV (i) Out-of-service order (conducting operations during suspension or revocation for failure to pay penalties)	49 U.S.C. 521(b)(2)(A) and (b)(7))	15,691	15,876
Appendix A IV (j) (conducting operations during suspension or revocation)	49 U.S.C. 521(b)(7)	24,441	24,730
Appendix B (a)(1) Recordkeeping—maximum penalty per day	49 U.S.C. 521(b)(2)(B)(i)	1,292	1,302
Appendix B (a)(1) Recordkeeping—maximum total penalty	49 U.S.C. 521(b)(2)(B)(i)	12,919	13,072
Appendix B (a)(2) Knowing falsification of records	49 U.S.C. 521(b)(2)(B)(ii)	12,919	13,072
Appendix B (a)(3) Non-recordkeeping violations	49 U.S.C. 521(b)(2)(A)	15,691	15,876
Appendix B (a)(4) Non-recordkeeping violations by drivers	49 U.S.C. 521(b)(2)(A)	3,923	3,969
Appendix B (a)(5) Violation of 49 CFR 392.5 (first conviction)	49 U.S.C. 31310(i)(2)(A)	3,230	3,268
Appendix B (a)(5) Violation of 49 CFR 392.5 (second or subsequent conviction)	49 U.S.C. 31310(i)(2)(A)	6,460	6,536
Appendix B (b) Commercial driver's license (CDL) violations	49 U.S.C. 521(b)(2)(C)	5,833	5,902
Appendix B (b)(1): Special penalties pertaining to violation of out-of-service orders (first conviction)	49 U.S.C. 31310(i)(2)(A)	3,230	3,268
Appendix B (b)(1) Special penalties pertaining to violation of out-of-service orders (second or subsequent conviction)	49 U.S.C. 31310(i)(2)(A)	6,460	6,536
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (minimum penalty)	49 U.S.C. 521(b)(2)(C)	5,833	5,902
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (maximum penalty)	49 U.S.C. 31310(i)(2)(C)	32,297	32,679
Appendix B (b)(3) Special penalties pertaining to railroad-highway grade crossing violations	49 U.S.C. 31310(j)(2)(B)	16,743	16,941
Appendix B (d) Financial responsibility violations	49 U.S.C. 31138(d)(1), 31139(g)(1)	17,213	17,416
Appendix B (e)(1) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (transportation or shipment of hazardous materials)	49 U.S.C. 5123(a)(1)	83,439	84,425

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Appendix B (e)(2) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—minimum penalty.	49 U.S.C. 5123(a)(3)	502	508
Appendix B (e)(2): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—maximum penalty.	49 U.S.C. 5123(a)(1)	83,439	84,425
Appendix B (e)(3) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (packaging or container).	49 U.S.C. 5123(a)(1)	83,439	84,425
Appendix B (e)(4): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (compliance with FMCSRs).	49 U.S.C. 5123(a)(1)	83,439	84,425
Appendix B (e)(5) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (death, serious illness, severe injury to persons; destruction of property).	49 U.S.C. 5123(a)(2)	194,691	196,992
Appendix B (f)(1) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating (generally).	49 U.S.C. 521(b)(2)(F)	27,813	28,142
Appendix B (f)(2) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating (hazardous materials)—maximum penalty.	49 U.S.C. 5123(a)(1)	83,439	84,425
Appendix B (f)(2): Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating (hazardous materials)—maximum penalty if death, serious illness, severe injury to persons; destruction of property.	49 U.S.C. 5123(a)(2)	194,691	196,992
Appendix B (g)(1): Violations of the commercial regulations (CR) (property carriers).	49 U.S.C. 14901(a)	11,125	11,256
Appendix B (g)(2) Violations of the CRs (brokers)	49 U.S.C. 14916(c)	11,125	11,256
Appendix B (g)(3) Violations of the CRs (passenger carriers)	49 U.S.C. 14901(a)	27,813	28,142
Appendix B (g)(4) Violations of the CRs (foreign motor carriers, foreign motor private carriers).	49 U.S.C. 14901(a)	11,125	11,256
Appendix B (g)(5) Violations of the operating authority requirement (foreign motor carriers, foreign motor private carriers)—maximum penalty for intentional violation ⁷ .	49 U.S.C. 14901 note	15,299	15,480
Appendix B (g)(5) Violations of the operating authority requirement (foreign motor carriers, foreign motor private carriers)—maximum penalty for a pattern of intentional violations.	49 U.S.C. 14901 note	38,250	38,702
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—minimum penalty.	49 U.S.C. 14901(b)	22,251	22,514
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—maximum penalty.	49 U.S.C. 14901(b)	44,501	45,027
Appendix B (g)(7): Violations of the CRs (HHG carrier or freight forwarder, or their receiver or trustee).	49 U.S.C. 14901(d)(1)	1,673	1,693
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—minimum penalty for first violation.	49 U.S.C. 14901(e)	3,349	3,389
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services) subsequent violation.	49 U.S.C. 14901(e)	8,372	8,471
Appendix B (g)(10) Tariff violations	49 U.S.C. 13702, 14903	167,433	169,412
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—first violation.	49 U.S.C. 14904(a)	334	338
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—subsequent violations.	49 U.S.C. 14904(a)	418	423
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for first violation.	49 U.S.C. 14904(b)(1)	838	848
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for subsequent violations.	49 U.S.C. 14904(b)(1)	3,349	3,389
Appendix B (g)(13): Service from freight forwarder at less than rate in effect—maximum penalty for first violation.	49 U.S.C. 14904(b)(2)	838	848
Appendix B (g)(13): Service from freight forwarder at less than rate in effect—maximum penalty for subsequent violation(s).	49 U.S.C. 14904(b)(2)	3,349	3,389
Appendix B (g)(14): Violations related to loading and unloading motor vehicles.	49 U.S.C. 14905	16,743	16,941
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B (except 13901 and 13902(c))—minimum penalty.	49 U.S.C. 14901	1,112	1,125
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B—maximum penalty.	49 U.S.C. 14907	8,372	8,471
Appendix B (g)(17): Unauthorized disclosure of information	49 U.S.C. 14908	3,349	3,389
Appendix B (g)(18): Violation of 49 U.S.C. subtitle IV, part B, or condition of registration.	49 U.S.C. 14910	838	848
Appendix B (g)(21)(i): Knowingly and willfully fails to deliver or unload HHG at destination.	49 U.S.C. 14915	16,743	16,941
Appendix B (g)(22): HHG broker estimate before entering into an agreement with a motor carrier.	49 U.S.C. 14901(d)(2)	12,919	13,072

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Appendix B (g)(23): HHG transportation or broker services—registration requirement.	49 U.S.C. 14901 (d)(3)	32,297	32,679
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum penalty per day.	49 U.S.C. 521(b)(2)(E)	1,292	1,307
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum total penalty.	49 U.S.C. 521(b)(2)(E)	12,919	13,072
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—minimum penalty for first violation.	49 U.S.C. 524	2,226	2,252
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—maximum penalty for first violation.	49 U.S.C. 524	5,562	5,628
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—minimum penalty for subsequent violation(s).	49 U.S.C. 524	2,780	2,813
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—maximum penalty for subsequent violation(s).	49 U.S.C. 524	8,344	8,433
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for first violation.	49 U.S.C. 14906	2,226	2,252
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for subsequent violation(s).	49 U.S.C. 14906	5,562	5,628

E. FRA 2021 Adjustments

FRA's 2021 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Minimum rail safety penalty	49 U.S.C. ch. 213	\$908	\$919
Ordinary maximum rail safety penalty	49 U.S.C. ch. 213	29,707	30,058
Maximum penalty for an aggravated rail safety violation	49 U.S.C. ch. 213	118,826	120,231
Minimum penalty for hazardous materials training violations	49 U.S.C. 5123	502	508
Maximum penalty for ordinary hazardous materials violations	49 U.S.C. 5123	83,439	84,425
Maximum penalty for aggravated hazardous materials violations	49 U.S.C. 5123	194,691	196,992

F. PHMSA 2021 Adjustments

PHMSA's civil penalties affected by this rule for hazardous materials

violations are located in 49 CFR 107.329, appendix A to subpart D of 49 CFR part 107, and § 171.1. The civil penalties affected by this rule for

pipeline safety violations are located in § 190.223. PHMSA's 2021 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Maximum penalty for hazardous materials violation	49 U.S.C. 5123	\$83,439	\$84,425
Maximum penalty for hazardous materials violation that results in death, serious illness, or severe injury to any person or substantial destruction of property.	49 U.S.C. 5123	194,691	196,992
Minimum penalty for hazardous materials training violations	49 U.S.C. 5123	502	508
Maximum penalty for each pipeline safety violation	49 U.S.C. 60122(a)(1)	222,504	225,134
Maximum penalty for a related series of pipeline safety violations	49 U.S.C. 60122(a)(1)	2,225,034	2,251,334
Maximum additional penalty for each liquefied natural gas pipeline facility violation.	49 U.S.C. 60122(a)(2)	81,284	82,245
Maximum penalty for discrimination against employees providing pipeline safety information.	49 U.S.C. 60122(a)(3)	1,292	1,307

⁷ Section (g)(5) was revised in the 2020 adjustment final rule to reflect the termination of

the North American Free Trade Agreement and the adoption of the United States Mexico Canada

Agreement (USMCA). See 86 FR 1745, 1748, n.6 (Jan. 11, 2021).

G. MARAD 2021 Adjustments

MARAD's 2021 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01182)
Maximum civil penalty for a single violation of any provision under 46 U.S.C. Chapter 313 and all of Subtitle III related MARAD regulations, except for violations of 46 U.S.C. 31329.	46 U.S.C. 31309	\$21,409	\$21,662
Maximum civil penalty for a single violation of 46 U.S.C. 31329 as it relates to the court sales of documented vessels.	46 U.S.C. 31330	53,524	54,157
Maximum civil penalty for a single violation of 46 U.S.C. 56101 as it relates to approvals required to transfer a vessel to a noncitizen.	46 U.S.C. 56101(e)	21,507	21,761
Maximum civil penalty for failure to file an AMVER report	46 U.S.C. 50113(b)	135	137
Maximum civil penalty for violating procedures for the use and allocation of shipping services, port facilities and services for national security and national defense operations.	50 U.S.C. 4513	27,051	27,371
Maximum civil penalty for violations in applying for or renewing a vessel's fishery endorsement.	46 U.S.C. 12151	156,917	158,772

H. Great Lakes St. Lawrence Seaway Development Corporation GLSLDC 2021 Adjustments

GLSLDC's 2021 civil penalty adjustment is as follows:

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Maximum civil penalty for each violation of the Seaway Rules and Regulations at 33 CFR part 401.	33 U.S.C. 1232	\$95,881	\$97,014

Regulatory Analysis and Notices*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Orders 12866 and DOT's Regulatory Policies and Procedures; therefore, the rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Flexibility Analysis

The Department has determined the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*) does not apply to this rulemaking. The RFA applies, in pertinent part, only when "an agency is required . . . to publish general notice of proposed rulemaking." 5 U.S.C. 604(a).⁸ The Small Business Administration's *A Guide for Government Agencies: How to Comply*

with the Regulatory Flexibility Act (2012), explains that:

If, under the [Administrative Procedure Act (APA)] or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]. . . . If an NPRM is not required, the RFA does not apply.

As stated above, DOT has determined that good cause exists to publish this final rule without notice and comment procedures under the APA. Therefore, the analytical requirements of the RFA do not apply.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This regulation has no substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. It does not contain any provision that imposes substantial direct compliance costs on State and local governments. Therefore, the

consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Because none of the measures in the rule have tribal implications or impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing notice of and a 60-day comment period on, and otherwise consult with members of the public and affected agencies concerning, each proposed collection of information. This final rule imposes no new information reporting or record keeping necessitating clearance by OMB.

⁸ Under 5 U.S.C. 603(a), the Regulatory Flexibility Act also applies when an agency "publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States." However, this rule does not involve the internal revenue laws of the United States.

F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979 as amended July 13, 1982 and July 30, 1985). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 4(c)(5) of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action qualifies for a categorical exclusion in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, (80 FR 44208, July 24, 2015), paragraph 5–6.6.f, which covers regulations not expected to cause any potentially significant environmental impacts. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this final rule.

G. Unfunded Mandates Reform Act

The Department analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995. The Department considered whether the rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The Department has determined that this final rule will not result in such expenditures. Accordingly, no further assessment or analysis is required under the Unfunded Mandates Reform Act.

List of Subjects*14 CFR Part 13*

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

14 CFR Part 383

Administrative practice and procedure, Penalties.

14 CFR Part 406

Administrative procedure and review, Commercial space transportation, Enforcement, Investigations, Penalties, Rules of adjudication.

33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

46 CFR Part 221

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

46 CFR Part 307

Marine safety, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 340

Harbors, Maritime carriers, National defense, Packaging and containers.

46 CFR Part 356

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Definitions, General information, Regulations.

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 213

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Parts 216, 217, 221, 224, 229, 230, 232, 233, and 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Parts 222, 235, 240, 242, 243, and 244

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

49 CFR Part 236

Penalties, Positive train control, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 237

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 272

Penalties, Railroad employees, Railroad safety, Railroads, Safety, Transportation.

49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Penalties.

Accordingly, the Department of Transportation amends 14 CFR chapters I, II, and III, 33 CFR chapter IV, 46 CFR chapter II, and 49 CFR chapters I, II, III, and V as follows:

Title 14—Aeronautics and Space**PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES**

■ 1. Revise the authority citation for part 13 to read as follows:

Authority: 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44701–44703, 44709–44710, 44713, 44725, 44742, 44802 (note), 46101–46111, 46301, 46302 (for a violation of

49 U.S.C. 46504), 46304–46316, 46318–46320, 46501–46502, 46504, 46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.83.

■ 2. Amend § 13.301 by revising paragraphs (b) and (c) to read as follows:

§ 13.301 Inflation adjustments of civil monetary penalties.

* * * * *

(b) Each adjustment to a maximum civil monetary penalty or to minimum and maximum civil monetary penalties that establish a civil monetary penalty range applies to actions initiated under this part for violations occurring on or after May 3, 2021, notwithstanding references to specific civil penalty amounts elsewhere in this part.

(c) Minimum and maximum civil monetary penalties are as follows:

TABLE 1 TO § 13.301—MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS

United States Code citation	Civil monetary penalty description	2020 minimum penalty amount	New minimum penalty amount for violations occurring on or after May 3, 2021, adjusted for inflation	2020 maximum penalty amount	New maximum penalty amount for violations occurring on or after May 3, 2021, adjusted for inflation
49 U.S.C. 5123(a)(1)	Violation of hazardous materials transportation law.	N/A	N/A	\$83,439	\$84,425.
49 U.S.C. 5123(a)(2)	Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	N/A	N/A	\$194,691	\$196,992.
49 U.S.C. 5123(a)(3)	Violation of hazardous materials transportation law relating to training.	\$502	\$508	\$83,439	\$84,425.
49 U.S.C. 44704(d)(3)	Knowing presentation of a non-conforming aircraft for issuance of an initial airworthiness certificate.	N/A	N/A	\$1,000,000	No change.
49 U.S.C. 44704(e)(4)	Knowing failure to submit safety critical information or include certain such information in an airplane flight manual or flight crew operating manual.	N/A	N/A	\$1,000,000	No change.
49 U.S.C. 44802 note	Operation of an unmanned aircraft or unmanned aircraft system equipped or armed with a dangerous weapon.	N/A	N/A	\$25,441	\$25,742.
49 U.S.C. 46301(a)(1)	Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	N/A	N/A	\$34,777	\$35,188.
49 U.S.C. 46301(a)(1)	Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	N/A	N/A	\$1,530	\$1,548.
49 U.S.C. 46301(a)(1)	Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	N/A	N/A	\$1,530	\$1,548.

TABLE 1 TO § 13.301—MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS—
Continued

United States Code citation	Civil monetary penalty description	2020 minimum penalty amount	New minimum penalty amount for violations occurring on or after May 3, 2021, adjusted for inflation	2020 maximum penalty amount	New maximum penalty amount for violations occurring on or after May 3, 2021, adjusted for inflation
49 U.S.C. 46301(a)(3)	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.	No change.
49 U.S.C. 46301(a)(5)(A)	Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	N/A	N/A	\$13,910	\$14,074.
49 U.S.C. 46301(a)(5)(B)(i).	Violation by an individual or small business concern related to the transportation of hazardous materials.	N/A	N/A	\$13,910	\$14,074.
49 U.S.C. 46301(a)(5)(B)(ii).	Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	N/A	N/A	\$13,910	\$14,074.
49 U.S.C. 46301(a)(5)(B)(iii).	Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	N/A	N/A	\$13,910	\$14,074.
49 U.S.C. 46301(a)(5)(B)(iv).	Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	\$13,910	\$14,074.
49 U.S.C. 46301 note	Individual who aims the beam of a laser pointer at an aircraft in the airspace jurisdiction of the United States, or at the flight path of such an aircraft.	N/A	N/A	\$26,614	\$26,929.
49 U.S.C. 46301(b)	Tampering with a smoke alarm device.	N/A	N/A	\$4,465	\$4,518.
49 U.S.C. 46302	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	N/A	\$24,252	\$24,539.
49 U.S.C. 46318	Interference with cabin or flight crew.	N/A	N/A	\$36,516	\$36,948.
49 U.S.C. 46319	Permanent closure of an airport without providing sufficient notice.	N/A	N/A	\$13,910	\$14,074.
49 U.S.C. 46320	Operating an unmanned aircraft and in so doing knowingly or recklessly interfering with a wild-fire suppression, law enforcement, or emergency response effort.	N/A	N/A	\$21,292	\$21,544.
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	N/A	See 49 U.S.C. 46301(a)(1) and (a)(5), above.	See 49 U.S.C. 46301(a)(1) and (a)(5), above.

PART 383—CIVIL PENALTIES

- 3. The authority citation for part 383 continues to read as follows:

Authority: Sec. 701, Pub. L. 114–74, 129 Stat. 584; Sec. 503, Pub. L. 108–176, 117 Stat. 2490; Pub. L. 101–410, 104 Stat. 890; Sec. 31001, Pub. L. 104–134.

- 4. Section 383.2 is revised to read as follows:

§ 383.2 Amount of penalty.

Civil penalties payable to the U.S. Government for violations of Title 49, Chapters 401 through 421, pursuant to 49 U.S.C. 46301(a), are as follows:

(a) A general civil penalty of not more than \$35,188 (or \$1,548 for individuals or small businesses) applies to violations of statutory provisions and rules or orders issued under those provisions, other than those listed in paragraph (b) of this section (*see* 49 U.S.C. 46301(a)(1));

(b) With respect to small businesses and individuals, notwithstanding the general \$1,483 civil penalty, the following civil penalty limits apply:

(1) A maximum civil penalty of \$14,074 applies for violations of most provisions of Chapter 401, including the anti-discrimination provisions of sections 40127 (general provision), and 41705 (discrimination against the disabled) and rules and orders issued pursuant to those provisions (*see* 49 U.S.C. 46301(a)(5)(A));

(2) A maximum civil penalty of \$7,037 applies for violations of section 41719 and rules and orders issued pursuant to that provision (*see* 49 U.S.C. 46301(a)(5)(C)); and

(3) A maximum civil penalty of \$3,519 applies for violations of section 41712 or consumer protection rules or orders (*see* 49 U.S.C. 46301(a)(5)(D)).

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

- 5. The authority citation for part 406 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

- 6. Amend § 406.9 by revising paragraph (a) to read as follows:

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 51 U.S.C. 50917(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than \$247,280 for each violation. A

separate violation occurs for each day the violation continues.

* * * * *

Title 33—Navigation and Navigable Waters**PART 401—SEAWAY REGULATIONS AND RULES****Subpart B—Penalties—Violations of Seaway Regulations**

- 7. The authority citation for subpart B of part 401 is revised to read as follows:

Authority: 33 U.S.C. 981–990, 1231 and 1232, 49 CFR 1.52, unless otherwise noted.

- 8. Amend § 401.102 by revising paragraph (a) to read as follows:

§ 401.102 Civil penalty.

(a) A person, as described in § 401.101(b) who violates a regulation in this chapter is liable to a civil penalty of not more than \$97,014.

* * * * *

Title 46—Shipping**PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS**

- 9. The authority citation for part 221 continues to read as follows:

Authority: 46 U.S.C. chs. 301, 313, and 561; Pub. L. 114–74; 49 CFR 1.93.

- 10. Section 221.61(b) is revised to read as follows:

§ 221.61 Compliance.

* * * * *

(b) Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$21,662 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and pursuant to the regulations in this part a person violating 46 U.S.C. 31329 is liable for a civil penalty of not more than \$54,157 for each violation. A person who charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 U.S.C. 56101(e) is liable for a civil penalty of not more than \$21,761 for each violation.

PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS

- 11. The authority citation for part 307 continues to read as follows:

Authority: Pub. L. 109–304; 46 U.S.C. 50113; Pub. L. 114–74; 49 CFR 1.93.

- 12. Section 307.19 is revised to read as follows:

§ 307.19 Penalties.

The owner or operator of a vessel in the waterborne foreign commerce of the United States is subject to a penalty of \$137.00 for each day of failure to file an AMVER report required by this part. Such penalty shall constitute a lien upon the vessel, and such vessel may be libeled in the district court of the United States in which the vessel may be found.

PART 340—PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES, CONTAINERS AND CHASSIS, AND PORT FACILITIES AND SERVICES FOR NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS

- 13. The authority citation for part 340 continues to read as follows:

Authority: 50 U.S.C. 4501 *et seq.* (“The Defense Production Act”); Executive Order 13603 (77 FR 16651); Executive Order 12656 (53 FR 47491); Pub. L. 114–74; 49 CFR 1.45; 49 CFR 1.93(l).

- 14. Section 340.9 is revised to read as follows:

§ 340.9 Compliance.

Pursuant 50 U.S.C. 4513 any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this part shall, upon conviction, be fined not more than \$27,371 or imprisoned for not more than one year, or both.

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL’S DOCUMENTATION

- 15. The authority citation for part 356 continues to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 12151; 46 U.S.C. 31322; Pub. L. 105–277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107–20, section 2202, 115 Stat. 168–170; Pub. L. 114–74; 49 CFR 1.93.

- 16. Amend § 356.49 by revising paragraph (b) to read as follows:

§ 356.49 Penalties.

* * * * *

(b) A fine of up to \$158,772 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States; and

* * * * *

Title 49—Transportation**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

- 17. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

- 18. Revise § 107.329 to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than \$84,425 for each violation, except the maximum civil penalty is \$196,992 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$508 for violations relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than \$84,425 for each violation, except the maximum civil penalty is \$196,992 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$508 for violations relating to training.

Appendix A to Subpart D of Part 107 [Amended]

- 19. In appendix A to subpart D of part 107, remove “\$83,439 or \$194,691” and “July 31, 2019” and add in their places

“\$84,425 or \$196,992” and “May 3, 2021,” respectively.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

- 20. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

- 21. Amend § 171.1 by revising paragraph (g) to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

* * * * *

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$84,425 for each violation, except the maximum civil penalty is \$196,992 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$508 for a violation relating to training.

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

- 22. The authority citation for part 190 continues to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.*

- 23. Amend § 190.223 by revising paragraphs (a), (c), and (d) to read as follows:

§ 190.223 Maximum penalties.

(a) Any person found to have violated a provision of 49 U.S.C. 60101, *et seq.*, or any regulation in 49 CFR parts 190 through 199, or order issued pursuant to 49 U.S.C. 60101, *et seq.* or 49 CFR part 190, is subject to an administrative civil penalty not to exceed \$225,134 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed \$2,251,334 for any related series of violations.

* * * * *

(c) Any person found to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed \$82,245, which may be in addition to other

penalties to which such person may be subject under paragraph (a) of this section.

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 is subject to an administrative civil penalty not to exceed \$1,307, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

* * * * *

PART 209—RAILROAD SAFETY ENFORCEMENT PROCEDURES

- 24. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.89.

- 25. Amend § 209.103 by revising paragraphs (a) and (c) to read as follows:

§ 209.103 Minimum and maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous materials transportation laws, an order issued thereunder, subchapter A or C of chapter I, subtitle B, of this title, or a special permit or approval issued under subchapter A or C of chapter I, subtitle B, of this title is liable for a civil penalty of not more than \$84,425 for each violation, except that—

(1) The maximum civil penalty for a violation is \$196,992 if the violation results in death, serious illness, or severe injury to any person, or substantial destruction of property; and

(2) A minimum \$508 civil penalty applies to a violation related to training.

* * * * *

(c) The maximum and minimum civil penalties described in paragraph (a) of this section apply to violations occurring on or after May 3, 2021.

- 26. Amend § 209.105 by revising the last sentence of paragraph (c) to read as follows:

§ 209.105 Notice of probable violation.

* * * * *

(c) * * * In an amended notice, FRA may change the civil penalty amount proposed to be assessed up to and including the maximum penalty amount of \$84,425 for each violation, except that if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, FRA may change the penalty amount proposed to be assessed up to and including the maximum penalty amount of \$196,992.

§ 209.409 [Amended]

- 27. Amend § 209.409 as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

■ 28. In appendix A to part 209, amend the section “Penalty Schedules; Assessment of Maximum Penalties” by:

- a. Adding a sentence to the end of the sixth paragraph;
- b. Revising the fourth sentence in the seventh paragraph; and
- c. Revising the first sentence of the tenth paragraph.

The addition and revisions read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

* * * * *

Penalty Schedules; Assessment of Maximum Penalties

* * * * *

* * * Effective May 3, 2021, the minimum civil monetary penalty was raised from \$908 to \$919, the ordinary maximum civil monetary penalty was raised from \$29,707 to \$30,058, and the aggravated maximum civil monetary penalty was raised from \$118,826 to \$120,231.

* * * For each regulation in this part or order, the schedule shows two amounts within the \$919 to \$30,058 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). * * *

* * * * *

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to \$120,231 per violation where a pattern of repeated violations or a grossly negligent violation has created an imminent hazard of death or injury or has caused death or injury. * * *

* * * * *

Appendix B to Part 209 [Amended]

- 29. Amend appendix B to part 209 as follows:
 - a. Remove the dollar amount “\$83,439” everywhere it appears and add in its place “\$84,425”;
 - b. Remove the dollar amount “\$194,691” everywhere it appears and add in its place “\$196,992”; and
 - c. Remove the dollar amount “\$502” and add in its place “\$508”.

PART 213—TRACK SAFETY STANDARDS

- 30. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 213.15 [Amended]

- 31. In § 213.15, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 214—RAILROAD WORKPLACE SAFETY

- 32. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 31304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 214.5 [Amended]

- 33. Amend § 214.5 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 215—RAILROAD FREIGHT CAR SAFETY STANDARDS

- 34. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 215.7 [Amended]

- 35. Amend § 215.7 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 216—SPECIAL NOTICE AND EMERGENCY ORDER PROCEDURES: RAILROAD TRACK, LOCOMOTIVE AND EQUIPMENT

- 36. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302,

21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 216.7 [Amended]

- 37. Amend § 216.7 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 217—RAILROAD OPERATING RULES

- 38. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 217.5 [Amended]

- 39. Amend § 217.5 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 218—RAILROAD OPERATING PRACTICES

- 40. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 20131, 20138, 20144, 20168, 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 218.9 [Amended]

- 41. Amend § 218.9 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 219—CONTROL OF ALCOHOL AND DRUG USE

- 42. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; Sec. 412, Div. A, Pub. L. 110–432, 122 Stat. 4889 (49 U.S.C. 20140, note); and 49 CFR 1.89.

§ 219.10 [Amended]

- 43. Amend § 219.10 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and

- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 220—RAILROAD COMMUNICATIONS

- 44. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20103, note, 20107, 21301–21302, 20701–20703, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 220.7 [Amended]

- 45. Amend § 220.7 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER AND FREIGHT TRAINS

- 46. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 221.7 [Amended]

- 47. Amend § 221.7 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY–RAIL GRADE CROSSINGS

- 48. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 222.11 [Amended]

- 49. Amend § 222.11 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 223—SAFETY GLAZING STANDARDS—LOCOMOTIVES, PASSENGER CARS AND CABOOSSES

- 50. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 223.7 [Amended]

- 51. Amend § 223.7 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 224—REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

- 52. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 224.11 [Amended]

- 53. In § 224.11, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 225—RAILROAD ACCIDENTS/ INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

- 54. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–20902, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 225.29 [Amended]

- 55. Amend § 225.29 as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 227—OCCUPATIONAL NOISE EXPOSURE

- 56. The authority citation for part 227 continues to read as follows:

Authority: 49 U.S.C. 20103, 20103, note, 20701–20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 227.9 [Amended]

- 57. In § 227.9, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 228—PASSENGER TRAIN EMPLOYEE HOURS OF SERVICE; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

- 58. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 103, 20103, 20107, 21101–21109; Sec. 108, Div. A, Pub. L. 110–432, 122 Stat. 4860–4866, 4893–4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 228.6 [Amended]

- 59. In § 228.6, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

- 60. In appendix A to part 228, under the heading “General Provisions,” amend the “Penalty” paragraph by adding a sentence at the end of the first paragraph to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

General Provisions

* * * * *

Penalty. * * * Effective May 3, 2021, the minimum civil monetary penalty was raised from \$908 to \$919, the ordinary maximum civil monetary penalty was raised from \$29,707 to \$30,058, and the aggravated maximum civil monetary penalty was raised from \$118,826 to \$120,231.

* * * * *

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

- 61. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 229.7 [Amended]

■ 62. In § 229.7, amend paragraph (b) as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 230—STEAM LOCOMOTIVE INSPECTION AND MAINTENANCE STANDARDS

■ 63. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 230.4 [Amended]

■ 64. In § 230.4, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 231—RAILROAD SAFETY APPLIANCE STANDARDS

■ 65. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 231.0 [Amended]

■ 66. In § 231.0, amend paragraph (f) as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 233—SIGNAL SYSTEMS REPORTING REQUIREMENTS

■ 67. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 504, 522, 20103, 20107, 20501–20505, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 233.11 [Amended]

- 68. Amend § 233.11 as follows:
- a. Remove the dollar amount “\$908” and add in its place “\$919”;

■ b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and

■ c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 234—GRADE CROSSING SAFETY

■ 69. Revise the authority citation for part 234 to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Public Law 110–432, Div. A., Sec. 202, 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 234.6 [Amended]

■ 70. In § 234.6, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 235—INSTRUCTIONS GOVERNING APPLICATIONS FOR APPROVAL OF A DISCONTINUANCE OR MATERIAL MODIFICATION OF A SIGNAL SYSTEM OR RELIEF FROM THE REQUIREMENTS OF PART 236

■ 71. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 235.9 [Amended]

■ 72. Amend § 235.9 as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 236—RULES, STANDARDS, AND INSTRUCTIONS GOVERNING THE INSTALLATION, INSPECTION, MAINTENANCE, AND REPAIR OF SIGNAL AND TRAIN CONTROL SYSTEMS, DEVICES, AND APPLIANCES

■ 73. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 236.0 [Amended]

■ 74. In § 236.0, amend paragraph (f) as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 237—BRIDGE SAFETY STANDARDS

■ 75. The authority citation for part 237 continues to read as follows:

Authority: 49 U.S.C. 20102–20114; Public Law 110–432, Div. A, Sec. 417; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 237.7 [Amended]

■ 76. In § 237.7, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 238—PASSENGER EQUIPMENT SAFETY STANDARDS

■ 77. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 238.11 [Amended]

■ 78. In § 238.11, amend paragraph (a) as follows:

- a. Remove the dollar amount “\$908” and add in its place “\$919”;
- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

■ 79. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 239.11 [Amended]

- 80. Amend § 239.11 as follows:
- a. Remove the dollar amount “\$908” and add in its place “\$919”;

- b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

- 81. The authority citation for part 240 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 240.11 [Amended]

- 82. In § 240.11, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 241—UNITED STATES LOCALATION REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

- 83. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.89.

§ 241.15 [Amended]

- 84. In § 241.15, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS

- 85. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 242.11 [Amended]

- 86. In § 242.11, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and

- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES

- 87. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 243.7 [Amended]

- 88. In § 243.7, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

- 89. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 244.5 [Amended]

- 90. In § 244.5, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and
 - c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 272—CRITICAL INCIDENT STRESS PLANS

- 91. The authority citation for part 272 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49 CFR 1.89; and sec. 410, Div. A, Pub. L. 110–432, 122 Stat. 4888.

§ 272.11 [Amended]

- 92. In § 272.11, amend paragraph (a) as follows:
 - a. Remove the dollar amount “\$908” and add in its place “\$919”;
 - b. Remove the dollar amount “\$29,707” and add in its place “\$30,058”; and

- c. Remove the dollar amount “\$118,826” and add in its place “\$120,231”.

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

- 93. The authority citation for part 386 is revised to read as follows:

Authority: 49 U.S.C. 113; chapters 5, 51, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 32402, Pub. L. 112–141, 126 Stat. 405, 795 (49 U.S.C. 31306a); Sec. 701 Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.87.

- 94. Amend appendix A to part 386 by revising the introductory text, section II, and section IV.a. through e. and g. through j. to read as follows:

Appendix A to Part 386—Penalty Schedule: Violations of Notices and Orders

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Public Law 114–74, sec. 701, 129 Stat. 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

* * * * *

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of \$1,125 but not more than \$11,256 per violation.

* * * * *

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to \$1,951 per violation.

(For purposes of this violation, the term “driver” means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to \$19,505 per violation. (This violation applies to motor carriers including an independent contractor who is not a “driver,” as defined under paragraph IV(a) above.)

c. Violation—Operation of a commercial motor vehicle or intermodal

equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—\$1,951 each time the vehicle or intermodal equipment is so operated.

(This violation applies to drivers as defined in IV(a) above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to \$19,505 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner operator who is not a “driver,” as defined in IV(a) above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to \$975 per violation.

* * * * *

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer’s commercial motor vehicle operations or to cease part of an intermodal equipment provider’s operations, *i.e.*, failure to cease operations as ordered.

Penalty—Up to \$28,142 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to \$24,730 per day the operation continues after the effective date and time of the out-of-service order.

i. Violation—Conducting operations during a period of suspension under § 386.83 or § 386.84 for failure to pay penalties.

Penalty—Up to \$15,876 for each day that operations are conducted during the suspension or revocation period.

j. Violation—Conducting operations during a period of suspension or revocation under § 385.911, § 385.913, § 385.1009, or § 385.1011 of this subchapter.

Penalty—Up to \$24,730 for each day that operations are conducted during the suspension or revocation period.

■ 95. Amend appendix B to part 386 by revising the introductory text and paragraphs (a)(1) through (5), (b), (d) through (f), (g)(1) through (8), (10) through (14), and (16) through (18), (g)(21)(i), (g)(22) and (23), (h), and (i) to read as follows:

Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Pub. L. 114–74, sec. 701, 129 Stat. 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) * * *

(1) *Recordkeeping.* A person or entity that fails to prepare or maintain a record required by part 40 of this title and parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$1,307 for each day the violation continues, up to \$13,072.

(2) *Knowing falsification of records.* A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation order of the Secretary is subject to a maximum civil penalty of \$13,072 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) *Non-recordkeeping violations.* A person or entity that violates part 382, subpart A, B, C, D, E, or F, part 385, or parts 390 through 399 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$15,876 for each violation.

(4) *Non-recordkeeping violations by drivers.* A driver who violates parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed \$3,969.

(5) *Violation of 49 CFR 392.5.* A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed \$3,268 for a first conviction and not less than \$6,536 for a second or subsequent conviction.

* * * * *

(b) *Commercial driver’s license (CDL) violations.* Any employer, employee,

medical review officer, or service agent who violates any provision of 49 CFR part 382, subpart G, or any person who violates 49 CFR part 383, subpart B, C, E, F, G, or H, is subject to a civil penalty not to exceed \$5,902; except:

(1) A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$3,268 for a first conviction and not less than \$6,536 for a second or subsequent conviction;

(2) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes an employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than \$5,902 or more than \$32,679; and

(3) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that CDL-holder to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings is subject to a civil penalty of not more than \$16,941.

* * * * *

(d) *Financial responsibility violations.* A motor carrier that fails to maintain the levels of financial responsibility prescribed by part 387 of this subchapter or any person (except an employee who acts without knowledge) who knowingly violates the rules of part 387, subparts A and B, is subject to a maximum penalty of \$17,416. Each day of a continuing violation constitutes a separate offense.

(e) *Violations of the Hazardous Materials Regulations (HMRs) and safety permitting regulations found in subpart E of part 385 of this subchapter.* This paragraph (e) applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$84,425 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not less than

\$508 and not more than \$84,425 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$84,425 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not more than \$84,425.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$196,992 for each offense.

(f) *Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final "unsatisfactory" safety rating, to a civil penalty of not more than \$28,142 (49 CFR 385.13). Each day the transportation continues in violation of a final "unsatisfactory" safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final "unsatisfactory" safety rating, to a civil penalty of not more than \$84,425 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$196,992 for each offense. Each day the transportation continues in violation of a final "unsatisfactory"

safety rating constitutes a separate offense.

(g) * * *

(1) A person who operates as a motor carrier for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$11,256 per violation.

(2) A person who knowingly operates as a broker in violation of registration requirements of 49 U.S.C. 13904 or financial security requirements of 49 U.S.C. 13906 is liable for a penalty not to exceed \$11,256 for each violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$28,142 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier of property in violation of the provisions of 49 U.S.C. 13902(c) is liable for a minimum penalty of \$11,256 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, outside the boundaries of a commercial zone along the United States-Mexico border, is liable for a maximum penalty of \$15,480 for an intentional violation and a maximum penalty of \$38,702 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a minimum penalty of \$22,514 and a maximum penalty of \$45,027 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, is liable for a minimum penalty of \$1,693 per violation.

(8) A person—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment; or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a minimum penalty of \$3,389 for the first violation and \$8,471 for each subsequent violation.

* * * * *

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C.

13702 is liable for a maximum penalty of \$169,412 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts or omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is \$338 for the first violation and \$423 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$848 for the first violation and up to \$3,389 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$848 for the first violation and up to \$3,389 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than \$16,941 per violation.

* * * * *

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under part B of subtitle IV, title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a minimum penalty of \$1,125 and for a maximum penalty of \$8,471 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business-related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee,

employee, or other person authorized to receive information from them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of \$3,389.

(18) A person who violates a provision of part B, subtitle IV, title 49, U.S.C., or a regulation or order under part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of \$848 for each violation if another penalty is not provided in 49 U.S.C. chapter 149.

* * * * *

(21) * * *

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G, of this subchapter, is liable for a civil penalty of not less than \$16,941 for each violation. Each day of a continuing violation constitutes a separate offense.

* * * * *

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than \$13,072 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than \$32,679 for each violation.

(h) *Copying of records and access to equipment, lands, and buildings.* A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety

Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than \$1,307 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$13,072.

(i) *Evasion.* A person, or an officer, employee, or agent of that person:

(1) Who by any means tries to evade regulation of motor carriers under title 49, United States Code, chapter 5, chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or a regulation in subtitle B, chapter I, subchapter C of this title, or this subchapter, issued under any of those provisions, shall be fined at least \$2,252 but not more than \$5,628 for the first violation and at least \$2,813 but not more than \$8,433 for a subsequent violation.

(2) Who tries to evade regulation under part B of subtitle IV, title 49, U.S.C., for carriers or brokers is liable for a penalty of at least \$2,252 for the first violation or at least \$5,628 for a subsequent violation.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 96. The authority citation for part 578 is revised to read as follows:

Authority: Pub. L. 92–513, Pub. L. 94–163, Pub. L. 98–547, Pub. L. 101–410, Pub. L. 102–388, Pub. L. 102–519, Pub. L. 104–134, Pub. L. 109–59, Pub. L. 110–140, Pub. L. 112–141, Pub. L. 114–74, Pub. L. 114–94 (49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, 33114, and 33115); delegation of authority at 49 CFR 1.81, 1.95.

■ 97. In § 578.6, revise paragraphs (a)(1), (a)(2)(i)(B), (a)(3) and (4), (b) through (g), (h)(1), and (i) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) * * *

(1) *In general.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(a), 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation in this chapter prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than \$22,992 for each violation. A separate violation

occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph (a)(1) for a related series of violations is \$114,954,525.

(2) * * *

(i) * * *

(B) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than \$13,072 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by this section. The maximum penalty under this paragraph (a)(2)(i)(B) for a related series of violations is \$19,607,465.

(3) *Section 30166.* A person who violates Section 30166 of Title 49 of the United States Code or a regulation in this chapter prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph (a)(3) is \$22,992 per violation per day. The maximum penalty under this paragraph (a)(3) for a related series of daily violations is \$114,954,525.

(4) *False and misleading reports.* A person who knowingly and willfully submits materially false or misleading information to the Secretary, after certifying the same information as accurate under the certification process established pursuant to Section 30166(o) of Title 49 of the United States Code, shall be subject to a civil penalty of not more than \$5,628 per day. The maximum penalty under this paragraph (a)(4) for a related series of daily violations is \$1,125,668.

(b) *National Automobile Title Information System.* An individual or entity violating 49 U.S.C. Chapter 305 is liable to the United States Government for a civil penalty of not more than \$1,814 for each violation.

(c) *Bumper standards.* (1) A person that violates 49 U.S.C. 32506(a) is liable to the United States Government for a civil penalty of not more than \$3,011 for each violation. A separate violation occurs for each passenger motor vehicle or item of passenger motor vehicle equipment involved in a violation of 49 U.S.C. 32506(a)(1) or (4)—

(i) That does not comply with a standard prescribed under 49 U.S.C. 32502; or

(ii) For which a certificate is not provided, or for which a false or

misleading certificate is provided, under 49 U.S.C. 32504.

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is \$3,352,932.

(d) *Consumer information*—(1) *Crashworthiness and damage susceptibility*. A person who violates 49 U.S.C. 32308(a), regarding crashworthiness and damage susceptibility, is liable to the United States Government for a civil penalty of not more than \$3,011 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph (d)(1) for a related series of violations is \$1,642,208.

(2) *Consumer tire information*. Any person who fails to comply with the national tire fuel efficiency program under 49 U.S.C. 32304A is liable to the United States Government for a civil penalty of not more than \$62,314 for each violation.

(e) *Country of origin content labeling*. A manufacturer of a passenger motor vehicle distributed in commerce for sale in the United States that willfully fails to attach the label required under 49 U.S.C. 32304 to a new passenger motor vehicle that the manufacturer manufactures or imports, or a dealer that fails to maintain that label as required under 49 U.S.C. 32304, is liable to the United States Government for a civil penalty of not more than \$1,835 for each violation. Each failure to attach or maintain that label for each vehicle is a separate violation.

(f) *Odometer tampering and disclosure*. (1) A person that violates 49 U.S.C. Chapter 327 or a regulation in this chapter prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than \$11,256 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph (f)(1) for a related series of violations is \$1,125,668.

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation in this chapter prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or \$11,256, whichever is greater.

(g) *Vehicle theft protection*. (1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than \$2,473 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 or 33103 is only a single violation. The maximum penalty under

this paragraph (g)(1) for a related series of violations is \$618,201.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than \$183,629 a day for each violation.

(h) * * *

(1) A person that violates 49 U.S.C. 32911(a) is liable to the United States Government for a civil penalty of not more than \$43,280 for each violation. A separate violation occurs for each day the violation continues.

* * * * *

(i) *Medium- and heavy-duty vehicle fuel efficiency*. The maximum civil penalty for a violation of the fuel consumption standards of 49 CFR part 535 is not more than \$42,621 per vehicle or engine. The maximum civil penalty for a related series of violations shall be determined by multiplying \$42,621 times the vehicle or engine production volume for the model year in question within the regulatory averaging set.

Signed in Washington, DC, on April 16, 2021:

Peter Paul Montgomery Buttigieg,
Secretary of Transportation.

[FR Doc. 2021-08224 Filed 4-30-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 244 and 259

[Docket No. DOT-OST-2019-0144]

RIN 2105-AE47

Tarmac Delay Rule

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT or the Department) is issuing a final rule to modify U.S. and foreign air carrier obligations with respect to tarmac delays and to conform carrier obligations with respect to departure delays with the changes made to the Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016. The final rule also makes changes to passenger notification requirements during tarmac delays, as well as carrier tarmac delay reporting and record retention requirements.

DATES: This rule is effective June 2, 2021.

FOR FURTHER INFORMATION CONTACT: Ryan Patanaphan, Senior Trial Attorney,

or Blane A. Workie, Assistant General Counsel, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202-366-9342, 202-366-7152 (fax), ryan.patanaphan@dot.gov or blane.workie@dot.gov (email).

SUPPLEMENTARY INFORMATION:

Background

Current Rule

On April 25, 2011, the Department published the “Enhancing Airline Passenger Protections” rule to improve the air travel environment for passengers.¹ Under this rule, carriers are required to adopt and adhere to tarmac delay contingency plans. DOT’s regulations require that these plans contain assurances that covered carriers will not allow aircraft to remain on the tarmac for more than 3 hours for domestic flights and 4 hours for international flights without providing passengers the option to deplane, subject to exceptions related to safety, security, and Air Traffic Control related reasons. Carriers’ plans must also contain assurances that carriers will provide adequate food and drinking water within 2 hours of the aircraft being delayed on the tarmac, provide notifications regarding the status of the delay and the opportunity to deplane if the opportunity to deplane exists, maintain operable lavatories and, if necessary, provide medical attention.

FAA Extension, Safety and Security Act

Section 2308 of the FAA Extension, Safety, and Security Act of 2016, Public Law 114-190 (FAA Extension Act) requires the Department to issue regulations and take other actions necessary to carry out the amendments made by Section 2308. These amendments include new language requiring air carriers to begin to return an aircraft to a suitable disembarkation point no later than 3 or 4 hours after the main aircraft door is closed for departure. In response to the FAA Extension Act, the Department’s Office of Aviation Enforcement and Proceedings (renamed the Office of Aviation Consumer Protection, or OACP) issued an “Enforcement Policy on Extended Tarmac Delays” (Enforcement Policy)² on November 22, 2016. The Enforcement Policy states that, as a matter of enforcement discretion, the Department will not take enforcement action against U.S. and

¹ Enhancing Airline Passenger Protections Rule, 76 FR 23110, Apr. 25, 2011.

² <https://www.transportation.gov/airconsumer/enforcement-policy-extended-tarmac-delays>.

foreign air carriers with respect to departure delays if U.S. and foreign air carriers begin to return the aircraft to a gate or another suitable disembarkation point no later than 3 hours for domestic flights and no later than 4 hours for international flights after the main aircraft door has closed in preparation for departure. The Enforcement Policy further provides that the process of beginning to return to the gate or a suitable disembarkation point varies based on whether the aircraft is in a carrier-controlled part of the airport or a non-carrier-controlled part of the airport. The Enforcement Policy was intended to be a temporary fix until the Department issues a final rule that specifically addresses lengthy tarmac delays pursuant to the FAA Extension Act.

Notice of Proposed Rulemaking

On October 25, 2019, the Department published a notice of proposed rulemaking (NPRM), 84 FR 57370, in which it proposed to implement changes to the tarmac delay rule resulting from the FAA Extension Act. The NPRM incorporated the FAA Extension Act's new departure delay standard by proposing a new exception applicable to departure delays, with additional proposals intended to clarify or improve the existing tarmac delay rule. In response to the NPRM, the Department received 18 comments from U.S. and foreign air carriers, air carrier associations, a consumer advocacy group, an individual consumer, and a data and technology company. The comments addressed ten subjects discussed in the NPRM: (1) Departure delay exception, (2) start of the tarmac delay, (3) applicability of the tarmac delay rule to U.S. and foreign air carriers, (4) diversions, (5) data reporting requirements (including reducing duplicative reports and other adjustments to existing requirements), (6) narrative reporting requirement, (7) status announcements, (8) deplaning announcements, (9) tarmac delay safety exception, and (10) provision of food and water. The Department also received comments on issues that were not raised in the NPRM and are outside the scope of this rule—*i.e.*, additional exceptions to the tarmac delay rule, methodology used to calculate tarmac delay civil penalties, and comfortable cabin temperatures. The Department has carefully reviewed and considered the comments received. The commenters' positions that are germane to the specific issues raised in the NPRM and the Department's responses are set forth below.

Comments and Responses

1. Departure Delay Exception

The NPRM: Section 42301 of Title 49 of the United States Code provides that a tarmac delay ends for an arriving and departing flight when a passenger has the option to deplane an aircraft and return to the airport terminal; however, for a departing flight, it is not a violation of the assurance to permit an aircraft to remain on the tarmac for more than three hours for domestic flights and more than four hours for international flights if the air carrier begins to return the aircraft to a suitable disembarkation point by those times in order to deplane passengers. DOT proposed to amend its tarmac delay rule by creating a new departure delay exception to reflect the statutory changes in 49 U.S.C. 42301. To determine when the carrier begins to return to a suitable disembarkation point, DOT proposed that if the aircraft is in an area of the airport property that is under the carrier's control, an aircraft would be considered to have begun to return to a suitable disembarkation point when the pilot begins maneuvering the aircraft to the disembarkation point. DOT also proposed that if the aircraft is in an area that is not under the carrier's control, then the aircraft has begun to return to a suitable disembarkation point when a request is made to the FAA control tower, airport authority, or other relevant authority directing the aircraft's operations, rather than when permission is granted as was articulated in the Enforcement Policy. The Department proposed to apply the same standard to flights of U.S. and foreign air carriers experiencing a tarmac delay at a U.S. airport.

Comments: Carriers were generally in agreement with the adoption of the departure delay exception, with some carriers proposing different standards for determining when the process of beginning to return to a suitable disembarkation point is triggered. Although many carriers agreed with changing the trigger from "permission granted" to "permission requested," carriers and others mostly disagreed with varying the standard for returning to a suitable disembarkation point depending on the location of the aircraft on the airfield. Many carriers expressed concern about their flight crews not being aware of whether the aircraft was in a carrier-controlled area or an area controlled by another entity. The International Air Transport Association (IATA) and Airlines for America (A4A), in a joint comment joined by several other airlines, recommended adopting a performance-based standard for

determining when a carrier begins to return to a suitable disembarkation point regardless of the location of the aircraft. Instead of finding that an aircraft begins to return when a request is made to the FAA or other authority, IATA, A4A, and others proposed that the aircraft begins to return when the decision is made to return. Air China and Xiamen Air recommended that the exception be triggered when a request to return is made by any carrier representative.

An individual and the FlyersRights organization opposed the adoption of a departure delay exception. The individual commented that the permissible tarmac delay time should be shortened, not lengthened as would occur under the NPRM. FlyersRights commented that tarmac delay incidents have increased in number since adoption of the 2016 Enforcement Policy, which provided for a new departure delay standard. FlyersRights also commented that Congress intended the departure delay exception to be triggered when the aircraft physically moves back to the gate, rather than the standard articulated in the NPRM.

DOT Response: After fully considering the comments received, the Department has decided to implement the departure delay exception as proposed in the NPRM. The 2016 FAA Extension Act requires the Department to adopt a revised standard for tarmac delays on departing flights. Compliance with the 2016 FAA Extension Act requires that the Department permit carriers to keep departing flights on the tarmac for periods longer than the 3- and 4-hour time periods currently allowed under DOT's tarmac delay regulation, provided that the aircraft have begun to return to a suitable disembarkation point by those times in order to deplane passengers. The Department does not interpret its authority under 49 U.S.C. 42301 to allow it to require a decrease in the amount of time carriers are permitted to keep aircraft on the tarmac, unless a carrier voluntarily chooses to lower the time-period it will permit an aircraft to remain on the tarmac and incorporates that lower time limit into its tarmac delay contingency plan.

The Department acknowledges that commenters of multiple perspectives suggested eliminating the dichotomy of carrier-controlled and non-carrier-controlled areas from the analysis of whether an aircraft has begun to return to a suitable disembarkation point. DOT fully considered these comments and evaluated whether a single standard could work in both situations. The Department concluded that its approach

to analyzing the location of the aircraft and using a different standard for whether the aircraft is in a carrier-controlled or non-carrier-controlled area sufficiently balances the needs of effective enforcement of the tarmac delay rule and the circumstances and interests of carriers and passengers, while appreciating the complexity of airport environments. A standard that requires carriers physically to maneuver aircraft back to the gate regardless of the aircraft's location, as sought by consumer advocates, may be difficult for carriers to meet if their aircraft are in a position on the airfield where FAA, for example, is directing the aircraft's movements and FAA does not provide the clearance for an aircraft to physically move. Conversely, industry commenters' suggestion that the process of returning to the gate has begun when a decision is made to return, lacks a measurable standard that can be easily corroborated. It could also result in situations in which a carrier makes a decision to return to a suitable disembarkation point, but the aircraft does not actually begin the process to return to a suitable disembarkation point for some time due to reasons within the carrier's control.

The Department believes that the exception articulated in the NPRM provides the best middle ground that balances the above interests. For aircraft in an area of the airport that is not controlled by the carrier, there are typically verifiable and objective indicia of when an aircraft has begun the process of returning to a suitable disembarkation point, and the Department has determined that an appropriate trigger for this process is when the carrier makes a request for permission from the third party directing the aircraft's movements (*e.g.*, FAA, airport authority, or terminal) to return to a suitable disembarkation point. For aircraft that are in a carrier-controlled area, the physical maneuvering of the aircraft will signal the start of the process of returning to a suitable disembarkation point, consistent with the standard that has been in effect since the Department issued its 2016 Enforcement Policy.

As stated in the NPRM, the Department notes that the departure delay exception only applies when carriers begin to return to a suitable disembarkation point *in order to deplane passengers*. If a flight begins to return to a suitable disembarkation point, but does not provide passengers an opportunity to deplane, absent one of the safety, security, or air traffic control (ATC) exceptions provided in the regulation, DOT would not consider the

flight to have begun to return to a suitable disembarkation point to provide passengers an opportunity to deplane, and the departure delay exception would not apply. For example, an aircraft that begins the process of returning to the gate or another suitable disembarkation point for a mechanical-related problem would not benefit from the departure delay exception if the purpose of the return did not include providing passengers an opportunity to deplane and passengers were not provided the option to deplane.

2. Start of the Tarmac Delay

The NPRM: The Department proposed that for departing flights, a tarmac delay starts when the main aircraft door is closed, in line with the language in the FAA Extension Act. The Department further proposed to provide flexibility to carriers by taking into account circumstances when a carrier has closed the main aircraft door for departure but the aircraft has not left the gate. The Department proposed that, if a carrier can show that passengers on board the aircraft have the opportunity to deplane an aircraft, even while the aircraft doors are closed, then the tarmac delay clock would not start until passengers no longer have the opportunity to deplane. Absent a showing that passengers have the opportunity to deplane while the aircraft is at the gate with the doors closed, the Department would presume passengers do not have an opportunity to deplane.

Comments: Industry comments were generally supportive of the proposal regarding the start of a tarmac delay for departing flights and for the flexibility that the Department proposed for carriers. Some carriers, as well as IATA and A4A, also preferred to use the gate departure time as the start of the tarmac delay, in line with the data that is submitted to the Bureau of Transportation Statistics under Form BTS 244. Some carriers noted that many aircraft do not capture the door closing time. Exhaustless, Inc. opposed any standard that does not start the tarmac delay when the aircraft doors close, as provided in the statute. FlyersRights noted that the flexibility offered in the NPRM, in which carriers can rebut the presumption that the opportunity to deplane ends when the aircraft doors close, negates the benefits of the Department's proposal regarding the provision of food and water. FlyersRights argues that, if the timer for the food and water requirement starts when the aircraft doors close, then the timer for a tarmac delay would not be

in alignment if it starts at any time other than the time the aircraft doors close.

DOT Response: As amended by the FAA Extension Act, 49 U.S.C. 42301(b)(3) provides that “[a] passenger shall have the option to deplane an aircraft and return to the airport terminal when there is an excessive tarmac delay,” and that “[i]n providing the option described in subparagraph (A), the air carrier shall begin to return the aircraft to a suitable disembarkation point” no later than three or four hours (depending on whether the flight is domestic or international) “after the main aircraft door is closed in preparation for departure.” Based on this statutory language, the Department interprets the tarmac delay to start when the main aircraft door is closed for departing flights, rather than the gate departure time (*i.e.*, the time the aircraft pushes back from the gate), as proposed by some carriers. The Department expects that in most situations, the time the aircraft door is closed is equivalent to the time passengers no longer have the opportunity to deplane, thereby starting the tarmac delay. However, the Department acknowledges that there may be a few instances in which the opportunity to deplane may still exist after the aircraft doors are closed, for example, circumstances in which the jet bridge is still attached to the aircraft and the crew is available and willing to open the aircraft door immediately to allow a passenger to deplane. For this reason, this rule allows carriers to present evidence that the opportunity to deplane exists even with the doors closed. In such situations, evidence that the carrier made announcements that the opportunity to deplane was available and that the aircraft doors could be opened as soon as a passenger requested to deplane would be sufficient to show that an opportunity existed.

The Department agrees with FlyersRights regarding its comment that flexibility in the start of the tarmac delay could create a misalignment between the start of the tarmac delay and the start of the food and water clock. For this reason, the Department has modified the food and water provision in the rule, as discussed in a later section.

3. Applicability to U.S. and Foreign Carriers

The NPRM: Although 49 U.S.C. 42301, which was amended by the FAA Extension Act, only applies to U.S. carriers, the NPRM proposed to apply the departure delay exception to both U.S. and foreign air carriers under DOT's authority to prohibit unfair and

deceptive practices in 49 U.S.C. 41712. The NPRM proposed to apply the requirements of the NPRM to both U.S. and foreign air carriers to streamline the tarmac delay requirements and decrease confusion in the airport environment.

Comments: Commenters on this issue all agreed that adjustments to the tarmac delay rule should be applied to U.S. and foreign air carriers alike.

DOT Response: The requirements of this final rule apply to both U.S. and foreign air carriers, as proposed.

4. Diversions

The NPRM: The NPRM proposed that diversions would be treated as arriving flights up to the point that an opportunity to deplane is provided to passengers. Once an opportunity to deplane is provided, the diversion would be treated as a departing flight and after that point, the departure delay exception could apply if carriers begin to return to a suitable disembarkation point to deplane passengers within the time frames specified in the exception.

Comments: Industry comments were not all supportive of the NPRM's proposed treatment of diversions. While Exhaustless, Inc. and Delta Air Lines agreed with the proposals, Air China, the Association of Asia Pacific Airlines (AAPA), the National Air Carrier Association, and the Regional Airline Association (RAA), expressed their view that the tarmac delay requirements should not apply to diversions. Many of them noted that carriers should not be held accountable for the lack of deplanement facilities at diversion airports, particularly during mass diversions, or in instances in which foreign carriers do not serve the diversion airport. AAPA also stated that passengers may not benefit from the rule in such situations if the flights are cancelled and passengers are stranded at an airport without carrier staff. Spirit Airlines proposed that diversions be treated as departing flights entirely, or to stop the tarmac delay clock when gates are not available and the airport or air traffic control caused the delay.

DOT Response: Section 42301 provides that a passenger shall have the option to deplane from an aircraft during an excessive tarmac delay, and that the option shall be offered to a passenger "even if a flight in covered air transportation is diverted to a commercial airport other than the originally scheduled airport." 49 U.S.C. 42301(b)(3)(B). The statute makes clear that the tarmac delay requirements apply to diversions, and the Department is implementing the tarmac delay rule consistent with the statute. The Department has decided to proceed with

the NPRM proposal to permit carriers to take advantage of the departure delay exception during diversions only after an opportunity to deplane is provided to passengers. If no opportunity to deplane has been provided, then the diversion is still treated as an arriving flight and the carrier must provide an opportunity for passengers to deplane within 3 or 4 hours, depending on whether the flight is domestic or international. The departure delay exception, as written, is not easily applied to diverted flights before an opportunity to deplane is provided, particularly the exception's primary elements such as *returning* to a suitable disembarkation point and doing so within 3 or 4 hours *after the main aircraft door is closed*.

In considering the concerns of foreign carriers who may have limited operations at a diversion airport, the Department's Office of Aviation Consumer Protection, the unit within the Office of the General Counsel that enforces aviation consumer protection requirements, already considers circumstances in which a carrier encounters unforeseeable conditions, and for which the carrier exerts no control, in determining whether to proceed with enforcement action and whether to mitigate any potential sanction. The Department also notes that carriers are required by the regulation to coordinate tarmac delay procedures in advance with the airport authorities and government agencies at the carrier's regular diversion airports in the United States. If exigent circumstances require a flight to divert to an airport that is not a regular U.S. diversion airport for the carrier, while the tarmac delay requirements would continue to apply, the Office of Aviation Consumer Protection would consider the totality of the circumstances in determining whether there is a violation in such a situation. In doing so, the Office of Aviation Consumer Protection recognizes that carriers diverting to a non-regular diversionary airport are not required to coordinate tarmac delay contingencies in advance with authorities at that airport and may not have a contingency plan with the airport, which may impact the airline's ability to provide the opportunity to deplane in a timely manner. The Office of Aviation Consumer Protection often affords the carrier additional leeway when the carrier finds itself in such circumstances; however, the tarmac delay requirements not related to the opportunity to deplane, such as providing timely food and water or notifications, would not be impacted when the delay occurs at a non-regular

diversion airport. The Department expects the carrier to take reasonable efforts to prevent or mitigate tarmac delay violations given the resources available in each respective situation.

5. Data Reporting Requirements

The NPRM: The Department proposed to revise the tarmac delay reporting requirements in 14 CFR part 244. Under existing reporting rules in 14 CFR parts 234 and 244, reporting carriers³ are required to file BTS Form 234 "On-Time Flight Performance Report" on a monthly basis for all scheduled passenger domestic flights that they market under their code to or from any U.S. large, medium, small, or non-hub airport. The report includes information on domestic scheduled passenger flights that experience tarmac delays at U.S. airports. Reporting carriers are also required to file BTS Form 244 "Tarmac Delay Report" on a monthly basis to report information on passenger flights they operate that experience lengthy tarmac delays, including domestic scheduled passenger flights that experience lengthy tarmac delays at medium, small, or non-hub U.S. airports to the extent the carriers do not already report on-time performance data voluntarily for these airports under 14 CFR 234.7.⁴ The combination of 14 CFR parts 234 and 244 reporting requirements has resulted in reporting carriers reporting tarmac delays twice at most U.S. airports. The NPRM proposed that reports for tarmac delays on scheduled domestic passenger flights no longer needed to be reported by reporting carriers under 14 CFR part 244, provided that such flights are reported under 14 CFR part 234.

The Department also proposed to eliminate the requirement that tarmac delay reports be filed under 14 CFR part

³ "Reporting carrier" for air transportation taking place on or after January 1, 2018, means an air carrier certificated under 49 U.S.C. 41102 that accounted for at least 0.5 percent of domestic scheduled-passenger revenues in the most recently reported 12-month period as defined by the Department's Office of Airline Information, and as reported to the Department pursuant to part 241. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Information. 14 CFR 234.2.

⁴ Reporting carriers are not required to file BTS Form 244 to report information on scheduled flights that experience lengthy tarmac delays at large hub U.S. airports because when DOT issued its rule for carriers to file BTS Form 244, that information was already required to be reported for domestic scheduled flights at large hub airports through BTS Form 234. Since then, the requirement for reporting carriers to provide on-time performance data using BTS Form 234 has been expanded to cover medium, small and non-hub airports. Also, the reporting of on-time performance data for scheduled domestic flights at medium, small, or non-hub U.S. airports on BTS Form 234 is mandatory and no longer voluntary for reporting carriers.

244 for international tarmac delays of between 3 and 4 hours in duration. Under the proposal, the requirement to report would only be triggered if the tarmac delay rises to the level of an “excessive tarmac delay,” defined as a tarmac delay of more than 3 hours for a domestic flight and more than 4 hours for an international flight.

Comments: Commenters generally supported the proposed changes to data reporting requirements. IATA and A4A also proposed that flights falling under the departure delay exception be excluded from reporting requirements, as the organizations preferred not to have such flights included in the Department’s monthly Air Travel Consumer Report. They also proposed excluding such flights from the statutory reporting requirement for U.S. carriers under 49 U.S.C. 42301(h). The RAA disagreed with the NPRM proposal, and expressed the view that non-reporting carriers should be exempt from 14 CFR part 244 reporting requirements entirely, including when a flight is not reported by a reporting carrier. Exhaustless, Inc. and FlyersRights opposed the proposal that international tarmac delays of between 3 and 4 hours in duration no longer needed to be reported under 14 CFR part 244, with FlyersRights noting that a competitive market requires informed consumers.

DOT Response: On balance, the Department views the data reporting requirement as serving a useful purpose in providing information to consumers to enable them to make informed decisions. However, the Department found that continuing to require reports for international tarmac delays not exceeding 4 hours would serve limited value to consumers, particularly when the Department does not publish these underlying tarmac delays in the monthly Air Travel Consumer Report. The data for international tarmac delays between 3 and 4 hours in duration primarily served an academic function, without aiding consumers’ ability to make informed choices, an element of the Department’s consumer protection mission. For this reason, the Department has decided to adopt the proposal that international tarmac delays of 4 hours or less no longer need to be reported under 14 CFR part 244.

Regarding duplicative reporting, the intent of the Department on this subject was to reduce unnecessary reporting that resulted from recent changes to 14 CFR part 234, thereby reducing the reporting burden for both reporting and non-reporting carriers. After reviewing the comments, the Department continues to see no reason to delay moving forward with the proposed

changes of eliminating duplicative reporting. The final rule makes minor adjustments and relieves non-reporting carriers of the obligation of filing BTS Form 244 for scheduled domestic flights if such flights are already reported by the reporting carrier to the Department using BTS Form 234. As noted in the NPRM, prior to this rule, tarmac delays on scheduled domestic flights marketed but not operated by a reporting carrier were reported twice: The reporting carrier reported the flight using BTS Form 234, and the non-reporting carrier reported the same flight using BTS Form 244. The final rule also relieves reporting carriers of the obligation of filing BTS Form 244 for scheduled domestic tarmac delays that occur at small, medium, and non-hub airports, delays which are already reported under 14 CFR part 234. Under the final rule, all covered carriers continue to be required to file BTS Form 244 for tarmac delays occurring on international and public charter flights, and on flights not otherwise reported under 14 CFR part 234 (e.g., extra section flights). Non-reporting U.S. carriers that operate flights that are not held out by reporting carriers are still required to file BTS Form 244 for tarmac delays on domestic and international flights. The Department was not persuaded that non-reporting carriers should be exempt from the part 244 reporting requirement. On the contrary, such reports may serve even greater value to consumers when they evaluate flight options from smaller, non-reporting carriers, many of which may be less familiar to the traveling public than larger, reporting carriers.

The Department found unpersuasive commenters’ suggestion that tarmac delays meeting the departure delay exception or another exception be excluded from reporting requirements. The Department notes that the definition of an “excessive tarmac delay” under 49 U.S.C. 42301 for U.S. carriers is unaffected by whether an exception to the tarmac delay incident exists. Such exceptions, if applicable, would mean that the lengthy tarmac delay incident did not violate the law, but the exceptions do not reclassify a tarmac delay as something other than a tarmac delay. The applicability of an exception also does not impact whether a carrier must file a tarmac delay report under 49 U.S.C. 42301(h), and in the regulatory context, the Department views the applicability of an exception to impact whether a carrier has violated the tarmac delay rule, but not whether a tarmac delay has occurred. Whether an exception to the tarmac delay

incident applies, the consumer harm of being held on an aircraft for an extended period exists, and information concerning such incidents is important for consumers to make informed decisions.

The Department also notes that, if carriers were permitted to exclude flights meeting a tarmac delay exception from their reporting requirements, the result could be inconsistent reporting practices between carriers determining whether an exception applied, thereby adding subjectivity to the data. Moreover, reporting carriers would see an increase in the time and resources needed to file their monthly reports under 14 CFR part 234 because the time needed to investigate and sort out tarmac delay exceptions from routine monthly on-time performance reports could be significant based on the amount of time that it currently takes airlines and the Department to make such determinations.

6. Narrative Reporting Requirement

The NPRM: The Department proposed to eliminate the tarmac delay record retention requirement in 14 CFR 259.4(e) and replace it with a reporting requirement. Prior to this final rule, U.S. and foreign air carriers with a tarmac delay contingency plan were required to retain specific information related to a tarmac delay for two years, including, among other information, the length and cause of the delay and an explanation of the actions taken to minimize passenger hardship. Under 49 U.S.C. 42301(h), U.S. carriers are also required to submit a written description of each excessive tarmac delay, which may include the information required to be retained under 14 CFR 259.4(e). The Department proposed that the new reporting requirement, which would replace the record retention requirement, would include the same information required to be retained under the existing § 259.4(e), and would also satisfy U.S. carrier obligations under 49 U.S.C. 42301(h). The Department proposed that the new reports would be due within 30 days of the date an excessive tarmac delay occurs, which is consistent with the time frame reports are due for U.S. carriers under 49 U.S.C. 42301(h).

Comments: Comments from industry were supportive of the proposal. The AAPA, IATA, and A4A noted that the 30-day timeframe for filing the narrative reports as proposed in the NPRM may be insufficient, particularly when the precise cause of the delay may take longer to determine. The associations felt that carrier personnel may feel uncomfortable certifying to information that may change after the report is filed,

and they asked that the certification statement accompanying the report be qualified to certify to the accuracy of the report at the time the report is submitted. IATA and A4A expressed their view that the Department should rely on a carrier's narrative report to the exclusion of other evidence that the Department would otherwise seek from carriers during the course of a tarmac delay investigation.

DOT Response: After reviewing the comments, the Department has decided to adopt the proposal in the final rule, with slight revisions to address carrier concerns regarding the certification statement. The Department has decided to maintain a 30-day time frame for this narrative reporting requirement because this aligns with the narrative reporting requirement for U.S. carriers under 49 U.S.C. 42301(h). Because the final rule permits U.S. carriers to fulfill their section 42301(h) reporting obligation under this regulation, the time frame for the narrative reporting requirement under this rule is consistent with that set by the statute.

The Department has considered carriers' concerns that carrier staff may be uncomfortable with certifying to the accuracy of a report when new information may be learned following the submission of a report. This final rule modifies the certification language by clarifying that, to the submitter's knowledge and belief, the submitted report is true and correct based on information available at the time of this report's submission. The Department expects that carriers will supplement their reports with the Department and submit additional information or materials, including any corrections to the previously submitted reports, as soon as new information becomes known.

7. Status Announcements

The NPRM: The Department proposed to eliminate the requirement that carriers provide notifications regarding the status and cause of the delay every 30 minutes to passengers on board an aircraft.

Comments: Most comments were in favor of the proposal. FlyersRights disagreed with the proposed elimination of the status announcements and suggested that passengers on board a plane be informed of changes in the status or cause of the delay. Air New Zealand expressed the view that it would be more appropriate to provide passenger announcements when new information becomes available or where there is information specific to a change in circumstances.

DOT Response: After carefully considering the comments submitted, the Department has decided to retain a scaled-down status notification requirement in the final rule, rather than eliminating the requirement entirely as proposed in the NPRM. Under the final rule, each covered carrier is required to notify passengers once regarding the status of the delay when the tarmac delay exceeds 30 minutes. The rule clarifies that each covered carrier may provide subsequent updates, including flight status changes and additional information beyond the requirements of the rule, as the carrier deems appropriate. The Department believes that carriers should, at a minimum, provide basic information about the status of a delay when passengers have been on board a delayed aircraft for over 30 minutes, and the status notification requirement in this rule enables passengers to receive that minimum information. Such a notification may have the effect of setting passenger expectations for the length of the delay, and may help to mitigate passenger concerns or complaints. The Department expects that carriers will continue to notify passengers regarding changes in the status of the delay as changes occur, and the Department encourages them to do so. However, the Department no longer requires that carriers provide regular status notifications every 30 minutes. In the NPRM, the Department noted that regular status notifications may serve limited value to consumers if no new information is available, particularly during overnight delays when passengers may prefer to remain uninterrupted. Accordingly, the Department believes that carriers are in the best position to determine what information will be most useful and least disruptive to passengers in each situation.

8. Deplaning Announcements

The NPRM: The Department proposed to change carrier obligations with respect to notifying passengers when they have an opportunity to deplane. Prior to this final rule, carriers were required to notify passengers that they have the opportunity to deplane an aircraft if the opportunity to deplane exists. The first notification was required beginning 30 minutes after the scheduled departure time, and another notification needed to be made every 30 minutes thereafter while the opportunity to deplane existed. The Department proposed to eliminate the carrier's obligation to provide additional notifications every 30 minutes, thereby reducing the burden on carrier staff,

while maintaining passengers' access to information. Under the proposal, carriers would be obligated to make a notification when an opportunity to deplane exists (and each time such an opportunity recurs, if, for example, an aircraft returns to the gate after taxiing).

Comments: Commenters unanimously agreed with the proposed change to the rule. FlyersRights commented that passengers should also be notified about the end of an opportunity to deplane.

DOT Response: The obligation to provide an announcement regarding the passengers' opportunity to deplane from an aircraft is an essential component of the tarmac delay rule. As the Department has previously noted, the announcement serves the critical purpose of informing all passengers on the aircraft that the opportunity to deplane exists, which, in many situations, will not be apparent to passengers seated in areas that do not have a line of sight to an open aircraft door. It prevents situations in which some passengers experience a tarmac delay while other passengers on the same aircraft do not.

Based on the comments, the Department has decided to adopt the proposal regarding deplaning announcements, with slight clarifying modifications, in this final rule. Under the final rule, each time the opportunity to deplane exists at a suitable disembarkation point, each covered carrier must timely notify the passengers on board the aircraft that they have the opportunity to deplane. Carriers no longer have an ongoing obligation to make deplaning announcements every 30 minutes, as required by the existing rule, but they are required to make a timely announcement when the opportunity to deplane arises, including in situations in which the aircraft returns to the gate on departure, or during a diversion when an aircraft is parked and awaiting departure to the intended destination. In determining whether a deplaning announcement is timely, the Office of Aviation Consumer Protection considers various factors, such as the length of time that the opportunity to deplane exists prior to an announcement being made and whether a lack of a deplaning announcement had the effect of depriving passengers of an opportunity to deplane. Carriers are not expected to provide deplaning announcements during the boarding process or prior to the scheduled departure time of the flight.

Although the Department does not prescribe the precise content of these announcements beyond informing passengers that they have the

opportunity to deplane, the Department encourages carriers to provide passengers sufficient detail in their announcements to create a realistic expectation of how long the opportunity to deplane will continue to exist. This could help passengers gauge whether and when to take advantage of the opportunity to deplane. Whether the carrier permits a passenger to re-board the aircraft after the passenger has taken advantage of the opportunity to deplane is an operational decision left to the carrier for purposes of this rule. This rule does not impact carriers' ability to announce that deplaning passengers should stay near the gate area, or that deplaning passengers may not be permitted to re-board the aircraft, as appropriate.

9. Tarmac Delay Safety and Security Exceptions

The NPRM: Prior to this final rule, the tarmac delay regulations and 49 U.S.C. 42301 had slightly different standards for the safety and security exceptions to the tarmac delay requirements. Under the regulation, 14 CFR 259.4, a safety or security exception existed when the pilot-in-command determined that there was a safety related or security related reason why the aircraft could not leave its position on the tarmac to deplane passengers. Under 49 U.S.C. 42301, a passenger must have the option to deplane an aircraft and return to the airport terminal when there is a lengthy tarmac delay except when the pilot in command determines that permitting a passenger to deplane would jeopardize passenger safety or security. The Department proposed to amend the safety and security exceptions to the tarmac delay rule to incorporate the exceptions articulated in 49 U.S.C. 42301 into the existing safety and security exceptions in the regulation. Under this proposal, a safety or security exception would occur when the pilot-in-command determined that deplaning passengers at a suitable disembarkation point would jeopardize passenger safety or security, or when there was a safety related or security related reason why the aircraft could not leave its position on the tarmac to deplane passengers. As the Department's Office of Aviation Consumer Protection already considered the exceptions provided in 49 U.S.C. 42301 and the Department's tarmac delay rule to determine whether a violation occurred, the Department did not expect that this change in language would impact carriers or consumers.

Comments: Commenters generally agreed with the proposal, but many carriers added that the Department should afford flight crews greater

deference and discretion in determining when a safety or security exception exists, and that the Department should not second guess a crewmember's decision on where to divert a flight. The RAA also commented that the lack of buses and stairs should be considered a safety exception to the tarmac delay rule, as the availability of such equipment is often out of the carrier's control and is needed for passenger safety.

DOT Response: The Department has carefully considered the comments submitted on this issue and is adopting the language of the safety and security exceptions as articulated in the NPRM in this final rule. To address commenters' concerns about deference to flight crews, the Department notes that the Office of Aviation Consumer Protection already defers generally to crew decisions not to offload passengers for reasons that are reasonably based on safety and security concerns when the circumstances that give rise to those safety and security concerns are unavoidable and not precipitated by a carrier's own actions or inactions. For example, the Office does not question a pilot's decision about where to divert a flight because that is an exigent, operational decision. The Office of Aviation Consumer Protection may evaluate a carrier's decision to dispatch a flight, however, if the carrier has reason to know that a diversion would be likely at the time of the flight's departure. Regarding a lack of buses and stairs, the Department does not consider the inability to offload passengers due to the lack of deplaning equipment, absent other factors, to create a per se safety exception to the tarmac delay rule. If lacking a way to offload passengers were a per se exception to the rule, the rule, which itself requires carriers to find ways to offload passengers stranded on the tarmac, would have no effect.

Consistent with current practice and Department policy, the Office of Aviation Consumer Protection, when investigating potential tarmac delay violations, affords the carrier the opportunity to present evidence in support of its position, including whether the carrier believes the rule was violated, whether an exception applies, whether there are any mitigating circumstances, whether the consumer harm was limited, and any other facts the carrier would like for the Office to consider. The Office of Aviation Consumer Protection considers all the information presented in each matter when determining whether enforcement action and any sanction is appropriate.

10. Provision of Food and Water

The NPRM: The Department proposed to clarify carrier obligations with respect to the provision of food and water. Prior to this final rule, carriers were required to provide adequate food and potable water no later than 2 hours after the aircraft left the gate (in the case of a departure) or touched down (in the case of an arrival) if the aircraft remained on the tarmac, unless the pilot-in-command determined that safety or security considerations precluded such service. Because the obligation to provide food and water was triggered 2 hours after the aircraft left the gate, there were two separate start times for carriers' tarmac delay responsibilities. More specifically, for the purposes of calculating the length of a tarmac delay, a tarmac delay started after the main aircraft door was closed in preparation for departure, which generally meant that passengers on board the aircraft no longer had the opportunity to deplane. On the other hand, carriers' obligation to provide food and water occurred within 2 hours of the aircraft leaving the gate. The proposal sought to standardize carrier obligations such that the food and water timer would begin at the same time a tarmac delay begins.

Comments: FlyersRights and several carriers agreed with the proposal. IATA and A4A commented that the start of the food and water timer should match the gate departure time, while Spirit Airlines commented that starting the clock when the aircraft doors are closed could lead to situations in which the aircraft is actively taxiing while the food and water requirement is triggered, which could present an unsafe situation.

DOT Response: Based on the comments received, the Department has adopted the proposal on this requirement, with slight modifications. The language has been revised to clarify that the obligation to provide food and water exists no later than 2 hours after the tarmac delay begins. With this change in language, the tarmac delay clock and the food and water clock are in alignment, addressing the concerns raised by commenters including FlyersRights. As stated previously, a tarmac delay for a departing flight generally starts when the main aircraft door is closed. In some situations, this start time may also approximate the time that the aircraft pushes back from the gate, minimizing the potential impact of this modification to the rule in such situations. The Department also notes that, as with the prior iteration of the food and water requirement, safety or security considerations may preclude

the provision of food and water. If 2 hours into the tarmac delay, for example, the carrier can show that operation of the aircraft would make the provision of food and water unsafe (e.g., the aircraft is taxiing and approaching an active runway for takeoff), the obligation would not be imposed at that time. The Department expects the carrier to provide food and water at the next safe opportunity if the aircraft remains on the ground with passengers onboard.

As with prior guidance on this issue, the Department has chosen not to define what constitutes “adequate food” for purposes of this rule. The Department previously stated that a granola bar and a bottle of water or similar snack would suffice. The Department does not expect carriers to serve full meals, but carriers are expected to have or obtain adequate supplies of food and drinking water for all passengers onboard the aircraft during the delay. Carriers may provide more substantial food or more frequent service as they deem appropriate.

Effective Date of Reporting Requirements

The amended provisions of 14 CFR part 244 take effect for reports submitted to the Department on or after the effective date of this rule. As such, data for tarmac delays that are already reported under 14 CFR part 234 or data for tarmac delays of 4 or fewer hours in duration on international flights are not to be included in reports submitted to the Department on or after the effective date of the rule. Also, part 244 reports submitted to the Department on or after the effective date of the final rule must include the data points required by 14 CFR 244.3(a) in the order they are listed in the regulation, consistent with the BTS Accounting and Reporting Directive. The report must also include the data point required by 14 CFR 244.3(b), if applicable.

Narrative reports under 14 CFR 259.4(g) are required for tarmac delays occurring on and after the effective date of this rule. U.S. carriers may continue to file their narrative reports at the website <https://filingtarmacdelayplan.dot.gov/>, consistent with the prior practice for reports filed under 49 U.S.C. 42301(h). Foreign carriers may also file their narrative reports at this website after creating an account. Alternatively, carriers may send their narrative reports to the email address TarmacDelayEmailAccount@dot.gov.

Statutory Authority

The Department has the authority to establish minimum standards for the

emergency contingency plans of air carriers and to require adherence to those plans, pursuant to 49 U.S.C. 42301. In addition, the Department’s authority to regulate unfair and deceptive practices in air transportation or the sale of air transportation is found at 49 U.S.C. 41712. This final rule modifies or clarifies existing regulatory requirements and does not declare a new practice to be unfair or deceptive to consumers.

Pursuant to 49 U.S.C. 41708, the Department has the authority to require air carriers and foreign air carriers to file annual, monthly, periodical, or special reports in the form and way prescribed by the Department, and it may require such reports to be filed under oath. Additionally, 49 U.S.C. 42301 requires air carriers to submit to the Department a written description of an excessive tarmac delay within 30 days of the incident.

A different statute, 49 U.S.C. 46301, gives the Department the authority to issue civil penalties for violations of sections 41708, 41712, 42301, or for any regulation issued under the authority of those sections.

Regulatory Notices

A. Executive Order 12866 (Regulatory Planning and Review)

This action has been determined to be not significant under Executive Order 12866 (“Regulatory Planning and Review”), as supplemented by Executive Order 13563 (“Improving Regulation and Regulatory Review”). Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that order.

B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This rule does not contain any provision that (1) has substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and

criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the provisions in the final rule significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000 pound payload capacity). See 14 CFR 399.73. Nearly all the provisions in this rule generate minimal cost savings or are clarifications (which would result in no economic impact). This rule is expected to result in cost savings or benefits that are minimal and difficult to quantify. A small number of tarmac delays occur on flights operated by small entities, and the impact on the small entities is expected to be minimal. Accordingly, the Department does not believe that the final rule would have a significant impact on a substantial number of small entities. In addition, the Department did not receive comments to the NPRM that suggested that the rule would have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. As required by the PRA, the Department has submitted the Information Collection Request (ICR) abstracted below to OMB. Before OMB decides whether to approve those proposed collections of information that are part of this final rule and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to:

Department of Transportation, Office of Aviation Consumer Protection, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Department may not impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. The Department intends to renew the OMB control number for the information collection requirements resulting from this rulemaking action. The OMB control number, when renewed, will be announced by separate notice in the **Federal Register**. The 60-day notice for this information collection was previously published in the **Federal Register** as part of the NPRM. See 84 FR 57370. The Department invited interested parties to comment on the information collection requirements contained in the NPRM and did not receive comments regarding the estimated burdens that would be imposed by the proposed changes to collection requirements and that were referenced in the NPRM. However, commenters generally supported the changed reporting obligations and the reduction in burdens, as noted above.

This final rule modifies existing information collection requirements under OMB control number 2105–0561. OMB control number 2105–0561 addresses five information collections: (1) Retention of tarmac delay data, (2) adoption and audit of tarmac delay plans, (3) display of on-time performance data on carrier websites, (4) reporting of tarmac delay data, and (5) posting of customer service plans and contracts of carriage on carrier websites. The changes implemented by this rule modify information collections 1 and 4 in the above list. This rule does not replace, change, or discontinue the other information collections that are addressed in OMB control number 2105–0561.

This rule changes two parts of the Department's regulations: 14 CFR parts 244 (reporting tarmac delay data) and 259, specifically § 259.4(e) (retention of records related to tarmac delays). It eliminates reports for tarmac delays between 3 and 4 hours on international flights, eliminates duplicative reporting of domestic tarmac delays that are already reported under 14 CFR part 234, and changes a record retention

requirement in 14 CFR 259.4(e) into a descriptive tarmac delay reporting requirement.

For each of the information collections proposed for 14 CFR part 244 and 14 CFR 259.4, the title, a description of the respondents, and an estimate of the burdens are set forth below:

1. Requirement That Carriers Report Certain Tarmac Delay Data to BTS for Tarmac Delays Exceeding 3 Hours (for Domestic Flights) and Exceeding 4 Hours (for International Flights) on a Monthly Basis

Title: Reporting Tarmac Delay Data to BTS for Tarmac Delays Exceeding 3 Hours (for Domestic Flights) and 4 Hours (for International Flights).

Respondents: U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with 30 or more seats, and foreign air carriers that operate scheduled passenger or public charter service to and from the United States using any aircraft with 30 or more seats.

Number of Respondents: 61 U.S. and 70 foreign carriers (estimated). Due to the changes in the rule, it is expected that, in nearly all cases, tarmac delays that would be reportable under 14 CFR part 244 would be on international flights, as nearly all tarmac delays on domestic flights would be reported under 14 CFR part 234.⁵ Based on data submitted by airlines to BTS from 2012 to 2019, the final rule would result in an average of 27 tarmac delays on international flights to be reported through BTS Form 244 in a given year.

Estimated Annual Burden on Respondents: Based on the highest and lowest number of reports submitted by each individual carrier in the years 2012 through 2019, the rule's requirements would result in each U.S. air carrier filing 0 to 18 reports annually under 14 CFR part 244, and each foreign air carrier filing 0 to 7 reports annually under 14 CFR part 244. The ranges reflect the highest number of reportable tarmac delays on international flights experienced in a year by carriers during the period. At 30 minutes of burden per report filed, the rule would result in a burden of between 0.0 hours and 9.0 hours for each U.S. carrier, and between 0.0 and 3.5 hours for each foreign air carrier.

⁵ The rule would not affect the reporting of tarmac delays on domestic flights if those flights are not already reported under 14 CFR part 234 (*i.e.*, those flights that are neither held out or operated by carriers that file reports under 14 CFR part 234); however, such tarmac delays are generally uncommon.

Estimated Total Annual Burden: This rule would result in an estimated 27 reports filed under 14 CFR part 244 each year, with a total annual burden of 13.5 hours. This total reflects a reduction in existing burdens that would result from the rule's changes to existing regulations, including (1) eliminating reports for tarmac delays between 3 and 4 hours on international flights, and (2) eliminating duplicative reporting for domestic tarmac delays that are already reported under 14 CFR part 234. The rule's requirement for an additional data point for certain tarmac delay reports (when the length of the tarmac delay is not reflected in the required data points reported on BTS Form 244) would not result in any measurable effect on burden.

2. Eliminating Tarmac Delay Record Retention Requirement and Adding a Narrative Reporting Requirement

Title: Changing Tarmac Delay Record Retention Requirement into a Narrative Reporting Requirement That Complies with 49 U.S.C. 42301(h).

Respondents: U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with 30 or more seats, and foreign air carriers that operate scheduled passenger or public charter service to and from the United States using any aircraft with 30 or more seats.

Number of Respondents: 61 U.S. air carriers and 70 foreign air carriers (estimated). Based on reports submitted by carriers to BTS between 2012 and 2019, the Department expects an average of 150 reportable tarmac delays to occur in a given year, with an average of 134 delays on flights operated by U.S. air carriers and an average of 14 delays on flights operated by foreign air carriers (out of an average of 27 annual tarmac delays occurring on international flights operated by both U.S. and foreign carriers).⁶ Under the final rule, carriers no longer need to retain for 2 years the records related to these tarmac delays. Instead, carriers are required to file a report with a written description of the tarmac delay incident to the Department's Office of Aviation Consumer Protection. Because U.S. carriers already file such reports pursuant to 49 U.S.C. 42301(h), U.S. carriers do not encounter any additional reporting burdens under the rule's changes to 14 CFR 259.4, and would experience a net burden decrease as a result of the proposed elimination of the

⁶ Due to rounding, the average number of annual tarmac delays by U.S. and foreign carriers does not add up to the total average number of annual tarmac delays (150).

record retention requirement. For purposes of calculating total burdens, the Department has decided to incorporate the U.S. carrier reporting burden under 49 U.S.C. 42301(h) into this information collection, thereby combining the burden calculation for both U.S. and foreign carrier narrative reports under this rule. U.S. carriers file narrative reports for the 134 average annual tarmac delays they experience, while the 14 average annual tarmac delays operated by foreign air carriers would result in new reports being filed under 14 CFR 259.4. These reports replace the record retention that was required of carriers prior to this final rule.

Estimated Annual Burden on Respondents: The Department expects that the burden on carriers to file descriptive tarmac delay reports is 2 hours per report for U.S. carriers and 4 hours per report for foreign carriers. The expected burden per U.S. carrier is between 0 and 84 reports per year, and the expected burden per foreign carrier is between 0 and 7 reports per year (based on the highest annual number of tarmac delays experienced by a single U.S. and foreign carrier between 2012 and 2019), or 0.0 to 168.0 hours of burden per U.S. carrier and 0.0 to 28.0 hours of burden per foreign carrier.

Estimated Total Annual Burden: This information collection would result in an estimated annual burden of 134 reports for U.S. carriers and 14 reports for foreign carriers, or a total of 324 hours (134 reports multiplied by 2 hours per report for U.S. carriers, and 14 reports multiplied by 4 hours per report for foreign carriers)

F. Unfunded Mandates Reform Act

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

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979) available at <https://www.transportation.gov/office-policy/transportation-policy/procedures-consideringenvironmental-impacts-dot-order-56101c>. Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and, therefore, do not require either an

environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.1(d). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 4(c)(6)(i) of DOT Order 5610.1C provides that "actions relating to consumer protection, including regulations" are categorically excluded. The purpose of this rulemaking is primarily to amend obligations of carriers during tarmac delays. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this final rule. As this action relates to airline consumer protection regulations, the action is categorically excluded under the order.

List of Subjects

14 CFR Part 244

Administrative practice and procedure, Airports, Consumer protection.

14 CFR Part 259

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 14 CFR chapter II, subchapter A, is amended as follows:

PART 244—REPORTING TARMAC DELAY DATA

- 1. Revise the authority citation for part 244 to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, 41708, 41712, and 42301.

- 2. Amend § 244.1 by removing the definition of "Arrival time", adding definitions for "Excessive tarmac delay" and "Gate arrival time" in alphabetical order, and revising the definition for "Tarmac delay" to read as follows:

§ 244.1 Definitions.

* * * * *

Excessive tarmac delay means a tarmac delay of more than three hours for a domestic flight and more than four hours for an international flight.

* * * * *

Gate arrival time is the instant when the pilot sets the aircraft parking brake after arriving at the airport gate or passenger unloading area. If the parking brake is not set, record the time for the opening of the passenger door. Also, for purposes of § 244.3 carriers using a Docking Guidance System (DGS) may record the official "gate-arrival time"

when the aircraft is stopped at the appropriate parking mark.

* * * * *

Tarmac delay means the period of time when an aircraft is on the ground with passengers and the passengers have no opportunity to deplane.

- 3. Revise § 244.2 to read as follows:

§ 244.2 Applicability.

(a) *Covered operations.* Except as provided in paragraph (b) of this section, this part applies to U.S. certificated air carriers, U.S. commuter air carriers and foreign air carriers that operate passenger service to or from a U.S. airport with at least one aircraft that has an original manufacturer's design capacity of 30 or more seats. Covered carriers must report all passenger operations that experience an excessive tarmac delay at a U.S. airport.

(b) *Exceptions.* (1) For foreign air carriers that operate charter flights from foreign airports to U.S. airports, and return to foreign airports, and do not pick up any new passengers in the United States, the charter flights are not flights subject to the reporting requirements of this part.

(2) For U.S. air carriers whose flights are reported under 14 CFR part 234 (Airline Service Quality Performance Reports), their scheduled domestic flights are not subject to the reporting requirements of this part.

- 4. Revise § 244.3 to read as follows:

§ 244.3 Reporting of tarmac delay data.

(a) Each covered carrier shall file BTS Form 244 "Tarmac Delay Report" with the Office of Airline Information of the Department's Bureau of Transportation Statistics setting forth the information for each of its covered flights that experienced an excessive tarmac delay at a U.S. airport, including diverted flights and cancelled flights on which the passengers were boarded and then deplaned before the cancellation. The reports are due within 15 days after the end of any month during which the carrier experienced the excessive tarmac delay. The reports shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information, and shall contain the following information:

- (1) Carrier code.
- (2) Flight number.
- (3) Departure airport (three letter code).
- (4) Arrival airport (three letter code).
- (5) Date of flight operation (year/month/day).
- (6) Gate departure time (actual) in local time.

(7) Wheels-off time (actual) in local time.

(8) Wheels-on time (actual) in local time.

(9) Gate arrival time (actual) in local time.

(10) Aircraft tail number.

(11) Total ground time away from gate for all gate return/fly return at origin airports including cancelled flights.

(12) Longest time away from gate for gate return or canceled flight.

(13) Three letter code of airport where flight diverted.

(14) Wheels-on time at diverted airport.

(15) Total time away from gate at diverted airport.

(16) Longest time away from gate at diverted airport.

(17) Wheels-off time at diverted airport.

(b) Covered carriers that experience an excessive tarmac delay at a U.S. airport and are filing a form under this section must also report the length of the excessive tarmac delay to the Office of Airline Information of the Department's Bureau of Transportation Statistics, if the length of the excessive tarmac delay experienced is not otherwise represented by the data points listed in paragraph (a) of this section (e.g., the pilot sets the aircraft parking brake after arriving at the passenger unloading area, but passengers are not provided an opportunity to deplane at that time).

(c) The same information required by paragraphs (a)(13) through (17) of this section must be provided for each subsequent diverted airport landing.

PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS

■ 5. The authority citation for part 259 is revised to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, 41708, 41712, and 42301.

■ 6. Revise § 259.2 to read as follows:

§ 259.2 Applicability.

This part applies to all the flights of a certificated or commuter air carrier if the carrier operates scheduled passenger service or public charter service using any aircraft originally designed to have a passenger capacity of 30 or more seats, and to all flights to and from the U.S. of a foreign air carrier if the carrier operates scheduled passenger service or public charter service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats, except as otherwise provided in this part. This part does not

apply to foreign air carrier charters that operate to and from the United States if no new passengers are picked up in the United States. Section 259.4 does not apply to a flight that diverts to the United States when the flight is operated by a foreign air carrier and scheduled to operate between two foreign points.

■ 7. Amend § 259.3 by adding definitions for “Main aircraft door” and “Suitable disembarkation point” in alphabetical order and revising the definition of “Tarmac delay” to read as follows:

§ 259.3 Definitions.

* * * * *

Main aircraft door means the door used for boarding. In situations in which there are multiple doors that can be used for boarding, the last door closed is the main aircraft door.

* * * * *

Suitable disembarkation point means a location at an airport where passengers can deplane from an aircraft.

Tarmac delay means the period of time when an aircraft is on the ground with passengers and the passengers have no opportunity to deplane.

■ 8. Revise § 259.4 to read as follows:

§ 259.4 Contingency Plan for Lengthy Tarmac Delays.

(a) *Adoption of plan.* Each covered carrier, as defined by § 259.3, shall adopt a Contingency Plan for Lengthy Tarmac Delays for its scheduled and public charter flights at each U.S. large hub airport, medium hub airport, small hub airport, and non-hub airport at which it operates or markets such air service, except as specified in § 259.2, and shall adhere to its plan's terms.

(b) *Contents of plan.* Each Contingency Plan for Lengthy Tarmac Delays shall include, at a minimum, assurances that the covered carrier shall comply with the requirements set forth in paragraph (c) of this section.

(c) *Requirements.* Covered carriers must comply with the following requirements:

(1) For all domestic flights, each covered U.S. air carrier shall provide a passenger on a flight experiencing a tarmac delay at a U.S. airport the opportunity to deplane before the tarmac delay exceeds three hours in duration, subject to the exceptions in paragraph (c)(3) of this section;

(2) For all international flights, each covered carrier shall provide a passenger on a flight experiencing a tarmac delay at a U.S. airport the opportunity to deplane before the tarmac delay exceeds four hours in

duration, subject to the exceptions in paragraph (c)(3) of this section;

(3) A covered U.S. carrier that experiences a tarmac delay at a U.S. airport must comply with paragraphs (c)(1) and (2) of this section, and a covered foreign air carrier must comply with paragraph (c)(2) of this section, unless:

(i) For departing flights, the flight begins to return to a suitable disembarkation point no later than three hours (for domestic flights) or four hours (for international flights) after the main aircraft door is closed in order to deplane passengers. If the aircraft is in an area that is not under the carrier's control, the aircraft has begun to return to a suitable disembarkation point when a request is made to the Federal Aviation Administration control tower, airport authority, or other relevant authority directing the aircraft's operations. If the aircraft is in an area that is under the carrier's control, the aircraft has begun to return to a suitable disembarkation point when the pilot begins maneuvering the aircraft to a suitable disembarkation point;

(ii) The pilot-in-command determines that deplaning passengers at a suitable disembarkation point would jeopardize passenger safety or security, or there is a safety related or security related reason why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(iii) Air traffic control advises the pilot-in-command that returning to a suitable disembarkation point to deplane passengers would significantly disrupt airport operations;

(4) For all flights during a tarmac delay, each covered carrier must provide adequate food and potable water no later than two hours after the start of the tarmac delay, unless the pilot-in-command determines that safety or security considerations preclude such service;

(5) For all flights, each covered carrier must ensure operable lavatory facilities, as well as adequate medical attention if needed, during a tarmac delay;

(6) For all flights, each covered carrier must notify the passengers on board the aircraft during a tarmac delay regarding the status of the delay when the tarmac delay exceeds 30 minutes, and thereafter each covered carrier may provide subsequent updates, including flight status changes, as the carrier deems appropriate;

(7) For all departing flights and diversions, each time the opportunity to deplane exists at a suitable disembarkation point, each covered carrier must timely notify the passengers on board the aircraft that the

passengers have the opportunity to deplane;

(8) Each covered carrier must ensure that it has sufficient resources to implement its Contingency Plan for Lengthy Tarmac Delays, as set forth in paragraphs (a) and (b) of this section; and

(9) Each covered carrier must ensure that its Contingency Plan for Lengthy Tarmac Delays, as set forth in paragraphs (a) and (b) of this section, has been coordinated with the following entities:

(i) Airport authorities (including terminal facility operators where applicable) at each U.S. large hub airport, medium hub airport, small hub airport, and non-hub airport that the carrier serves, as well as its regular U.S. diversion airports;

(ii) U.S. Customs and Border Protection (CBP) at each large U.S. hub airport, medium hub airport, small hub airport, and non-hub airport that is regularly used for that carrier's international flights, including regular U.S. diversion airports; and

(iii) The Transportation Security Administration (TSA) at each U.S. large hub airport, medium hub airport, small hub airport, and non-hub airport that the carrier serves, including regular U.S. diversion airports.

(d) *Diversions.* For purposes of this section, a diverted flight is treated as an arriving flight up to the point that an opportunity to deplane is provided to passengers. Once an opportunity to deplane is provided, the diversion is treated as a departing flight, and after that point, the departure delay exception in paragraph (c)(3)(i) of this section applies if the carrier begins to return to a suitable disembarkation point in order to deplane passengers as required by the exception.

(e) *Code-share responsibility.* The tarmac delay contingency plan of the carrier under whose code the service is marketed governs, if different from the operating carrier, unless the marketing carrier specifies in its contract of carriage that the operating carrier's plan governs.

(f) *Amendment of plan.* At any time, a carrier may amend its Contingency Plan for Lengthy Tarmac Delays to decrease the time for aircraft to remain on the tarmac for domestic flights covered in paragraph (c)(1) of this section, for aircraft to remain on the tarmac for international flights covered in paragraph (c)(2) of this section, for aircraft to begin to return to a suitable disembarkation point covered in paragraph (c)(3)(i) of this section, and for providing food and water covered in paragraph (c)(4) of this section. A carrier

may also amend its plan to increase these intervals (up to the limits in this part), in which case the amended plan shall apply only to departures that are first offered for sale after the plan's amendment.

(g) *Written reports.* (1) Each covered operating carrier subject to this part shall submit to the Office of Aviation Consumer Protection of the U.S. Department of Transportation a written description of each of the flights it operates that experiences a tarmac delay of more than three hours (on domestic flights) and more than four hours (on international flights) at a U.S. airport no later than 30 days after the tarmac delay occurs.

(2) The written description referenced in paragraph (g)(1) of this section shall include, at a minimum, the following information:

(i) The name of the operating carrier, the name of the marketing carrier if the operating carrier is not the marketing carrier, and the flight number;

(ii) The originally scheduled origin and destination airports of the flight;

(iii) The airport at which the tarmac delay occurred and the date it occurred;

(iv) The length of the tarmac delay that occurred; and

(v) An explanation of the incident, including the precise cause of the tarmac delay, the actions taken to minimize hardships for passengers (including the provision of food and water, the maintenance and servicing of lavatories, and medical assistance), and the resolution of the incident.

(3) The written description referenced in paragraph (g)(1) of this section shall be accompanied by a signed certification statement that reads as follows:

I, (Name) and (Title), of (Carrier Name), certify that the enclosed report has been prepared under my direction, and affirm that, to the best of my knowledge and belief, the report is true and correct, based on information available at the time of this report's submission.

Date:

Signature:

Email address and phone number:

(4) A U.S. air carrier that submits a report in accordance with paragraph (g) of this section is in compliance with the reporting mandate for U.S. air carriers in 49 U.S.C. 42301(h) with respect to the excessive tarmac delay reported.

(h) *Unfair and deceptive practice.* A carrier's failure to comply with the assurances required by this part and contained in its Contingency Plan for Lengthy Tarmac Delays will be considered to be an unfair and deceptive practice within the meaning

of 49 U.S.C. 41712 that is subject to enforcement action by the Department.

Issued this 23rd day of April, 2021, in Washington, DC under authority delegated in 49 CFR 1.27(n):

John E. Putnam,

Acting General Counsel.

[FR Doc. 2021-08850 Filed 4-30-21; 8:45 am]

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DEPARTMENT OF COMMERCE

Office of the Under-Secretary for Economic Affairs

15 CFR Chapter XV

[Docket No.: 210422-0086]

RIN 0605-AA56

Concrete Masonry Products Research, Education and Promotion Order; Referendum Procedures

AGENCY: Under Secretary for Economic Affairs, United States Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule establishes procedures for conducting a referendum to determine whether manufacturers of concrete masonry units (manufacturers) favor the issuance of a Concrete Masonry Products Research, Education, and Promotion Order (Order). The purpose of the Order would be to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The Department will publish a proposed Order that will become final if approved by referendum.

DATES: This final rule is effective May 3, 2021. Registration to participate in the referendum begins May 4, 2021, and will continue through midnight of the day prior to the first day of the referendum period (see Summary of Final Rule below). The Department will announce the referendum period along with a final proposed Order in a separate notification in a later **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Communications for the Commerce Checkoff Implementation Program, Office of the Under Secretary for Economic Affairs, telephone: (202) 482-0671 or via electronic mail: michael.thompson1@trade.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Concrete Masonry Products Research, Education, and Promotion Act of 2018, 15 U.S.C. 8701 *et seq.* (the Act), the Department is enacting a research, education, and promotion program (commonly referred to as a checkoff program) for concrete masonry products. The Act also authorizes the Secretary to “issue such regulations as may be necessary to carry out [the Act] and the power vested in the Secretary under [the Act].” 15 U.S.C. 8713. The Act specifically authorizes the Secretary to conduct the referendum, and states that “[referenda . . . shall be conducted in a manner determined by the Secretary.” 15 U.S.C. 8706(c)(1).

As part of this rulemaking process, the Department published (1) a proposed Order (85 FR 52059, August 24, 2020), and (2) proposed referendum procedures (85 FR 65288, October 15, 2020). This rule finalizes the referendum procedures for which the comment period expired on November 16, 2020. The Department received comments from five commenters regarding the proposed referendum procedures (see below for comments and responses).

Executive Order 12866

This rulemaking is not a significant regulatory action under Executive Order 12866. Because it is not a significant action under Executive Order 12866, it is not subject to Executive Order 13771.

Summary of Final Rule

The Department will conduct a referendum in 2021 (the Department will publish the dates when it publishes the second proposed Order). Each manufacturer eligible to vote in the referendum is entitled to one vote. The Department will use Employer Identification Numbers (EINs) to identify manufacturers, with each manufacturer EIN entitled to a vote. The use of EINs will prevent duplicate voting and provide a clear method for listing manufacturers. For the order to go into effect, there must be a majority “yes” vote by both: (1) The total number of concrete masonry unit manufacturers voting, and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. Manufacturers must register prior to midnight of the day prior to the start of the referendum period in order to vote.

This final rule notifies all interested voters that they must register prior to the beginning of the referendum period. For the initial referendum the Department will mail registration forms to those manufacturers of concrete

masonry units of which it is aware. The Department also will make the registration form available on the Department of Commerce website (<https://www.commerce.gov/bureaus-and-offices/ousea/concrete-masonry-checkoff>) or by email request to Checkoff@doc.gov. Based on the registration, the Department will provide ballots to eligible voters. For the initial referendum the Department will mail ballots to eligible, registered manufacturers. For a manufacturer to be eligible they must have manufactured concrete masonry units within 180 days of the referendum period. During the referendum, the Department will collect and review all ballots received and determine whether any ballots are invalid and should not be counted. After tallying all valid ballots, the Department will prepare a report on the referendum and announce the results to the public. The Department would use these same procedures for any subsequent referendum under the Act. For any future proposed orders, voter eligibility would be based on the scope of such proposed orders.

Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980 and codified at 5 U.S.C. 600–611, was intended to place the burden on the government to review all new regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization can have a bearing on its ability to comply with Federal regulations. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business; (2) to require that agencies communicate and explain their findings to the public; and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. The Department published an Initial Regulatory Flexibility Analysis (IRFA) in the proposed rule and described the impact of the proposed rule on small entities. The final Regulatory Flexibility Analysis follows.

Basis and Purpose of the Rule

This action is taken under the authority of the Act, which authorizes a research, education, and promotion program for concrete masonry products, also known as a checkoff program. The Secretary will establish this checkoff program by issuance of an order issued that is subject to approval by an industry referendum. If industry approves of the order, the program would then be carried out by a Board, which would develop research and education programs as well as efforts to promote concrete masonry products in domestic markets. Board activities would be funded by assessments on manufacturers of concrete masonry products, based on the number of masonry units sold each quarter. The Department published the proposed order in the **Federal Register** on August 24, 2020 (85 FR 52059). That document discussed the objectives of and legal basis for the proposed order and are not repeated here.

This rule establishes procedures for conducting a referendum to determine whether manufacturers of concrete masonry units favor the issuance of the order. The Department of Commerce will conduct the referendum. The Secretary will implement this program if the Secretary determines that a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum are in favor of the program. The Department will use these procedures for any subsequent referendum under the Order.

A Statement of the Significant Issues Raised by Public Comments or by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Initial Regulatory Flexibility Analysis

The Department received one comment that pointed out an apparent inaccuracy in the total employment number 6,344 jobs, as depicted in table 3 in the IRFA. The Department recognizes the table can cause confusion. The Department provided a footnote and hyperlink from the Census Bureau (<https://www.census.gov/programs-surveys/susb/about/glossary.html>) that provides additional explanation of information in the table. The relevant additional information is provided below:

Enterprise: An enterprise (or “company”) is a business organization consisting of one or more domestic establishments that were specified under common ownership or control.

The enterprise and the establishment are the same for single-establishment firms. Each multi-establishment company forms one enterprise—the enterprise employment and annual payroll are summed from the associated establishments.

Enterprise Size: Enterprise size designations are determined by the summing employment of all associated establishments. Employer enterprises with zero employees are enterprises for which no associated establishments reported paid employees in the mid-March pay period but paid employees at some time during the year.

Firm: A firm is a business organization consisting of one or more domestic establishments in the same geographic area and industry that were specified under common ownership or control. The firm and the establishment are the same for single-establishment

firms. For each multi-establishment firm, establishments in the same industry within a geographic area will be counted as one firm; the firm employment and annual payroll are summed from the associated establishments.

One company or business can have multiple firms. Of the 430 firms noted in the table, 401 firms or 93 percent came from companies with fewer than 500 employees. And these 401 firms accounted for 514 establishments, or 75 percent of all establishments and 62 percent of employment across the industry in the United States.

A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

This final rule applies to products manufactured on concrete block

machines and used for construction. As indicated by the data below and confirmed by industry experts, the industry is dominated by small entities.

The U.S. Small Business Administration size standard to qualify as a small business for Federal Government programs is 500 or fewer employees in this industry.¹ According to Census Bureau data, there were 430 firms and 686 establishments engaged in concrete block and brick manufacturing in 2017.² Of these, 401 firms, or 93 percent, employed fewer than 500 employees, and these small firms accounted for 514 establishments, or 75 percent of all establishments and 62 percent of industry employment.³ Note that a single company or business can have multiple firms, and a single firm can have multiple establishments.

Table 3: Block and Brick Manufacturers 2017 by Business Size

Size of business by number of employees	Number of firms	Number of establishments	Employment	Estimated receipts (\$mils)	Annual payroll (\$mils)
Total	430	686	16,575	4,682	814
0-4	92	92	173	56	9
5-9	66	66	432	97	19
10-19	83	87	1,168	277	56
20-99	116	152	3,851	922	185
100-499	44	117	4,607	1,506	251
500+	29	172	6,344	1,823	293

Source: U.S. Census Bureau 2017 County Business Patterns and 2017 Economic Census, Table US_6digitnaics_2017, released 03/06/2020

A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule to Affected Entities

This action would impose a reporting burden on eligible manufacturers of concrete masonry units. To participate in the referendum, eligible manufacturers would register with the Department in advance of the referendum period. Eligible manufacturers would have the opportunity to complete and submit a ballot to the Department indicating

whether or not they favor implementation of the proposed order. The specific burdens for registration and the ballot are detailed later in this document in the section titled “Paperwork Reduction Act”.

There are no special skills required to complete the registration or ballot forms. The Department estimates that the respondent burden of the referendum is 0.5 hours for registration and 0.25 hours to complete the ballot and that approximately 690 small businesses will be affected. This results

in a total estimated burden on small businesses of 517.5 hours. According to the Bureau of Labor Statistics, the median pay for industrial production managers is \$50.71 per hour.⁴ Thus, the Department estimates that the cost to firms of participating in the referendum will average \$38.03.

¹ See “Table of Small Business Size Standards Matched to North American Industry Classification System Codes” on the U.S. Small Business Administration website. For the economic analysis the Department used statistics for the North American Industry Classification System (NAICS) code 327331, concrete block and brick manufacturing.

² A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control and an establishment is a single physical location at which business is conducted or services or industrial operations are performed. See “Statistics of U.S. Businesses Glossary” on the U.S. Census Bureau website.

³ See “2017 SUSB Annual Data Tables by Establishment Industry” on the U.S. Census Bureau website. For more information, see the County Business Patterns methodology on the Census website.

⁴ See the *Occupational Outlook Handbook* on the Bureau of Labor Statistics website, <https://www.bls.gov/ooh/>.

A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

To minimize the respondent burden, the Department plans to create simple forms for ease of registration and voting. Further, the Department plans to allow registration and voting by mail or fax—at the choice of the respondent.

In order to comply with the statutory requirements of the Act, there are no possible alternatives to this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Department submitted to the Office of Management and Budget (OMB) for approval the information collection requests associated with this rulemaking. OMB approved the information collection requests under OMB Number 0605–0029.

Title: Concrete Masonry Products Research, Education, and Promotion Order; Referendum procedures.

OMB Number: 0605–0029.

Expiration Date of Approval: May 3, 2024.

Type of Request: New information collection for research, education and promotion programs.

Abstract: The Department seeks to establish an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of research, education, and promotion to support the concrete masonry products industry. The Department has published a proposed Order in the **Federal Register** to establish the program. The purpose of the proposed Order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses of concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The proposed Order allows a Concrete Masonry Products Board (Board) made up of industry members appointed by the Secretary of Commerce (Secretary) to develop and implement programs of research, education, and promotion. The funding of the Board's activities and programs will be through assessments paid by manufacturers of concrete masonry units. The initial assessment will be \$.01 per concrete masonry unit sold.

The Secretary will hold a referendum among eligible manufacturers to determine whether they favor the

implementation of the proposed Order. A final Order only will go into effect if the referendum results in the affirmative vote of a majority of those voting and also a majority of the block machine cavities in operation by those voting.

There are two forms in this information collection request relating to the referendum. The first is the registration form for the concrete referendum. The registration form may be submitted by eligible concrete masonry unit manufacturers and is necessary to ensure that the referendum is accurate and complete. Manufacturers only may participate in the referendum if they register. The second form relates to the ballot form for the concrete referendum. Eligible concrete masonry unit manufacturers may complete and submit the ballot to reflect their desire for or against implementing the order. Authorizing Statute: 15 U.S.C. Chapter 113 (sections 8701–8717).

Registration

Estimate of Burden: 0.5 hour per application.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 690.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 345 hours.

The Department will add the registration form to the other information collections approved under OMB No. 0605–0029.

Ballot

Estimate of Burden: 0.25 hour per ballot.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 690.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 172.5 hours.

The Department will add the ballot form to the other information collections approved under OMB No. 0605–0029.

The Department published a proposed rule regarding the referendum procedures in the **Federal Register** on October 15, 2020 (85 FR 65288). The Department made available copies of the rule through the Office of the Federal Register also via the internet at <http://www.regulations.gov>. That rule provided for a 30-day comment period. In the proposed rule, the Department invited comments on the information collection requirements prescribed in the Paperwork Reduction Act section of

this rule. Specifically, the Department solicited comments on: (a) Whether these information collection requirements (ICRs) are necessary for the proper performance of the functions of the Department, including whether the information has practical utility; (b) the accuracy of the Department's estimates of the burden of the ICRs; (c) the quality, utility, and clarity of the information to be collected; and (d) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. One commenter stated that the industry should have been provided the opportunity to review the actual forms. The Department published in its proposed rule (85 FR 65288, October 15, 2020) that it will restrict the information collection request to that information needed to ensure eligibility of the registrant and voter to participate (two forms—a registration and the ballot) in the referendum and then the notice accurately described the types of information the forms will require. The public had a chance to comment on the information collection request during the public comment period.

Pursuant to 5 U.S.C. 553(d)(3), the Department finds that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule must be in effect for the Department to allow registration for those desiring to participate in the referendum. Additionally, the regulated entities are not harmed by an immediate effective date because this rule (1) does not impose any requirements on regulated entities that require preparation, and (2) provides at least 30 days for affected entities to register prior to the beginning of the referendum period.

Summary of Public Comments and the Department's Responses

The Department published the proposed rule concerning this action in the **Federal Register** on October 15, 2020 (85 FR 65288) and provided a 30-day comment period ending November 16, 2020. The Department received comments from five commenters, one of which was a duplicate. One fully supported the proposed Order and referendum procedures, one was generally opposed to the order and referendum, and two were in support but desired further clarity. The comments are addressed in the following paragraphs.

Comments in Full Support

Comment: The Department received one comment which supported the proposed Order with no changes. The commenter noted that passing the referendum will be a critical variable in the success of their business and customers.

Response: The Department appreciates the comment.

Comments in Support, With Recommendation

Comment: One commenter noted that under the instruction found in § 1500.103(b) under the types of information the Department did not include the “machine” when referring to cavities.

Response: The missing word “machine” was inadvertent, and the Department will add “machine” to the final referendum procedures rule.

Comment: One commenter requested the Department make explicit on registration forms that the registrant only count machine cavities used to manufacture concrete masonry units. Additionally, the commenter requests that registration forms and communications are clear that only those EINs under which machine cavities are being used to manufacture concrete masonry units be considered eligible to participate in the referendum.

Response: The Department agrees with both of these comments. Registration forms will state that registrants only count machine cavities used to manufacture concrete masonry units, and registration forms and other relevant communications will state that only those EINs under which machine cavities are being used to manufacture concrete masonry units be considered eligible to participate in the referendum.

Comments Generally Opposed

Comment: One commenter recommended the Department better refine reporting of machine cavities, distinguishing between machines producing concrete masonry units from those designed for dual purpose. The commenter states that “[a]dvancements in the technology of these manufacturing machines has made it possible to interchange molds between concrete masonry units and pavers on the same machine. Thus, a block machine that normally is used to produce pavers could be used to manufacture one concrete masonry unit for the sole purpose of qualifying for the referendum.”

Response: The commenter differentiates those machines that have convertible capacity from those normally associated with concrete masonry unit (CMU) production using the phrase “traditional concrete masonry unit cavities”. While the Department understands the commenter’s desire to constrain those cavities eligible to count toward the total participating, the statute clearly does not make any such distinction. The term “machine cavities in operation” means those machine cavities associated with a block machine that have produced concrete masonry units within the last 6 months of the date set for determining eligibility and is fully operable and capable of producing concrete masonry units. The Department interprets the statute in accordance with accepted principles of statutory construction. Therefore, a manufacturer may include in its cavity count total those cavities that have produced concrete masonry units within six months of the referendum, regardless of whether it is on a machine designed for the dual purpose or sole purpose of making concrete masonry units.

Both the registration form and ballot form are official government forms. Both have the following statement: the making of any false statement or representation on this form, knowing it to be false, is a violation of Title 18, Section 1001 United States Code, which provides for the penalty of a fine of \$10,000 or imprisonment of not more than five years or both.

Comment: The Department received a comment voicing concern at the introduction of the new terms “Lead Executive” and “Agent.” Another commenter voiced concern on both the impartiality of the agents as well as lack of oversight of the vote.

Response: The statute grants the Secretary the authority to determine the manner in which to conduct the referendum. Agents that will conduct the referendum are employees of the Department of Commerce. The Lead Executive is a member of the Senior Executive Service and will oversee the vote count and report the results to the Secretary. The Department will amend its definition to make clear the Lead Executive is a member of the Senior Executive Service and agents are employees of the Department of Commerce.

Comment: The Department received another comment that the referendum

procedures should include more specificity concerning the initial referendum.

Response: As the commenter notes, these rules apply to all future referenda and therefore purposely provide the Secretary the latitude to make adjustments to the process. For example, the Department will allow voters to cast ballots by mail-in and fax for the initial referendum. However, advancements in technology may allow subsequent referenda to occur online or using voting software. To help clarify its intent on casting ballots, the Department will add possible examples of ballot casting methods. Similarly, the referendum period will change for subsequent referenda, and the Department will provide adequate advance notice for any such changes in the **Federal Register**.

Comment: One commenter disagreed with the language that “Agents will not refuse a ballot to any person who claims to be eligible to vote” in proposed § 1500.103(e).

Response: This language was meant to reinforce the requirement to register in advance of the voting period. However, the Department recognizes the potential confusion and will remove this clause from the final referendum procedures rule. With regard to voter eligibility, the Department makes explicit that if the Department requests, manufacturers shall provide proof of sales, proof of cavities in operation, or any other such proof the Department deems necessary to establish voting eligibility. Failure to provide the requested proof to the Department will result in ineligibility to participate in the referendum.

Comment: One commenter thought the Department should ensure that all eligible producers be notified and guaranteed a vote in the referendum and that the Department have specific plans in place to ensure eligible manufactures receive proper notice of the referendum. Another commenter thought the Department should publish a listing of “pros and cons” of check off programs as an aid to voters.

Response: The Department will notify the public of any proposed rules through publication in the **Federal Register**. Such notification in the **Federal Register** provides constructive notice to the public, will specify the legal authority to issue the notice, and gives the notice and procedures status.

The Department is not responsible to individually notify each manufacturer nor would such individual notification allow for full public review and comment. Further, the Department is responsible to enact legislation as it is written and does not as a matter of practice issue “pros and cons” of its rulemaking. The Department will publish all notifications of its actions in the **Federal Register** with fulsome explanations of the considered action to encourage public comment.

Comment: One commenter asked the Department to make explicit the role of the Concrete Masonry Products Board in future referenda. Specifically, the comment dealt with the possibility of expanding the scope of the order to include additional products.

Response: Whether the Order goes into effect will be dependent only on the results of a completed referendum. Unilaterally expanding the scope of the Order would be beyond the powers and duties of the Board and would require a subsequent referendum on the new proposed Order. In short, any future expansion of the scope of the Order would require the Department to conduct a referendum, with voter eligibility being based on the scope of such proposed order.

Comment: One commenter made a point to show the Department has missed several deadlines as outlined in the statute.

Response: While the Department strives for strict adherence to all prescribed deadlines, the Department has diligently worked to implement the statutory requirements and will continue to implement regulations to further the statutory intent of in the most expeditious manner possible.

Comment: One commenter felt that voter eligibility as outlined in the proposed order was inconsistent with the statute because it did not include manufacturers of concrete masonry products. The commenter requested that the Department provide clarity on voter eligibility.

Response: Only manufacturers of concrete masonry units are subject to assessment, and therefore, only manufacturers of concrete masonry units are eligible to participate in the referendum if they have produced concrete masonry units within 180 days of the start of the referendum period. The proposed Order is thus consistent with the statute and provides that manufacturers of concrete masonry products that are subject to an assessment are eligible to participate in the referendum.

Additional Comments

The Department received comments regarding suggestions for changes to the proposed Order that did not address the subject of referendum procedures. The Department did not make any change to the proposed referendum procedures based on those comments. The Department has considered these comments in finalizing the proposed Order and will address these comments in a future **Federal Register** document that announces and explains the final Order.

List of Subjects in 15 CFR Part 1500

Administrative practice and procedure, Advertising, Concrete masonry promotion, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, under the authority at 15 U.S.C. 8701–8717, the Office of the Under-Secretary for Economic Affairs, Department of Commerce, adds 15 CFR chapter XV, consisting of part 1500, to read as follows:

Chapter XV—Office of the Under-Secretary for Economic Affairs, Department of Commerce

PART 1500—CONCRETE MASONRY RESEARCH, EDUCATION, AND PROMOTION

Subpart A [Reserved]

Subpart B—Referendum Procedures

Sec.	
1500.100	General.
1500.101	Definitions.
1500.102	Voting.
1500.103	Instructions.
1500.104	Agents.
1500.105	Ballots.
1500.106	Referendum report.
1500.107	Confidential information.
1500.108	OMB control number.

Authority: 15 U.S.C. 8701–8717.

Subpart A [Reserved]

Subpart B—Referendum Procedures

Authority: 15 U.S.C. 8706.

§ 1500.100 General.

Agents will conduct a referendum in accordance with this subpart.

§ 1500.101 Definitions.

The following definitions apply to this subpart:

(a) *Agent* means the Department of Commerce (Department) employee(s) the Secretary designates to conduct the referendum.

(b) *Eligible manufacturer* means any person who is currently a manufacturer of concrete masonry units and has manufactured a concrete masonry unit within 180 days of the referendum period.

(c) *Employer Identification Number* means the number generally issued to businesses by the U.S. Department of Treasury. An Employer Identification Number (EIN) is also known as a Federal Tax Identification Number and is used to identify a business entity. For more information on EINs and how to apply go to <https://www.irs.gov/businesses>.

(d) *Lead Executive* means the individual or individuals the Secretary designates to oversee the conduct of the referendum and is a member of the Senior Executive Service.

(e) *Referendum period* means the period of time, not less than 30 days, that the Secretary or his agent determines appropriate for conducting the referendum.

(f) *Registration* means the form and process eligible manufacturers who wish to vote must complete and follow in order to vote. Voters must register by midnight of the day prior to the beginning of the referendum period.

§ 1500.102 Voting.

(a) Each eligible manufacturer shall be entitled to cast one vote.

(b) The order shall become effective only if the Secretary determines that the order has been approved by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.

(c) In order to vote, a manufacturer must register by midnight of the day prior to the start of the referendum period.

(d) For referendum purposes the Department will use Employer Identification Numbers (EIN) to identify unique manufacturers.

(e) An officer or employee of an eligible manufacturer, or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity provided that any individual so voting shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of an agent, the individual shall submit adequate evidence of such authority. The Secretary does not authorize proxy voting.

(f) Voters are to cast ballots by the means specified by the Secretary, such means could include in person, mail-in,

fax, via internet link, or through use of voting software. In the case of the initial referendum, the Department will use a combination of mail-in and fax to allow voters to cast ballots.

(g) If the Department requests, manufacturers shall provide proof of sales, proof of cavities in operation, or any other such proof the Department deems necessary to establish voting eligibility. Failure to provide the requested proof to the Department will result in ineligibility to participate in the referendum.

§ 1500.103 Instructions.

The agent(s) shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Secretary. The Secretary may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the agent(s). Such agent(s) shall:

(a) Determine the period during which voters may cast ballots;

(b) Provide notification to allow interested voters to register in advance of the referendum period. The Department will restrict the information requested to that information needed to ensure eligibility of request or to participate in the referendum. Types of information will include name, contact information (address, phone number, email), status as a manufacturer of concrete masonry units, affirmation of having manufactured concrete masonry units within 180 days prior to the beginning of the referendum period, the number of machine cavities in operation, their Employer Identification Number, and similar identifying information;

(c) Provide ballots and related material to voters for use in the referendum. The ballot shall provide for recording essential information, including information needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter. The Department will restrict the information requested to that information needed to determine a voter's eligibility. Information will include the name and address of the manufacturer, status as a manufacturer of concrete masonry units, affirmation that they have manufactured concrete masonry units within 180 days of the beginning of the referendum period, manufacturer Employer Identification Number, the number of machine cavities the manufacturer has in operation, and similar verification information;

(d) Give reasonable public notice of the referendum;

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to webinars and other such media vehicles; and

(2) By such other means as the agent may deem advisable;

(e) Send to eligible manufacturers whose names and addresses are known to the agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed order;

(f) At the end of the referendum period, collect, open, number, and review the ballots and tabulate the results in the presence of the Lead Executive authorized to monitor the referendum process;

(g) Prepare a report on the referendum; and

(h) Announce the results to the public.

§ 1500.104 Agents.

The Secretary may appoint agent(s) to conduct the referendum. Agent(s) may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. The agent authorizes each individual so appointed to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1500.105 Ballots.

(a) The agent(s) shall accept all ballots cast. However, if an agent determines a need for additional review for any reason, the agent shall endorse above the voter's signature on the ballot with a statement to the effect that the ballot needs additional scrutiny. The agent will attach to the ballot information regarding the reasons for additional review, the results of any investigations made with respect to the review, and the final disposition of the review. Agents will not count ballots found to be invalid or late, a non-exhaustive list of examples include:

(1) The ballot is blank, missing a vote, has no signature;

(2) Both voting boxes are marked in the vote section;

(3) The ballot arrives after midnight of the last day of the referendum period;

(4) The ballot is in a state that agents cannot determine the vote; or

(5) The ballot has a name that is different on the ballot from that of the registered voter, except for votes cast by power of attorney with sufficient documentation to prove such power of attorney.

(b) As stated in § 1500.102(e), the Secretary does not authorize proxy voting. However, agents will accept power of attorney votes with proper documentation.

§ 1500.106 Referendum report.

Unless otherwise directed, the Lead Executive shall prepare and submit to the Secretary a report on the results of the referendum, the manner in which the agent(s) conducted the referendum, the kind of public notice given, and other information the Lead Executive finds pertinent to the analysis of the referendum and its results.

§ 1500.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1500.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, is OMB control number 0605-0029.

Dated: April 23, 2021.

Kenneth White,

Senior Policy Analyst, Under Secretary for Economic Affairs.

[FR Doc. 2021-08891 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-20-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Termination of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Democratic Republic of the Congo

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of termination of arrival restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security to terminate arrival restrictions applicable to flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the Democratic Republic of the Congo (DRC). These arrival restrictions were initiated due to outbreaks of Ebola Virus Disease (EVD) in the DRC and in

the Republic of Guinea. These restrictions directed such flights to only land at a limited set of United States airports where the United States Government had focused public health resources to implement enhanced public health measures. Arrival restrictions applicable to flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the Republic of Guinea remain in effect.

DATES: The arrival restrictions applicable to flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the DRC are terminated as of 11:59 p.m. Eastern Daylight Time on April 29, 2021.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection at 202–286–8995.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2021, the Secretary of Homeland Security (Secretary) announced arrival restrictions applicable to flights carrying persons who have recently traveled from, or were otherwise present within, the Democratic Republic of the Congo (DRC) or the Republic of Guinea, consistent with 6 U.S.C. 112(a), 19 U.S.C. 1433(c), and 19 CFR 122.32, in a **Federal Register** document titled “Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Democratic Republic of the Congo or the Republic of Guinea” (“Arrival Restrictions Notice”) (86 FR 12534).

For the reasons set forth below, the Secretary has decided to terminate the arrival restrictions applicable to flights carrying persons who have recently traveled from, or were otherwise present within, the DRC. These restrictions funnel relevant arriving air passengers to one of six designated airports of entry where the U.S. is implementing enhanced public health measures. Since March 1, 2021, there have been no new confirmed EVD cases reported in the DRC and all contacts of cases that were being monitored for EVD have passed the 21-day incubation period. With no new cases reported in the past 42 days (2 incubation periods), no remaining hospitalized patients with EVD, and no contacts of confirmed EVD cases still requiring monitoring, the potential risk for Ebola virus exposure in the DRC has greatly diminished. Therefore, flight restrictions are no longer required for flights carrying persons who have

recently traveled from, or were otherwise present within, the DRC. Because the most recent case of EVD in the Republic of Guinea was confirmed on April 3, 2021, the arrival restrictions applicable to flights carrying persons who have recently traveled from, or were otherwise present within, the Republic of Guinea remain in effect.

Notice of Termination of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Democratic Republic of the Congo

Pursuant to 6 U.S.C. 112(a), 19 U.S.C. 1433(c), and 19 CFR 122.32, and effective as of 11:59 p.m. Eastern Daylight Time on April 29, 2021, for all affected flights arriving at a United States airport, I hereby terminate the arrival restrictions applicable to flights carrying persons who have recently traveled from, or were otherwise present within, the Democratic Republic of the Congo announced in the Arrival Restrictions document published at 86 FR 12534 (March 4, 2021).

Alejandro Mayorkas

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–09326 Filed 4–29–21; 11:15 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2021–0181]

Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA

AGENCY: Coast Guard, DHS.

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

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the California Department of Transportation Route 4 highway bridge, across Old River, mile 14.8, between Victoria Island and Byron Tract, California. The amount of vessel traffic transiting the bridge site does not warrant an open on signal requirement for this drawbridge. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is

seeking comments from the public regarding these proposed changes.

DATES: This deviation is effective from 6 a.m. on May 10, 2021, through 6 a.m. on August 7, 2021. Your comments and related material must reach the Coast Guard on or before August 7, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0181 using Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email Mr. Carl Hausner, Eleventh Coast Guard District, Bridge Section Chief; telephone (510) 437–3516, email Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
U.S.C. United States Code

II. Background and Purpose

The California Department of Transportation (Caltrans) Route 4 highway bridge has a vertical clearance of 12.7 feet above mean high water in the closed-to-navigation position, and operates in accordance with 33 CFR 117.183.

Caltrans has requested a permanent change in the operation schedule of the bridge due to the increase in vehicular traffic and a decrease in vessel traffic. Population growth and the cost of housing has increased land traffic traveling from the central valley to the San Francisco Bay Area for work. From 2011 to 2020 the bridge has opened 5.4 times per month from April through September and 2.9 times per month from October through March. Throughout the year, vessels requesting an opening are: recreational vessels, 21.5%; commercial vessels, 14.6%; government vessels conducting research, 60.5%; and law enforcement, 3.3%.

This test deviation will evaluate the impacts to navigation on the waterway. From 6 a.m. on May 10, 2021 through 6 a.m. on August 7, 2021, the drawspan of the bridge will open on signal if at least four hours notification is given to the drawtender at the Rio Vista Bridge across the Sacramento River, mile 12.8. Primary number, 707–374–2134; Secondary number, 209–948–7556. Caltrans will document vessel transits during this deviation and log any

comments the drawtender receives by the waterway users. Caltrans will also document any benefits to land traffic during this period.

By requiring vessel operators to plan in advance for an opening of the drawspan, it is anticipated the expected impacts to navigation during this test deviation will be minimal. Vessels that can transit the bridge, while closed, can continue to do so at any time. The Coast Guard will notify the boating public and all other interested parties by formal letter sent to all marinas within 25 miles of the bridge. There is no alternative route for vessels requiring an opening of the drawspan.

The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

III. Information Requested

We are seeking comments from waterway users to understand the impacts of the contemplated change to the operating schedule of Caltrans Route 4 highway bridge, across Old River, mile 14.8, between Victoria Island and Byron Tract, California.

IV. Public Participation and Request for Comments

We encourage you to submit comments through the Federal portal at <https://www.regulations.gov>. In your submission, please include the docket number for this notice of inquiry and provide a reason for each suggestion or recommendation. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this temporary deviation as being available in this docket, and all public comments, will be in our online docket at [https://](https://www.regulations.gov)

www.regulations.gov and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

This document is issued under authority of 5 U.S.C. 552 (a).

Dated: April 23, 2021.

Carl T. Hausner,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2021-09202 Filed 4-30-21; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0290]

RIN 1625-AA00

Safety Zone; Gulf of Mexico, Port Fourchon, LA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters within a one nautical mile radius around a capsized vessel in the Gulf of Mexico, near Port Fourchon, LA. The temporary safety zone is needed to protect life and property during emergency salvage operations surrounding the capsized vessel. Entry of vessels or persons into this zone and movement of vessels within this zone is prohibited unless specifically authorized by the Captain of the Port Marine Safety Unit Houma or a designated representative.

DATES: This rule is effective without actual notice from May 3, 2021 through June 15, 2021. For the purposes of enforcement, actual notice will be used from April 27, 2021 until May 3, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0290 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Romero, Waterways Management, U.S.

Coast Guard; telephone 985-850-6471, email: Anthony.A.Romero@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

DHS Department of Homeland

Security

FR Federal Register

NPRM Notice of proposed rulemaking

§ Section

U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. A safety zone is necessary to facilitate search and rescue and salvage operations surrounding a capsized vessel. Immediate action is needed to respond to the potential safety hazards associated with recovery salvage operations. We must establish this safety zone by April 27, 2021 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be against the public interest because immediate action is needed to continue ongoing search and rescue and salvage operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Marine Safety Unit Houma (COTP) has determined that potential hazards associated with the response operations on April 27, 2021, will be a safety concern for anyone within a one nautical mile radius around the capsized vessel in the South Timbalier Block 22 of the Gulf of Mexico at position 29°00'25.7877" N, 090°11'52.9852" W. This rule is needed to protect life and property on the navigable waters while response operations are ongoing.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from April 27, 2021 through June 15, 2021. The safety zone will cover all navigable waters within a one nautical mile radius around position 2900'25.7877" N, 09011'52.9852 W, in South Timbalier Block 22 of the Gulf of Mexico, near Port Fouchon, LA. The duration of the zone is intended to protect life and property on these navigable waters for the duration of emergency response operations related to the capsized vessel. No vessel or person will be permitted to enter and move within the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Houma. Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67. Persons and vessels permitted to enter or to move within this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement periods and changes through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the limited scale of the safety zone and the ease of vessel traffic navigating around said zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within a one nautical mile radius of vessels and machinery being used by personnel response operations to a capsized vessel. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is not required but will be available in the docket if necessary. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

Protest Activities

The Coast Guard respects the First Amendment rights of protestors. Protesters are asked to call or email the person listed in the **FOR FURTHER**

INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0290 to read as follows:

§ 165.T08–0290 Safety Zone; Gulf of Mexico, Port Fourchon, LA.

(a) *Location.* The following area is a safety zone: All navigable waters within a one nautical mile radius of the capsized vessel and emergency response operations taking place at 29°11′25.7877″ N, 090°11′52.9852″ W.

(b) *Effective period.* This section is effective without actual notice from May 3, 2021 through June 15, 2021. For the purposes of enforcement, actual notice will be used from April 27, 2021 until May 3, 2021.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into or remaining within this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Marine Safety Unit Houma.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (985) 850–6471.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by COTP or the designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners

(LNNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: April 27, 2021.

J.W. Russell,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Unit Houma.

[FR Doc. 2021–09233 Filed 4–30–21; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 90 and 95

[ET Docket No. 19–138; FCC 20–164; FR ID 17510]

Use of the 5.850–5.925 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts revised rules to repurpose the lower 45 megahertz of the 5.850–5.925 GHz band (5.9 GHz band) for the expansion of unlicensed mid-band spectrum operations, while retaining the upper 30 megahertz of spectrum in the 5.9 GHz band for intelligent transportation system (ITS) operations. Splitting the 5.9 GHz band between unlicensed and ITS uses is intended to optimize use of the spectrum resources in the 5.9 GHz band to fully and effectively serve the American people, providing access to additional spectrum for unlicensed use to help meet the growing demand for wireless broadband, while retaining spectrum for ITS use to meet current and future ITS needs within the transportation and vehicular-safety related ecosystem. The Commission modified the *First Report and Order* and *Order of Proposed Modification* released on November 20, 2020, with an Erratum released on December 11, 2020. The Commission released a Second Erratum on February 9, 2021. The corrections from these errata are included in this document.

DATES: Effective July 2, 2021, except for § 90.372, which is delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for § 90.372. The incorporation by reference of certain publications listed in the rules is approved by the Director of the Federal Register as of July 2, 2021.

FOR FURTHER INFORMATION CONTACT: Jamie Coleman, Chief, Spectrum Policy Branch, Office of Engineering and Technology, at (202) 418–2705 or

Jamie.Coleman@fcc.gov. For information regarding the PRA information collection requirements contained in this PRA, contact Nicole Ongele, Office of Managing Director, at (202) 418–2991 or Nicole.Ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order* and *Order of Proposed Modification*, ET Docket No. 19–138, FCC 20–164, adopted November 18, 2020, and released November 20, 2020. This document is available by downloading the text from the Commission's website at <https://docs.fcc.gov/public/attachments/FCC-20-164A1.pdf>. When the FCC Headquarters reopens to the public, the full text of this document also will be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to FCC504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Regulatory Flexibility Analyses

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* (85 FR 6841, Feb. 6, 2020). The Commission sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *First Report and Order* on small entities. This present FRFA conforms to the RFA.

Paperwork Reduction Act

The requirements in § 90.372 constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and

other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the FRFA.

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *First Report and Order* and *Order of Proposed Modification* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Introduction

1. To help meet the burgeoning demand for wireless broadband as the American public and businesses increasingly rely on internet connectivity, the Commission continuously evaluates spectrum use and its rules in efforts to enable more efficient spectrum use through a variety of methods, including authorizing unlicensed operations. For the past two decades, the entire 75 megahertz that makes up the 5.9 GHz band has been reserved for use by Dedicated Short Range Communications (DSRC) in the ITS radio service for transportation and vehicle safety-related purposes. During that time, the DSRC-based service has evolved slowly and is being used in certain traffic-related projects but has not been widely deployed within the consumer automobile market. In short, DSRC-based ITS has not lived up to the original promise of achieving the ITS goals identified when the spectrum was allocated—leaving valuable mid-band spectrum underused.

2. Meanwhile, numerous technologies that operate outside the 5.9 GHz band have been or are being developed and deployed to improve transportation safety and efficiency and provide certain services envisioned for DSRC. Recently, Cellular Vehicle-to-Everything

(C–V2X) based technology, which uses a different radio technology standard that is incompatible with DSRC-based operations, has gained momentum as a means of providing transportation and vehicle safety-related communications. On December 12, 2019, the Commission adopted the *NPRM* in this proceeding to consider the most efficient and effective use of the 5.9 GHz band spectrum.

3. In the *First Report and Order*, the Commission adopted rules to authorize unlicensed use in the lower 45 megahertz of the band (5.850–5.895 GHz) and retain the upper 30 megahertz of the band (5.895–5.925 GHz) for ITS service applications. As of the effective date of the *First Report and Order*, unlicensed indoor operations are permitted in the 5.850–5.895 GHz portion of the 5.9 GHz band, under specified power and other technical limitations designed to protect incumbent ITS service and federal radar operations from harmful interference. The Commission decided to consider requests for unlicensed outdoor operations in the 5.850–5.895 GHz band through the Commission's existing regulatory process for individualized and temporary access to spectrum, to be coordinated with the National Telecommunications and Information Administration (NTIA) to ensure that federal incumbents are protected from harmful interference. The Commission implemented a period of one year from the effective date of the *First Report and Order* for the ITS licensees to transition all operations into the 5.895–5.925 GHz portion of the band, and issued an *Order of Proposed Modification* that provides the procedures under section 316 of the Communications Act for the Commission to modify all ITS licenses to the revised bandplan. The Commission further adopted rules designating C–V2X technology as the ITS delivery system once the Commission adopts a deadline and the transition to the revised ITS band is complete. Pending resolution of the transition of ITS operations to C–V2X, ITS licensees will be able to continue their DSRC-based operations or, alternatively, to seek to deploy C–V2X-based operations through the Commission's existing regulatory processes.

II. Discussion

A. Dividing the 5.9 GHz Band for Unlicensed Operations and for ITS

4. Since the Commission first designated the 5.9 GHz band for ITS services in 1999, transportation and vehicular safety-related technologies have evolved significantly, as have

demands for access to mid-band spectrum, particularly for unlicensed operations. In the *First Report and Order*, the Commission found the public interest would be best served by dividing the 5.9 GHz band to address the needs of both ITS and unlicensed users. Based on its evaluation of these changed circumstances, the Commission determined that reconfiguring the 5.9 GHz band to designate 45 megahertz (at 5.850–5.895 GHz) for new unlicensed use and retaining 30 megahertz (at 5.895–5.925 GHz) for ITS applications would ensure the quickest path towards the most efficient and effective use of the 75 megahertz of spectrum, based on current and future needs.

5. *Unlicensed Operations in the Lower 45 Megahertz of the 5.9 GHz Band.* As proposed in the *NPRM*, the Commission decided to make the 45 megahertz at 5.850–5.895 GHz available for unlicensed operations. The Commission found that the availability of spectrum for unlicensed use is more critical than ever, especially after the COVID pandemic has increased reliance on unlicensed technologies like Wi-Fi as more households turn to in-home connectivity for distance learning, teleworking, and social networking. The Commission found the lower 45 megahertz (5.850–5.895 GHz) portion of the 5.9 GHz band is particularly valuable for unlicensed operations, which, when added to the adjacent spectrum available for Unlicensed National Information Infrastructure (U–NII) devices below 5.850 GHz, will allow for increased high-throughput broadband unlicensed applications in spectrum that is a core component of today's unlicensed ecosystem.

6. Based on the record, the Commission also found unlicensed use in the lower 45 megahertz of the 5.9 GHz band likely would be available to American consumers shortly after the rules in this proceeding become effective. Software or firmware upgrades to much of the Wi-Fi equipment already deployed and operating would allow consumers to access the 5.9 GHz band relatively quickly, a benefit that would not be possible in any other band.

7. *Safety-Related ITS in the Upper 30 Megahertz (5.895–5.925 GHz) of the 5.9 GHz Band.* Based on its consideration of the record, the Commission decided to continue making the upper 30-megahertz portion (5.895–5.925 GHz) of the 5.9 GHz band available for ITS. The Commission determined that this decision would ensure availability of enough spectrum for ITS licensees to continue existing operations and deploy those same services at scale. The Commission concluded, as supported by

many commenters, that continuing to reserve the entire 5.9 GHz band for possible additional services by ITS licensees would not be the most efficient or effective use of the band, nor was it in the best public interest to do so. The Commission agreed with commenters' assertions that the original concept for DSRC use of the band had not come to fruition, and changes to the 20+ year old band plan were essential to maximizing the use of this spectrum for the public's greatest well-being, particularly Americans in rural areas that lack adequate broadband access.

8. *30 megahertz for ITS.* The Commission determined to retain 30 megahertz of spectrum for ITS services based on the following factors: (1) The failure of the 5.9 GHz band to be used ubiquitously for the broad range of ITS applications that were originally anticipated; (2) the strong public interest benefits that would accrue by allowing unlicensed use in 45 megahertz of the 5.9 GHz band; and (3) the need for dedicated 5.9 GHz spectrum to support core vehicular safety applications. Although ITS proponents preferred that the Commission continue to allocate the entire 75 megahertz of the 5.9 GHz band for ITS, the Commission agreed with the commenters contending that 30 megahertz of spectrum is the appropriate amount of spectrum for ITS in the band. Based on the record, the Commission found that 30 megahertz would support the provision of the core vehicle-safety related ITS functions foreseen when the Commission originally provided for ITS services in the band, including for vehicle-to-vehicle (V2V) basic safety applications such as basic safety messages, for personal safety message applications, and for vehicle-to-infrastructure (V2I) applications.

9. The record demonstrated that with 30 megahertz, incumbent licensees would be able to provide on a widescale basis the same types of ITS services that, up until now, have been developed and deployed on a limited basis, and would preserve ITS licensees' ability to expand their existing safety-related services to millions more vehicles. The Commission found that 30 megahertz also would be sufficient for the basic safety applications of the next generation of ITS—C-V2X; it agreed with assertions in the record that with this 30 megahertz of spectrum made available for C-V2X-based ITS, automakers, technology providers, and service providers would be able to effectively use the spectrum for vehicle safety-related applications. Furthermore, the Commission decided

that ITS services in the 5.9 GHz band should not duplicate information (e.g., important roadway information) that is already readily available via other sources, such as commercial cellular services, nor should excess 5.9 GHz spectrum continue to be reserved for applications that can be or have already been provided using other spectrum bands or alternative technology.

10. The Commission was not persuaded that more than 30 megahertz is needed for potential new applications that extend beyond the types of safety-related services currently being offered by DSRC licensees pursuant to the Commission's rules, especially given that the 75 megahertz in the 5.9 GHz band has been underused for many years. DSRC service has not been widely deployed, potential future advanced applications are still under development and have not been deployed, and widespread commercial deployment would at best still be years away, if it occurs at all. The Commission found that the quickest, most efficient way to realize its goals of greater spectrum efficiency was to divide the band into two separate spectrum segments rather than subjecting the band to additional testing to determine appropriate sharing techniques. Furthermore, the Commission found that preserving 30 megahertz for ITS use in the 5.9 GHz band would comport with the use many other countries have designated for this band and allow global harmonization. It found that each jurisdiction appears to have made an individual policy choice that it has determined to be most appropriate for its circumstances, and that there are potential harmonization benefits in retaining some dedicated spectrum for ITS in this frequency range, particularly in the upper 20 megahertz. The Commission concluded that its plan to introduce C-V2X in the band, in conjunction with other administrations' support for such use within the 5.9 GHz band, should facilitate economies of scale in the production and deployment of equipment and, ultimately, provision of the core safety functions originally contemplated for the band.

11. The Commission disagreed with ITS proponents who insisted that the entire band be preserved for future ITS developments that could make use of the entire 75 megahertz in the 5.9 GHz band and that argued that more than 30 megahertz should be reserved to accommodate future advanced ITS safety-related services that are under development. Given the significant advances that have been made in automotive connectivity using a variety of means in different spectrum bands

outside of 5.9 GHz, an ever-greater portion of the overall valuable spectrum resource is being used to support automotive-related functions, including those related to safety. Viewed from this perspective, the Commission was not persuaded by arguments that the entire 5.9 GHz band is needed for ITS in order to ensure that possible future developments can be accommodated, even if it is possible that such future developments could potentially provide some additional safety benefits. In summary, the Commission concluded that although it is possible that ITS might ultimately make use of the entire 75 megahertz if it continued to be set aside for ITS, such a decision would not optimize use of this valuable spectrum, and the credibility of such arguments was lacking given that these same arguments have been advanced by ITS proponents for years with no discernable change in the marketplace. The Commission believed that the ITS messaging system must work to prioritize and deliver messages more efficiently in the 30 megahertz that will be available for ITS, such as by adjusting message timing to provide multiple types of messages on a single channel to provide the same level of safety to vehicles as can be done on the existing spectrum. Finally, the Commission concluded that targeting the upper 30 megahertz for ITS use (and transitioning that spectrum to C-V2X over time) will enable the United States to lead in the wireless sector as it has in others, since it was not aware of any widespread ITS deployments that use the full 75 megahertz that proponents say is needed to maintain U.S. leadership, and it appears the United States is not the only country where the long-time promises of ITS have failed to bear fruit.

12. *Transitioning ITS out of the 5.850–5.895 GHz Portion of the 5.9 GHz Band.* The Commission adopted rules providing up to one year from the effective date of the *First Report and Order* for ITS services to cease operating in the 5.850–5.895 GHz band. Based on the record, the Commission decided that this is a sufficient and reasonable amount of time for ITS licensees to take the necessary steps to transition from the lower 45 megahertz of spectrum and to engage in the same types of operations in the upper 30 megahertz that they were conducting in the band, since there have only been limited ITS deployments with relatively few installed transmitters. The Commission concluded that because the majority of the installed base was being used in trials for roadside units (RSUs) at

known locations, it should be simple to identify and modify that equipment. Furthermore, the Commission did not expect its decision to delay the introduction of on-board units (OBUs) since, under normal vehicle development cycles, it would expect at least two years before such equipment could be deployed in vehicles in large numbers. The Commission concluded that its action would accommodate the needs of incumbent licensees and provide sufficient time to consolidate their operations in the upper portion of the band, while enabling unlicensed system operators to begin taking advantage of the 5.850–5.895 GHz portion of the band with indoor deployments as soon as possible. The Commission directed the Wireless Telecommunications Bureau (WTB) to automatically remove all frequencies in the 5.850–5.895 GHz portion of the band that remain on any ITS license (individually licensed RSUs and OBUs that are licensed-by-rule) at a reasonable time after the transition deadline.

13. The Commission added a notification requirement consistent with the transition deadline of one year from the effective date of the *First Report and Order* as a condition on ITS part 90 licenses. This condition requires licensees to certify by that deadline that they have ceased operating in the 5.850–5.895 GHz portion of the band. Any licensee that does not transition to the upper 30 megahertz of spectrum in the 5.895–5.925 GHz segment of the 5.9 GHz band, as evidenced by failure to file the required notification advising the Commission of its transition, will have their license terminated automatically without specific Commission action. The Commission directed the WTB to establish the procedural requirements of the notification process via Public Notice. The Commission found that the notification requirement would ensure clearing of the lower 45 megahertz of spectrum and provide transparency to all stakeholders regarding the status of the band.

14. The Commission revised its rules to prohibit new ITS applications for the 5.850–5.895 GHz portion of the 5.9 GHz band. The Commission did not terminate any license or any licensee's renewal expectancy and found that this transition plan treats each licensee in a consistent manner. The Commission directed the WTB to modify the existing license freeze consistent with the decisions it adopted to allow licensees to register new RSUs to operate only within the modified ITS band of 5.895–5.925 GHz. Licensees may, at any time prior to the end of the one-year transition period, modify their currently

existing RSU location registrations on their own motion to delete frequency usage in the lower 45 megahertz, so that the remaining RSU registrations on their licenses would reflect only the 5.895–5.925 GHz frequencies. By no later than the transition date, licensees are required to cease all operations in the 5.850–5.895 GHz, including portable RSUs not subject to registration requirements, as any ITS operation in the band on or after that date would violate the Commission's rules and the terms of the modified licenses. Existing ITS licensees that currently operate on channels in the 5.850–5.895 GHz portion of the 5.9 GHz band may move any of their DSRC-based operations to channels in the 5.895–5.925 GHz portion of the band at any time before they are required to cease operations in the 5.850–5.895 GHz portion.

15. The Commission declined to adopt a specific mechanism for funding the transition because it did not propose a compensation mechanism in the *NPRM*, and thus did not provide parties an adequate opportunity to comment on such a mechanism.

B. Unlicensed Operations in the 5.850–5.895 GHz Band

16. As proposed in the *NPRM*, the Commission designated 45 megahertz in the 5.850–5.895 GHz portion of the 5.9 GHz band (the U–NII–4 band) for unlicensed operations to expand the unlicensed ecosystem by providing additional spectrum adjacent to the upper edge of the 5.725–5.850 GHz (U–NII–3) band for unlicensed devices. Based on its review of the pertinent technical and legal issues and an examination of the record, the Commission adopted a staged approach to effectuate the band-repurposing actions taken. To optimize use of the 5.850–5.895 GHz band by unlicensed operations as soon as possible with full consideration of the need to protect ITS and federal incumbent operations in this band, the Commission permitted immediate indoor unlicensed operations to operate across the entire 5.850–5.895 GHz portion of the 5.9 GHz band. The Commission limited unlicensed use to indoor operations in recognition of the potential that ITS licensees may currently be operating in portions of the 5.850–5.895 GHz band in particular geographic areas, as well as the need to protect federal incumbents operating in particular geographic zones in the 5.850–5.895 GHz band. The Commission declined to allow full-power unlicensed outdoor operations at this time. Instead, such use across the band will be allowed at a later time, after ITS operations have ceased to

operate in the 5.850–5.895 GHz band and after the Commission has adopted rules that will ensure protection of federal operations from these outdoor operations.

17. *Technical and Operational Rules for Unlicensed Operations—Indoor Unlicensed Operations to Protect Federal Incumbents and ITS Operations while ITS Remains in the 5.850–5.895 GHz Band.* As proposed in the *NPRM*, the Commission placed the U–NII–4 band (5.850–5.895 GHz) unlicensed device rules in part 15, subpart E along with the existing U–NII rules and subject to all the general part 15 operational principles. Based on NTIA's analysis and recommended equivalent isotropically radiated power (EIRP) spectral density limit of 20 dBm/MHz to protect federal radar operations in the 5.850–5.895 GHz band, for unlicensed operations in the 5.850–5.895 GHz band, the Commission limited indoor access point EIRP spectral density to 20 dBm/MHz with a maximum EIRP of 36 dBm over the bandwidth of operation (e.g., 33 dBm/20 MHz and 36 dBm/40 MHz). The Commission determined that when the U–NII–4 band was combined with U–NII–3 band spectrum, indoor access point EIRP can scale to 36 dBm for 80 and 160 megahertz channels. Under this framework, operators relying on indoor U–NII–4 devices will be able to operate at the highest power levels the Commission permits for U–NII devices (i.e., 36 dBm EIRP) using wider channels to maximize throughput and utility of the band. At the same time, the limit on power spectral density across all possible U–NII device bandwidths will ensure that Department of Defense (DoD) radars and ITS operations are protected from harmful interference. The Commission concluded that the 20 dBm/MHz EIRP spectral density limit it was adopting for unlicensed operations in the 5.850–5.895 GHz band to protect incumbent federal operations would similarly protect DSRC-based V2V and V2I operations in the band from co-channel harmful interference during the transition period.

18. In response to the NTIA's suggestions to further reduce the potential for harmful interference to federal radar operations in the band, the Commission adopted rules to ensure that indoor use only devices are not deployed outdoors. Specifically, the Commission required that indoor access point devices cannot be weather resistant; that access points have integrated antennas, or otherwise prohibit the capability of connecting other antennas to the devices, which will prevent substituting higher gain directional antennas and make the

devices less capable or suitable for outdoor use; and prohibited these access points from operating on battery power (except for back-up power in case of a power outage). It also required that the access points be marketed for indoor use only and include a label attached to the equipment and included in the device's user manual stating that "FCC regulations restrict operation to indoor use only." The Commission found that these requirements would make outdoor operations impractical and unsuitable.

19. The Commission also permitted devices such as Wi-Fi extenders and mesh networking equipment intended to work in conjunction with an indoor access point, referred to as subordinate devices in the Commission's rules, to operate at the same power levels as an indoor access point, provided that they comply with all of the requirements the Commission set forth for those devices (*i.e.*, the device cannot be weather resistant, must have an integrated antenna and cannot have the capability of connecting other antennas, cannot be capable of operating on battery power, and must include a label regarding proper usage) and the end unit obtains its own equipment certification. Under these requirements, modules do not qualify for higher power. Such devices may be used as part of a mesh network but may only be used within a single structure and not to connect separate buildings or structures. The Commission believed that such relief was a reasonable accommodation to keep most popular consumer devices less complex and more affordable without increasing the potential of harmful interference to incumbent licensees as these devices would be installed and used in manner analogous to an access point. To keep the potential for causing harmful interference low, the Commission required client devices to operate under the control of an access point, and limited client device's power spectral density and maximum transmit power to 6 dB below the power permitted for the access point.

20. *Out-of-Band Emissions (OOBE) Limits.* Based on support in the record, the Commission imposed the same level of OOBE protection from U-NII-4 devices that it had previously adopted for U-NII-3 devices. However, in doing so, it took advantage of building attenuation, as well as other factors, to provide flexibility and maximum utility to American consumers. Specifically, the Commission adopted indoor unlicensed device OOBE limits of 15 dBm/MHz at 5.895 GHz, decreasing linearly to -7 dBm/MHz at 5.925 GHz for U-NII-4 devices, or devices that operate across a single channel that

spans the U-NII-3 and U-NII-4 bands. The record supported these protection levels, which are the same as the current OOBE limits for U-NII-3 devices after accounting for building attenuation. The Commission was not persuaded that the more restrictive OOBE limits suggested by ITS proponents were needed to protect DSRC operations since those limits were more restrictive than the U-NII-3 OOBE limits, which the Commission previously affirmed would protect DSRC operations and have proven to be effective for protection of incumbent operations in the 5.9 GHz band. The Commission also adopted its proposal to apply the existing U-NII-3 OOBE limits at the lower edge of the U-NII-3 band for U-NII-4 devices, or devices that operate across a single channel that spans the U-NII-3 and U-NII-4 bands. The Commission concluded that these limits would protect adjacent-band ITS operations from harmful interference due to unlicensed operations in the U-NII-4 band while also supporting separate U-NII-3 and U-NII-4 bands, and would provide flexibility to design U-NII-3 equipment under the less stringent OOBE rules at the upper edge of the band as well as for devices to operate across the U-NII-3 and U-NII-4 bands using the widest channel bandwidths permitted under the IEEE 802.11p-2010 standard.

21. The IEEE 802.11p-2010 standard referenced in this rulemaking is formally known as: IEEE Standard for Information technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications Amendment 6: Wireless Access in Vehicular Environments. The standard specifies the extensions to IEEE Std. 802.11 for wireless local area networks (WLANS) providing wireless communications while in a vehicular environment and describes the functions and services that allow an IEEE 802.11(TM)-compliant device to communicate directly with another such device outside of an independent or infrastructure network. The standard provides valid type and subtype combinations, to/from distribution system combinations in data frames, time advertisement frame body, element IDs, default enhanced distributed channel access parameter set for station operation if dot11OCEnabled is true, encoding of the timing capabilities field, optional enhanced receiver performance requirements, management information

base attribute default values/ranges, emissions limits sets, behavior limits sets, transmit power level by regulatory domain, and spectrum mask data for 10 megahertz channel spacing. Other provisions include orthogonal frequency division multiplexing specifications for the 5 GHz band, frame formats, and the medium access control sublayer functional description.

22. *Measurement Procedures.* Consistent with its decision in *Unlicensed Use of the 6 GHz Band, Report and Order*, 85 FR 31390 (May 26, 2020) (6 GHz Report and Order) that the OOBE limit adopted to protect adjacent ITS services at the top of the 5.9 GHz band should be verified using a root mean square (RMS) detector or other appropriate techniques for measuring average power, the Commission decided that an RMS detector may be used to conduct 5.9 GHz unlicensed device OOBE measurements. The Commission concluded that because RMS measurements represent the continuous power being generated from a device, as opposed to peak power, which may only be reached for short periods of time, an RMS measurement is more appropriate for ensuring that U-NII devices' potential for causing harmful interference to adjacent-band operations is significantly minimized. The Commission stated that it would provide guidance on this procedure to the test labs and telecommunications certification bodies which conduct equipment approval measurements and equipment approval oversight.

23. *Outdoor Unlicensed Operations.* Although the Commission decided not to permit across the board outdoor unlicensed operations in the 5.850–5.895 GHz portion of the 5.9 GHz band before ITS operations move out of the band, it decided to allow limited outdoor unlicensed operations in certain specified locations in the band through either the special temporary authority or other existing regulatory processes where such operations would not cause harmful interference to any incumbent operations.

24. *Protection of Other Incumbents in the 5.850–5.895 GHz Band.* The Commission declined to adopt SES Americom's and Intelsat's suggestion for an aggregate power limit from unlicensed devices to be enforced through use of an Automatic Frequency Coordination (AFC) system to protect Fixed Satellite Service space station receivers from harmful interference. The Commission believed that because the space station receivers are limited to geostationary orbits, approximately 35,800 kilometers above the equator, it was unlikely that relatively low-

powered unlicensed devices would cause harmful interference to the space station receivers, especially since such devices are not expected to radiate significant power skyward. The Commission also believed that U-NII devices operating in the U-NII-4 band would not cause harmful interference to amateur operations in the 5.9 GHz band due to the relatively low power with which U-NII devices would operate as compared to amateur stations, which are permitted to operate with as much as 1.5 kW (62 dBm) peak envelope power. The Commission dismissed amateur commenters' concerns the Commission was reallocating the spectrum from the Amateur Service to unlicensed operations as beyond the scope of the proceeding, since part 15 devices do not operate pursuant to an allocation, and in any case, the Commission did not propose to remove the Amateur Service allocation from the 5.9 GHz band.

C. ITS in the 5.895–5.925 GHz Band

25. To promote the most effective use of the upper 30 megahertz of spectrum in the 5.9 GHz band, the Commission determined that the ITS service should be based on use of one technology, and concluded that C-V2X technology would provide the best means of achieving its goals for ITS in the coming years. In the *First Report and Order*, the Commission provided technical flexibility to enable ITS licensees currently using DSRC-based technology to operate in this 30-megahertz ITS band until the time ITS services must operate using C-V2X technology. Because the Commission believed that many, if not most, of the active ITS licensees would want to transition to C-V2X technology as soon as possible to speed development and deployment of ITS services, it decided to permit, through its waiver process, the deployment of C-V2X technology during the transition period in a manner that would not interfere with existing DSRC-based operations.

26. *ITS Operations using C-V2X Technology.* Based on consideration of the technology-related issues in the record, including the advantages of both DSRC and C-V2X, the Commission concluded that the public interest would be best served by adopting C-V2X as the sole ITS delivery technology and phasing out the existing DSRC technology. In making this decision, the Commission observed that DSRC had not enjoyed widespread deployment as the mandated ITS technology in the U.S. At the same time, momentum both domestically and globally appears to be shifting toward the use of C-V2X for ITS. International deployment and uses

of DSRC remain in flux and many automakers and developers are moving toward C-V2X. China has adopted C-V2X in lieu of DSRC, and the European Union is exploring whether to implement policies to create a path for C-V2X Direct deployment in Europe. By designating C-V2X for ITS delivery, the Commission concluded that the U.S. is positioning itself as a global leader to be at the forefront of continued C-V2X technology development as it becomes more globally harmonized.

27. The Commission stated that the following factors advocated in the record shaped its view: C-V2X Direct technology outperforms DSRC on reliability, range, and resilience to interference, which in turn will help improve non-line-of-site capabilities to promote safety benefits; during times of peak congestion, C-V2X functionality can offload less time-critical V2V, V2I, and vehicle-to-pedestrian communications to the cellular network, thereby supporting safety-critical communications; C-V2X is better for achieving network effects insofar as cost efficiencies support deployment on a more accelerated basis; new vehicles are now generally equipped with C-V2X network mode chipsets; C-V2X technology can leverage cellular networks and thereby reduce the infrastructure cost associated with deploying vehicle-to-everything (V2X) communications; and because C-V2X operates on both 20- and 10-megahertz channels, it could support throughput throughout the 30 megahertz of spectrum that would be available.

28. The Commission concluded that choosing C-V2X as the sole ITS connected vehicle technology in the U.S. is the best decision for promoting more robust ITS deployment in the 5.9 GHz in the coming years. While each technology has the capability of providing safety-related ITS services, the Commission was persuaded that C-V2X promises a more efficient and effective use of the spectrum through its ability to achieve greater network effects and leverage cellular networks to reduce infrastructure costs. The Commission was not convinced that the limited examples of recent DSRC deployments in other countries outweighed the U.S. automotive industry's focus on deploying C-V2X technology, or that those limited deployments portended a significant growth in DSRC deployments here in the U.S. The Commission was confident that its action would expedite and expand the deployment of ITS safety benefits while ensuring efficient use of spectrum.

29. The Commission rejected claims by the Institute for Policy Innovations

that ITS was an idea whose time has passed and that vehicle connectivity was not critical to potential automotive safety benefits. The Commission reasoned that by reducing the size of the ITS band, future ITS deployment could be focused on deploying critical vehicular safety applications and take its position as part of a larger framework of technology solutions currently available to make road travel safer for the American people. The Commission also rejected arguments from various local entities, state departments of transportation, and others that the Commission should conduct testing in coordination with the U.S. DOT, both with C-V2X and DSRC technology, to fully understand the potential coexistence with other co-primary users in the band. Instead, the Commission stated that it was choosing a single technology for the entire ITS band that it determined would be best suited for ITS in the coming years, and that further delay would not serve the American public. Rather, it would be best to move forward with a revised 5.9 GHz band plan which supports C-V2X technology so that these vehicle safety-related applications could be fully deployed quickly. Based on the record, the Commission believed that opting to permit a single technology—C-V2X—in the revised band plan best serves the American public.

30. *Transitioning to C-V2X Operations in the ITS Band.* The Commission decided to modify existing ITS licenses to allow operation only in the 5.895–5.925 GHz band. The Commission required licensees to transition out of the 5.850–5.895 GHz segment of the band within one year of the effective date of the *First Report and Order*, and designated C-V2X technology as the ITS delivery system once the Commission adopts a deadline and the transition to the revised ITS band is complete.

31. To enable a smoother and more rapid development and deployment of C-V2X-based ITS operations in the near term, the Commission decided to permit any existing or future part 90 ITS licensee to operate C-V2X-based RSUs in the 5.895–5.925 GHz band within its geographic license area by requesting and obtaining a waiver of the Commission's rules, subject to specific conditions. Each such ITS licensee would be required to coordinate its C-V2X-based RSU operations with any existing licensee within that same geographic area to ensure that no C-V2X-based RSUs would interfere with any DSRC-based RSUs that operate in the 5.895–5.925 GHz band. Under this approach, the Commission will also

condition C-V2X operations on complying with specific technical rules (e.g., power and OOB limits consistent with current DSRC-based rules), and the requirement that these operations must comply with any final rules that the Commission adopts for C-V2X operations. The Commission directed the WTB and the Public Safety and Homeland Security Bureau (PSHSB) to issue a public notice within 30 days of the effective date of the *First Report and Order* to establish and provide further clarity on a streamlined waiver process for providing ITS licensees authority to operate RSUs with C-V2X-based technology in the 5.895–5.925 GHz band in the near term. Because OBUs are licensed by rule under part 95 of the Commission's rules, manufacturers will need waivers to obtain equipment certification of C-V2X-based OBUs as well as a waiver to permit such device operation prior to the Commission adopting final rules for C-V2X-based OBUs. The Commission encouraged parties interested in pursuing development, installation, and use of C-V2X-based OBUs in advance of final rules to discuss their equipment with the WTB, the PSHSB, and the Office of Engineering and Technology to determine the appropriate course of action to enable the expeditious roll-out of these devices on vehicles in a manner that is consistent with existing technical rules and that will not cause harmful interference to DSRC-based operations that have not yet transitioned to C-V2X operations.

32. *Protecting Federal Operations.* The Commission agreed with NTIA's recommendation that sharing between ITS and Government operations in the 5.895–5.925 GHz band is possible if proper coordination of RSUs is performed, and thus adopted NTIA's recommendation. Coordination of OBUs is not needed.

D. Statutory Considerations

33. *Relocating DSRC to the upper 30 megahertz.* Under its authority under sections 301, 309, and 316 of the Communications Act, the Commission decided to modify all existing ITS licenses to specify the 5.895–5.925 GHz portion of the 5.9 GHz band for ITS operations following the one-year transition period. Under the terms of the modified licenses, the authority to operate in the lower 45 megahertz will expire at the end of this one-year period. As per 47 U.S.C. 316, the Commission provided for a 30-day protest period before these modifications can become final. The Commission found that these modifications were consistent with its statutory authority, supported by

judicial and Commission precedent, and would serve the public interest, convenience, and necessity.

34. The Commission found that relocating DSRC operations to the upper 30 megahertz of the 5.9 GHz band was within the Commission's authority under section 316 of the Communications Act. Section 316 gives the Commission authority to modify, by rulemaking or adjudications, any license either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action would promote the public interest, convenience, and necessity. Courts have held that the Commission's authority to "modify" licenses under section 316 does not confer on the Commission the ability to affect a "fundamental change" to those licenses. This means that the Commission can permissibly exercise its authority under section 316 if (1) it finds that doing so serves the "public interest" and (2) the modification is not so sweeping as to amount to "fundamental change" to the licenses being modified.

35. The Commission found that this modification is manifestly in the public interest because the modification will make room for valuable new unlicensed uses in the lower 45 megahertz of the band, while providing existing DSRC licensees sufficient spectrum to provide substantially the same basic vehicular safety services they now provide. This modification is therefore consistent with the long line of Commission actions changing or reducing frequencies where it has found doing so in the public interest.

36. The Commission also found that the record supported its conclusion that relocating DSRC licensees to the upper 30 megahertz of the band will not meaningfully interfere with the ability of incumbents to provide the same types of safety-related services that they are currently offering. The Commission concluded that the 30 megahertz would accommodate basic ITS services for not only the limited number of vehicles currently equipped with DSRC as currently allowed for under the Commission's rules (e.g., certain fleet vehicles, which are mostly involved in pilot projects) but also for additional commercial vehicles (e.g., fleet vehicles, trucks, cars) that might incorporate DSRC-based equipment and that could become available for American consumers on a wider basis across the country in the future—notwithstanding current trends by many manufacturers for introduction of the new C-V2X technology.

37. Further, the Commission concluded that the transition path it was

adopting in the *First Report and Order* was designed to accommodate a transition that minimizes any potential disruption to DSRC operations because it is technically feasible for ITS to operate on 30 megahertz in the upper part of the band by reconfiguring DSRC-based devices by updating firmware and/or software. The Commission did not require existing licensees to vacate use of channels in the lower 45-megahertz immediately; instead it gave incumbent licensees one year to develop and implement a transition path out of that portion of the 5.9 GHz band. The Commission found that these accommodations were particularly reasonable in light of the minimal current deployment of DSRC.

38. At bottom, the argument that the Commission's action amounts to a "fundamental change" rests on the assertion that it will upend the future plans of DSRC licensees to provide certain advanced ITS services, which some commenters argue require the use of the full 75 megahertz currently allocated to DSRC licensees. But the record—including the history, current deployment of basic safety-related DSRC-based ITS services, and status of future plans for these advanced services—is unconvincing that relocation to the upper 30 megahertz will upend any concrete business plans of DSRC licensees. As the D.C. Circuit explained in detail in *Teledesic LLC v. Federal Communications Commission* (275 F.3d at 84), in managing spectrum "[t]he Commission correctly conceives of its role in prophetic and managerial terms"—it must "predict the effect and growth rate of technological newcomers on the spectrum, while striking a balance between protecting valuable existing uses and making room for . . . new technologies." In making this determination, the Commission concluded that the potential deployment of future advanced DSRC-based ITS services that may or may not develop years into the future is too uncertain and remote to warrant the further reservation of spectrum for their deployment. After 20 years, with no widescale deployment of even the basic vehicle safety applications that have been available for years, the Commission cannot reasonably justify the protection of such possible future deployment of advanced ITS service at the expense of proven and market-ready technologies that stand ready to make use of the lower 45 megahertz.

39. *Transition to C-V2X.* The Commission determined that it has the authority under Title III of the Communications Act to transition operations in the upper 30 megahertz

from DSRC to C-V2X. The Commission found that transitioning to C-V2X is in the public interest and noted that the exercise of its authority under Title III to transition operations to a new technology is consistent with past Commission actions modifying technical operational rules and mandating the use of newer technologies to maximize spectral efficiency. Licenses in the 5.9 GHz band are for the provision of ITS services, for which the Commission has required the use of DSRC technology. In revising its rules to require ITS licensees to use C-V2X technology, the Commission decided it was acting pursuant to its broad Title III spectrum management authority and consistent with its obligation to “generally encourage the larger and more effective use of radio in the public interest.”

40. In response to commenters’ claims that if the Commission adopts a band plan that provides no spectrum for ITS licensees using DSRC technology, then the licenses effectively would be revoked and thus the Commission would exceed its section 312 authority, the Commission found that its decisions do not represent a termination of DSRC licenses. Instead, licensees will continue to be able to provide the same vehicular safety services on the upper 30 megahertz of the band that they provide under the current ITS band designation, and the ultimate transition from DSRC to C-V2X would similarly not result in any change in or reduction of vehicular-safety services. Licensees that operate under the new technical rules will maintain the same renewal expectancy they have today. The Commission also provided flexibility for ITS licensees to choose to migrate to C-V2X technologies in the upper 30 megahertz sooner than required by its rules if the C-V2X operation would not interfere with any existing ITS licensee that continues to use DSRC-based technology before it ultimately transitions to C-V2X.

41. *Other statutory considerations.* Contrary to commenters’ assertions, the Commission concluded that re-designating spectrum it originally set aside for ITS is not in conflict with any role assigned to it by Congress in the Transportation Equity Act for the 21st Century (TEA), nor does the action infringe on the Department of Transportation’s (DOT’s) ability to continue to administer the ITS program. The Commission reasoned that in the TEA, Congress directed the Commission to consider, in consultation with the Secretary of the U.S. DOT, spectrum needs for the operation of ITS, including spectrum for the dedicated short-range

vehicle-to-wayside wireless standard. However, the TEA did not require that the Commission designate the 5.9 GHz band—or any band—for ITS, only that the Commission consider doing so. The TEA directed the Commission to complete rulemaking on ITS spectrum by January 1, 2000, which it did. That was all that Congress required for the Commission to achieve its statutory duties. By contrast, the Communications Act gives the Commission broad authority to ensure the efficient use of spectrum in the public interest. The Commission found that the action it was taking on the spectrum it designated for ITS was being done pursuant to its general authority to act in the public interest, convenience, and necessity, which, as the D.C. Circuit has explained, is the sort of spectrum management issue for which the Commission’s authority is at its zenith. (47 U.S.C. 303, *Teledesic*, 275 F.2d at 79).

42. The Commission disagreed with ITS America’s claims that adopting the Commission’s proposal to reduce the amount of ITS spectrum in the 5.9 GHz band would not satisfy the requirements of section 1 of the Communications Act as it relates to the Commission’s responsibility to manage spectrum to ensure safety-of-life and property through the use of wire and radio communications. The Commission found that the record shows significant support for ensuring safety of life and property through the use of ITS in the upper 30 megahertz of the band, allowing it to repurpose the lower 45 megahertz of the band for unlicensed operations. The Commission also disagreed with ITS America’s suggestion that section 1 of the Communications Act binds the Commission so that it may only modify 5.9 GHz licenses consistent with U.S. DOT’s recommendations, finding that ITS America appears to misunderstand the role Congress afforded the Commission to oversee non-federal use of spectrum (including state and local governmental spectrum), whether for public safety or commercial purposes.

E. Benefits and Costs: Economic Analysis

43. The Commission reviewed the benefits of repurposing the lower 45 megahertz of the 5.9 GHz band for unlicensed use and the direct costs associated with transitioning existing ITS licensees to the upper 30 megahertz of the band. The evidence led to the conclusion that the benefits, in terms of new economic activity, are well above the costs. The Commission expected to realize substantial benefits by

expanding Wi-Fi capacity. Even using a highly conservative approach to calculate benefits, the Commission anticipated a present value of approximately \$6 billion in benefits in each of the years 2023–2025, or \$17.2 billion over that time frame. The Commission also noted that unlicensed use of the 5.9 GHz band may lead to benefits well beyond 2025, which underscores the conservative nature of its estimates. At the same time, by preserving the upper 30 megahertz for ITS, the Commission permitted current and future licensees to continue to offer such service in the band. The Commission therefore took into consideration the one-time transaction costs associated with incumbent licensees transitioning their operations to the upper 30 megahertz of spectrum and determined that these costs are significantly less than the present value of the benefits. Specifically, the Commission limited cost considerations to the costs of transitioning existing licensees to the upper 30 megahertz of the 5.9 GHz band.

44. *Benefits of Unlicensed Spectrum in the Lower 45 Megahertz of the 5.9 GHz Band.* Proponents of the Commission’s proposal generally referred to a RAND Corporation study (RAND 5.9 GHz Study), which found that repurposing the 5.9 GHz band for unlicensed use could generate between \$82.2 billion and \$189.9 billion in economic welfare per year, or the substantially lower benefits estimate of approximately \$28 billion between 2022 and 2025 put forth by WiFiForward (2020 WiFiForward Study), to argue that costs related to the automotive industry were small by comparison. Conversely, advocates for ITS argued that unlicensed benefits put forth in these studies were outweighed by those of retaining the band for ITS. While few commenters disputed the benefits put forth by RAND and WiFiForward, below, the Commission presented its own estimate, which errs toward underestimating benefits by using an approach that likely overcounts prospective usage of the 6 GHz band and omits various consumer benefits as well as benefits that could be achieved prior to 2023 or after 2025.

45. Other commenters supporting the Commission’s proposal referred to the economic value of Wi-Fi in general and the numerous use cases that Wi-Fi enables. Commenters argued that increased Wi-Fi capacity will allow new data-intensive Internet of Things applications and complement 5G development by facilitating the off-loading of a growing percentage of mobile traffic. Other Wi-Fi benefits

include its importance to education, medicine, smart agriculture, and industry. Commenters asserted that benefits from repurposing the 5.9 GHz band would arise from the increased Wi-Fi capacity attendant with the creation of additional channels—including an 80-megahertz channel and a 160-megahertz channel.

46. The Commission evaluated the economic benefits of dedicating the lower 45 megahertz of the 5.9 GHz band for unlicensed use by estimating the expected contribution to Gross Domestic Product (GDP) resulting from additional Wi-Fi traffic once this spectrum is made available to augment existing Wi-Fi capacity. Additional Wi-Fi capacity is valuable as future U.S. Wi-Fi demand is expected to greatly increase. The additional, wider channels made possible by repurposing spectrum in the 5.9 GHz band will allow more devices to connect at a given time. The additional traffic will produce new productive economic activity, including through additional online transactions between internet users and additional transactions between internet users and internet service providers (ISPs), which together comprise the added value of additional spectrum. The Commission focused here on the additional GDP created by transactions between ISPs and their customers since estimating additional online transactions between internet users is difficult due to lack of data. Thus, the Commission's estimate is conservative, capturing the economic value to the ISPs directly (*i.e.*, producer surplus), while ignoring consumer surplus gains.

47. Wi-Fi traffic occurs on discrete channels of 20-megahertz, 40-megahertz, 80-megahertz and potentially 160-megahertz bandwidth. Larger bandwidths improve the speed of traffic on the bands and additional channels increase the aggregate capacity of Wi-Fi. The Commission's baseline calculation of the increase in traffic is based on the idea that the additional 45 megahertz of 5.9 GHz spectrum will, when combined with spectrum from the 5.725–5.850 GHz (U–NII–3) band, enable Wi-Fi users to access an additional 160-megahertz channel and 80-megahertz channel, two additional 40-megahertz channels, and three additional 20-megahertz channels in addition to channels that are already available, including those in the 6 GHz band. This will give consumer devices additional channels to establish connections to mitigate congestion. Because Wi-Fi traffic is expected to greatly increase and strain capacity today and in the future, the Commission assumed that the additional 5.9 GHz

spectrum will be fully used by consumers. Moreover, the Commission's finding that benefits outweigh costs does not require full use of the U–NII–4 band. This implies that the Commission can estimate additional traffic for channels of a specific bandwidth as a proportion of new Wi-Fi channels that this spectrum would create relative to existing channels of that bandwidth. For example, there are already two 80-megahertz channels used commonly by Wi-Fi. The additional spectrum would allow use of one additional 80-megahertz channel. Assuming that this new channel would be fully used, traffic would increase by 50% based on the proportion, one new channel to two old channels. Using this and reasonable assumptions on the distribution of traffic across Wi-Fi channels of different bandwidths, the Commission calculated that Wi-Fi traffic would increase by 8.4%. The Commission's traffic distribution assumptions are specified in Electronic Communications Committee, ECC Report 302, at 22 (May 29, 2019), <https://docdb.cept.org/download/cc03c766-35f8/ECC%20Report%20302.pdf>. The Commission noted that although there are means to augment capacity other than through additional spectrum, such as with greater investment in infrastructure, its result maintains as long as capacity remains a bottleneck to service quality.

48. To calculate additional GDP, the Commission multiplied 8.4% by an extrapolation of U.S. Wi-Fi traffic to determine additional traffic per year in gigabytes (GBs). See CISCO, VNI Complete Forecast Highlights, United States—2022 Forecast Highlights, at 1–2 (2018). The Commission then multiplied this figure by an estimate of the average ISP revenue generated by an additional GB of traffic. Specifically, the Commission used projections of the price per GB for fixed U.S. broadband plans based on the Consumer Price Index (CPI) for “Internet services and electronic information providers” and a baseline price estimate from the Commission's 2018 International Broadband Data Report. See U.S. Bureau of Labor Statistics, Databases, Tables & Calculators by Subject, *Internet Services and Electronic Information Providers*, https://data.bls.gov/timeseries/CUUR0000SEEE03?output_view=data (last visited Oct. 27, 2020); *International Comparison Requirements Pursuant to the Broadband Data Improvement Act*, GN Docket No. 17–199, Sixth Report, 33 FCC Rcd 978, 1035, Table 3 (IB 2018). The Commission estimated benefits

only through 2025 to avoid relying on current data for projecting too far into the future, but noted that because its estimates incorporate existing sources of unlicensed spectrum, including in the 6 GHz band, it believed that the benefits of repurposing the 5.9 GHz band would continue beyond 2025. Moreover, although the Commission anticipated that benefits could arise earlier, it did not calculate benefits prior to 2023 to allow time for devices to be updated and adopted by consumers. Using a discount rate of 7%, the Commission's conservative approach led to a present value of approximately \$6 billion in benefits in each of the years 2023–2025, or \$17.2 billion over that time frame. If the Commission instead discounted by 3%, the present value of benefits over 2023–2025 is \$19.3 billion.

Alternatively, discounting by 7%, but relying instead on the Census Bureau's national revenues data for fixed internet services, the Commission estimated a present value of benefits of \$34.8 billion over 2023–2025.

49. *Costs of Repurposing the Band to Limit ITS Use to the Upper 30 Megahertz of the 5.9 GHz Band.* Various commenters claimed that the costs of reducing the spectrum dedicated for ITS substantially outweigh the benefits of dedicating 45 megahertz for unlicensed operations. However, rather than quantifying costs specific to the reduction in ITS, most commenters pointed to the economic impact caused by automobile collisions in aggregate throughout the United States each year. Commenters generally referred to U.S. DOT estimates of the economic impact of lives lost and injuries resulting from police-reported vehicle crashes in the United States as well as other studies and statistics that were not ITS-specific. Some commenters, however, referred to ITS-specific analyses, including to National Highway Traffic Safety Administration (NHTSA) estimates of economic cost savings associated with V2V and other studies.

50. Commenters also argued that repurposing ITS spectrum would lead to costs associated with traffic congestion, fuel consumption, and auto emissions, but in most instances, did not connect these costs to ITS. Certain commenters referred to annual traffic reductions and reduced carbon dioxide emissions associated with V2X, while others claimed that the repurposing could inhibit technology advancements, including in truck platooning, road weather information technologies, and logistics.

51. More generally, commenters expressed concern that repurposing spectrum in the 5.9 GHz band would

delay the spread of ITS applications in the United States. Relatedly, Alliance for Automotive Innovation asserted that “[w]ithin 5 years, a total of at least 5 million radios on vehicles and roadway infrastructure will have been deployed, including any previous V2X deployment,” but only if the entire 5.9 GHz band is preserved for ITS.

52. Finally, ITS advocates argued that existing ITS licensees would face a transition cost above \$500 million, with specific reference to U.S. DOT estimates of infrastructure and equipment replacement, engineering, and related costs. Commenters also claimed that substantial investments in research, development, and testing would be lost as a result of the Commission’s proposed rule.

53. In response, various commenters argued that the Commission’s proposal leaves sufficient spectrum to meet automotive needs and that references to economic valuations based on the sum of U.S. police-reported vehicle crashes erroneously suggest that 100% of crashes and congestion will be avoided if all 75 megahertz in the 5.9 GHz band is dedicated to ITS. Commenters also noted claims about advanced ITS-based applications that could permit congestion-related and environmental benefits were speculative and that automotive technologies could use other licensed or unlicensed spectrum for many of the non-safety-of-life services that automakers contend would rely on ITS. Proponents of the Commission’s proposal agreed that there would be costs associated with moving ITS licensees from the lower 45 megahertz, but that these were overstated by the U.S. DOT and should not include sunk costs that cannot be recouped regardless of Commission action.

54. In conducting the Commission’s analysis of benefits and costs, an underlying objective was to identify benefits and costs causally related to the Commission action being undertaken. As such, the Commission can credit economic losses only if they would be expected to result from repurposing the 5.9 GHz band; we cannot (and should not) attempt to attribute losses to this proceeding that would have occurred regardless of our rule changes. Thus, the Commission rejected cost quantifications based on enumerations of the economic harms resulting from police-reported vehicle crashes in the U.S. that are not specifically tied to changes to ITS spectrum.

55. In general, commenters have provided very limited information that would allow the Commission to quantify any costs associated with a reduction in ITS spectrum. Certain

commenters pointed to analyses, such as in the *NHTSA V2V NPRM* (82 FR 3854), seeking to quantify specific safety benefits of ITS to argue that such benefits may be diminished by the Commission. The Commission found that benefits attributed to ITS in these studies are likely overstated and inappropriate to view as costs resulting from the Commission’s proposal. As discussed above, the Commission found that the 30 megahertz of spectrum that is being retained for ITS applications is sufficient to support many ITS applications. For example, in estimating the benefits of a proposal to mandate DSRC-based vehicle-to-vehicle (V2V) communications, the *NHTSA V2V NPRM* found that substantial benefits could be achieved using 10 megahertz of ITS spectrum, 20 megahertz less than the spectrum that we retain for ITS. Additionally, NHTSA analysis forecasted benefits based on the state of technology in the 2010–2013 base period, which likely substantially overestimates the benefits of DSRC in later years, when reliance on complementary or substitute safety systems (e.g., based on cameras, lasers, and radars) would likely be far more widespread than in 2010–2013. Because commenters neither showed that hypothetical ITS benefits described in the NHTSA and other studies would be lost as a result of the Commission’s actions, nor established that such benefits are accurately calculated, the Commission rejected comments advancing quantifications from these studies.

56. More generally, the Commission did not believe that this proceeding will lead to cognizable costs due to automobile collisions that may be linked to its actions. Commenters argued that certain advanced features, including those pertaining to life and property, may require additional bandwidth. NHTSA’s own prior analysis suggests, however, that V2V safety applications that could eliminate a large proportion of crashes may require much less spectrum. And while commenters speculated about certain additional benefits (i.e., to pedestrians), they did not demonstrate whether such benefits would arise nor quantified the incremental benefit given the V2V safety applications that would be expected to be preserved. Further, commenters did not demonstrate that advanced applications, even if presumed to offer additional safety benefits, need to rely on ITS spectrum or would be largely obviated by developing safety features outside ITS.

57. Commenters also claimed various benefits of ITS from non-safety

applications. As explained above, the Commission declined to rely upon estimates of use of ITS spectrum for applications like road weather information technologies that are more appropriately provided using other spectrum bands not dedicated for safety-of-life applications. Moreover, the Commission found that commenters did not effectively demonstrate that advanced ITS features would reduce congestion or environmental or other costs that are not directly related to safety. The Commission noted that 30 megahertz of spectrum is sufficient to support many ITS applications and existing studies do not show that more spectrum would give rise to additional benefits. For example, whereas commenters claimed that commercial platooning systems are expected to improve fuel efficiency by 7.25%, other public estimates of these impacts are lower, and there may be offsetting congestion, safety, and other concerns that could diminish the benefits from this technology (if not eliminate them entirely), leading certain truck manufacturers to reconsider its use.

58. Nor did the Commission view the transition by existing DSRC licensees to the upper 30 megahertz in the 5.9 GHz band to be a substantial cause of delays to deployment of basic ITS applications in the foreseeable future. First, as other commenters pointed out, the Commission noted that C–V2X has had no spectrum dedicated to its deployment, but this has not prevented rapid innovation in that technology, which in part necessitated this proceeding. Second, the band plan proposed by Alliance for Automotive Innovation suggests that a transition by DSRC licensees would have been necessitated, even if the Commission’s rules proceeded exactly as AAI envisioned. The Alliance for Automotive Innovation proposal initially stipulated a transition of DSRC licensees from the upper 20 megahertz of the 5.9 GHz band to make way for C–V2X. The proposal then stipulated a second transition after five years, following selection of a single technology (either DSRC or C–V2X) with a ten-year phaseout period for the technology that does not prevail. Because there is no guarantee that DSRC would prevail, this would forestall its transition by several years, even assuming it was ultimately determined to be the prevailing technology—an assumption we find unconvincing for the reasons discussed above. Moreover, the Commission found that AAI’s proposed commitment to deploy 5 million radios if the entire 5.9 GHz band

is preserved for ITS is not enforceable, and importantly, represents a relatively modest ITS deployment that is not necessarily at variance with deployments that might be anticipated without the proposal. The proposed commitment and band plan do not contemplate the additional length of time necessary to deploy the prevailing technology nor the time that it would take for sufficient adoption by consumers to have meaningful benefits, a timeframe during which alternative safety applications may substantially diminish the incremental benefits achievable from ITS. For these reasons, the Commission declined to credit claims that its actions could impose costs stemming from delays in ITS deployment.

59. Finally, the Commission believed that the U.S. DOT's estimate of transitioning existing licensees was at the high end of total ITS transition costs, and was, in any event, well below the Commission's estimated benefits of repurposing the 5.9 GHz band for unlicensed use. In particular, the U.S. DOT confounded the costs of transitioning to the upper 30 megahertz of the 5.9 GHz band with those of transitioning to C-V2X. However, the latter cost is necessitated by market factors, including substantial support for the C-V2X technology by proponents of ITS, coupled with a general understanding that a single interoperable ITS standard best promotes public safety. For instance, the Alliance for Automotive Innovation noted that the selection of a single technology would put the auto industry in a position that maximizes benefits for road travelers. Moreover, existing DSRC licensees have recently begun to employ C-V2X on an experimental basis, telling the Commission that the transition to C-V2X is already ongoing. Thus, the Commission viewed it as inappropriate to include as part of the transition calculation, costs of transitioning to C-V2X. Additionally, in general, expenses on research, development, and testing referenced by ITS proponents represent typical examples of sunk costs that are irrecoverable irrespective of any action that we take. Specifically, the Commission agreed with comments noting that expenses on grants and research projects referenced by the U.S. DOT, represent typical examples of such sunk costs, which it declined to recognize.

60. *Robustness of baseline analysis.* In addition to applying different revenue projections and discount rates to its baseline traffic assumptions, the Commission found that its analysis was robust to several variations of its model.

In particular, the Commission repeated its calculations accounting for additional U-NII-2 channels, though it noted that most Wi-Fi use occurs within the 2.4 GHz, U-NII-1, and U-NII-3 bands. Accounting for U-NII-2 decreased the Commission's estimate to a present value GDP contribution of \$13.6 billion over the years 2023–2025. As in the Commission's baseline model, this valuation assumes that the 6 GHz channels would be used at the time that 5.9 GHz spectrum would also become available. If the Commission alternatively assumed that 6 GHz spectrum would not be available during 2023–2025, its estimates of the contribution of 5.9 GHz spectrum for unlicensed rises to at least a present value GDP contribution of \$53.1 billion over the years 2023–2025. Finally, in the Commission's baseline analysis, it assumed that 5.9 GHz spectrum would be fully used by consumers, which led to its baseline weighted traffic increase of 8.4%. Relaxing this assumption, suppose instead that, conservatively, the increase in traffic were only 1%. Using the Commission's lowest estimates of the value of this traffic still led to a present value GDP contribution of \$2 billion over 2023–2025, which is still higher than expected one-time transition costs.

61. *Alternative Estimates of Unlicensed Spectrum Value in the Record.* In the *NPRM*, the Commission noted that the RAND 5.9 GHz Study attempted to value additional traffic expected to result from repurposing the entire 5.9 GHz band for unlicensed use. Although commenters generally did not dispute RAND's assessment, per the *NPRM*, the Commission had reservations with these valuations. The RAND evaluation of additional traffic was the sum of extra value from the additional number of gigabytes (GBs) transmitted times an average broadband price per GB, plus the cost to consumers of new Wi-Fi-using devices that RAND found would have to be purchased to support this new traffic. While the Commission agreed that the availability of additional unlicensed spectrum in the 5.9 GHz band will create additional traffic, it found that RAND's device-based component likely overstated benefits because it assumes that Wi-Fi devices in use are substantially limited by capacity constraints, and thus, any increase in Wi-Fi capacity would generate new traffic that would be accommodated entirely by the purchase of new devices. The Commission anticipated that existing Wi-Fi devices will handle most of the additional traffic, focusing instead on the value of

the extra traffic itself based on its calculation above. Additionally, unlike the RAND 5.9 GHz Study, the Commission incorporated 6 GHz spectrum into its analysis.

62. The Commission also previously addressed another approach to evaluating unlicensed use: Estimating the GDP increase due to the resulting broadband speed increase. An alternative quantification in the RAND 5.9 GHz Study as well as the 2020 WiFiForward Study of the value of repurposing 5.9 GHz both relied on such estimates but based on different data. The Commission did not find an appropriate way to address its concerns regarding this estimate in either comments to this proceeding, the public record, or in the academic literature, and so declined to include a benefit of speed increases in its analysis.

III. Incorporation by Reference

63. Sections 90.375, 90.379, and 95.3189 of the final rules provide that DSRC Roadside Units (RSUs) and DSRC On-Board Unit (OBU) transmitter types operating in the 5895–5925 MHz band must comply with the technical standard Institute of Electrical and Electronics Engineers (IEEE) 802.11p–2010. The OFR has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that, for a final rule, agencies must discuss in the preamble to the rule the way in which materials that the agency incorporates by reference are reasonably available to interested parties, and how interested parties can obtain the materials. Additionally, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

64. In accordance with the OFR's requirements, the discussion in section III.B. of this preamble summarizes the required provisions of IEEE 802.11p–2010. Interested persons may obtain a copy of IEEE 802.11p–2010, either through IEEE's website or by mail at the address provided in § 90.395 and 95.3189 the rule. A copy of the standard may also be inspected at the FCC's main office.

IV. Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the First Report and Order

65. There is growing demand for Wi-Fi and other unlicensed applications' access to mid-band spectrum to provide low-cost wireless connectivity in countless products used by American consumers. To meet this demand, the Commission adopted rules to repurpose the 5.850–5.895 GHz portion of the 5.9

GHz band, which when added to the adjacent spectrum available for U-NII devices below 5.850 GHz, will allow for increased high-throughput broadband unlicensed applications in spectrum that is a core component of today's unlicensed ecosystem. At the same time, the Commission recognized that the 5.9 GHz band plays an important role in supporting ITS safety-related transportation and vehicular communications. Therefore, the Commission retained 30 megahertz of spectrum in the 5.895–5.925 GHz portion of the 5.9 GHz band for use by the ITS radio service. In addition, it required ITS licensees to transition its technology from the DSRC standard to the C-V2X standard.

66. To promote unlicensed use of the 5.850–5.895 GHz band as soon as possible, the Commission allowed immediate access for unlicensed indoor operations (at specified low power levels) across the 5.850–5.895 GHz band. While the Commission will not permit unlicensed outdoor operations across the 5.850–5.895 GHz band at this time, requests to allow for outdoor unlicensed operations would be considered through the Commission's existing regulatory process to be coordinated with the NTIA to ensure that federal incumbents are protected from harmful interference.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

67. No comments were filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

68. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

69. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as

the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

70. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore described here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

71. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

72. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017

U.S. Census of Governments data, the Commission estimated that at least 48,971 entities fall into the category of "small governmental jurisdictions."

73. *Radio Frequency Equipment Manufacturers (RF Manufacturers).* Neither the Commission nor the SBA has developed a small business size standard applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). There are several analogous SBA small entity categories applicable to RF Manufacturers—Fixed Microwave Services, Other Communications Equipment Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these small entity categories and the small business size standards under the SBA rules are detailed below.

74. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

75. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small

business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. The Commission noted, however, that the microwave fixed licensee category includes some large entities.

76. Other Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. U.S. Census Bureau data for 2012 show that 383 establishments operated in that year. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, the Commission concluded that the majority of Other Communications Equipment Manufacturers are small.

77. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concluded that a majority of manufacturers in this industry are small.

78. Wireless Telecommunications Carriers (except Satellite). This industry

comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimated that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

79. Automobile Manufacturing. This U.S. industry comprises establishments primarily engaged in (1) manufacturing complete automobiles (i.e., body and chassis or unibody) or (2) manufacturing automobile chassis only. The SBA has established a size standard for this industry, which is 1,500 employees or less. 2012 U.S. Census Bureau data indicate that 185 establishments operated in this industry that year. Of this number, 162 establishments had employment of fewer than 1,000 employees, and 11 establishments had employment of 1,000 to 2,499 employees. Therefore, the Commission estimated that the majority of manufacturers in this industry are small entities.

80. Internet Service Providers (Non-Broadband). Internet access service providers such as dial-up internet service providers, VoIP service providers using client-supplied telecommunications connections and internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Consequently, under this size standard, a majority of firms in this industry can be considered small.

81. Internet Service Providers (Broadband). Broadband internet

service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

82. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission found that all but five cable operators are small entities under this size standard. The Commission noted that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, the Commission was unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

E. Requirements for Small Entities Description of Projected Reporting, Recordkeeping, and Other Compliance

83. In the First Report and Order, the Commission adopted rules that require ITS licensees to cease use of the 5.850–5.895 GHz band one year following the

effective date of the *First Report and Order*, operate in only the 5.895–5.925 GHz band thereon, and acknowledge compliance with that requirement with the Commission. The Commission expects that all the filing, recordkeeping, and reporting requirements associated with the adopted rules will be the same for large and small businesses. In addition, the Commission believed that this rulemaking, by expanding the availability of unlicensed devices in the 5.850–5.895 GHz band, would provide an advantage to small entities, as these entities would benefit from being able to access this spectrum over a wide geographic area and frequency range without the complication or cost of needing to obtain a license. On balance, this would constitute a significant benefit for small businesses.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

84. RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

85. In repurposing the 5.850–5.895 GHz band for unlicensed use, the Commission expects to realize substantial benefits by expanding Wi-Fi capacity for small and large entities alike. At the same time, by preserving 30 megahertz of spectrum in the 5.895–5.925 GHz band for ITS use, the rules adopted in the *First Report and Order* will be sufficient for the current and future ITS licensees to continue to offer such service in the band. The Commission believes that it has streamlined these rules appropriately to afford small entities new opportunities to access that spectrum in a cost-effective manner. The Commission found that the public interest is best served by addressing the needs of both ITS and unlicensed users for access to distinct parts of the 5.9 GHz band. The adopted rules for unlicensed indoor operation in the 5.850–5.895 GHz band are designed to prevent the unlicensed devices from causing harmful

interference to the licensed ITS services operating in the band prior to the deadline for ceasing use of the 5.850–5.895 GHz band. Consequently, the Commission does not expect that the current and future licensees in the band, including small entities, would experience a significant economic impact from additional unlicensed use of the spectrum that would be permitted under the adopted rules.

86. The regulatory burdens, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of 5.9 GHz band in a prompt and efficient manner and apply equally to large and small entities, thus without differential impact. The Commission will continue to examine alternatives in the future with the objective of eliminating unnecessary regulations and minimizing any significant impact on small entities.

V. Ordering Clauses

87. Accordingly, it is ordered that, pursuant to the authority found in sections 1, 4(i), 301, 302, 303, 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 302, 303, 309, 316, and 332, and § 1.411 of the Commission's rules, 47 CFR 1.411, that the *First Report and Order* and *Order of Proposed Modification* are hereby adopted.

88. It is further ordered that the rules and requirements as adopted herein are adopted, effective sixty (60) days from the date of publication in the **Federal Register**, with the exception of § 90.372, which contains new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission directs the Wireless Telecommunications Bureau to establish and announce the effective date of § 90.372 in a document published in the **Federal Register** after the Commission receives OMB approval.

89. It is further ordered that, pursuant to sections 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 309 and 316, in this *Order of Proposed Modification*, the Commission modifies all ITS licenses in the 5.9 GHz band pursuant to the conditions specified in the *First Report and Order*. Specifically, the Commission modifies the licenses of all DSRC incumbents to add authorization to operate in the 5.895–5.925 GHz band to any RSU registrations currently lacking authority to do so. In addition, the Commission will modify all DSRC licenses to provide that after the end of the sunset period their authorizations

will be limited to the 5.895–5.925 GHz band. These modifications will be effective 60 days after publication of this *Order of Proposed Modification* in the **Federal Register**; provided, however, that in the event that any ITS licensee, or any other licensee or permittee who believes that its license or permit would be modified by this action, seeks to protest these modifications, such license modifications specified herein and contested by the licensee or permittee shall not be made final as to such licensee or permittee unless and until the Commission orders otherwise. Pursuant to section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 316(a)(1), publication of this *Order of Proposed Modification* in the **Federal Register** shall constitute notification in writing of the Commission's Order proposing the modification of the ITS licenses, and of the grounds and reasons therefore, and those licensees and any other party seeking to file a protest pursuant to section 316 shall have 30 days from the date of such publication to protest such Order.

90. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *First Report and Order* and *Order of Proposed Modification*, including the Final Regulatory Flexibility Analysis, to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Radio, Telecommunications.

47 CFR Parts 15, 90, and 95

Communications equipment, Incorporation by Reference, Radio, Telecommunications.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15, 90, and 95 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

- 2. Amend § 2.106 by revising footnote “NG160” to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG)
Footnotes

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NG160 In the band 5895–5925 MHz, the use of the non-federal mobile service is limited to operations in the Intelligent Transportation Systems radio service.

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PART 15—RADIO FREQUENCY DEVICES

- 3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

Subpart E—Unlicensed National Information Infrastructure Devices

- 4. Revise § 15.401 to read as follows:

§ 15.401 Scope.

This subpart sets out the regulations for Unlicensed National Information Infrastructure (U-NII) devices operating in the 5.15–5.35 GHz, 5.47–5.895 GHz bands, and 5.925–7.125 GHz bands.

- 5. Amend § 15.403 by revising the definitions for “Indoor Access Point”, “Subordinate Device”, and “U-NII devices” to read as follows:

§ 15.403 Definitions.

* * * * *

Indoor Access Point. For the purpose of this subpart, an access point that operates in the 5.850–5.895 GHz or the 5.925–7.125 GHz band, is supplied power from a wired connection, has an integrated antenna, is not battery powered, and does not have a weatherized enclosure. Indoor access point devices must bear the following statement in a conspicuous location on the device and in the user’s manual: FCC regulations restrict operation of this device to indoor use only.

* * * * *

Subordinate Device. For the purpose of this subpart, a device that operates in the 5.850–5.895 GHz band or in the 5.925–7.125 GHz band under the control of an Indoor Access Point, is supplied power from a wired connection, has an integrated antenna, is not battery powered, does not have a weatherized enclosure, and does not have a direct connection to the internet. Subordinate devices must not be used to connect devices between separate buildings or structures. Subordinate devices must be authorized under certification

procedures in part 2 of this chapter. Modules may not be certified as subordinate devices.

* * * * *

U-NII devices. Intentional radiators operating in the frequency bands 5.15–5.35 GHz, 5.47–5.895 GHz, and 5.925–7.125 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions.

- 6. Amend § 15.407 by:
■ a. Revising paragraphs (a)(3), (12) and (b)(4) introductory text;
■ b. Redesignating paragraphs (b)(5) through (10) as paragraphs (b)(6) through (11);
■ c. Adding new paragraph (b)(5); and
■ d. Revising paragraph (e).

The revisions and additions are as follows:

§ 15.407 General technical requirements.

* * * * *

(a) * * *

(3) *For the band 5.725–5.895 GHz:* (i)

For the band 5.725–5.850 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W. In addition, the maximum power spectral density shall not exceed 30 dBm in any 500-kHz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi. However, fixed point-to-point U-NII devices operating in this band may employ transmitting antennas with directional gain greater than 6 dBi without any corresponding reduction in transmitter conducted power. Fixed, point-to-point operations exclude the use of point-to-multipoint systems, omnidirectional applications, and multiple collocated transmitters transmitting the same information. The operator of the U-NII device, or if the equipment is professionally installed, the installer, is responsible for ensuring that systems employing high gain directional antennas are used exclusively for fixed, point-to-point operations.

(ii) For an indoor access point operating in the 5.850–5.895 GHz band, the maximum power spectral density must not exceed 20 dBm e.i.r.p. in any 1-megahertz band. In addition, the maximum e.i.r.p. over the frequency band of operation must not exceed 36 dBm. Indoor access points operating on a channel that spans the 5.725–5.850 GHz and 5.850–5.895 GHz bands must not exceed an e.i.r.p. of 36 dBm.

(iii) For client devices operating under the control of an indoor access point in the 5.850–5.895 GHz band, the maximum power spectral density must not exceed 14 dBm e.i.r.p. in any 1-megahertz band, and the maximum e.i.r.p. over the frequency band of operation must not exceed 30 dBm. Client devices operating on a channel that spans the 5.725–5.850 GHz and 5.850–5.895 GHz bands must not exceed an e.i.r.p. of 30 dBm.

(iv) For a subordinate device operating under the control of an indoor access point in the 5.850–5.895 GHz band, the maximum power spectral density must not exceed 20 dBm e.i.r.p. in any 1-megahertz band, and the maximum e.i.r.p. over the frequency band of operation must not exceed 36 dBm.

(v) In the 5.850–5.895 GHz band, client devices must operate under the control of an indoor access point. In all cases, an exception exists for transmitting brief messages to an access point when attempting to join its network after detecting a signal that confirms that an access point is operating on a particular channel. Access points may connect to other access points. Client devices are prohibited from connecting directly to another client device.

Note 1 to Paragraph (a)(3): The Commission strongly recommends that parties employing U-NII devices to provide critical communications services should determine if there are any nearby Government radar systems that could affect their operation.

* * * * *

(12) Power spectral density measurement: The maximum power spectral density is measured as a conducted emission by direct connection of a calibrated test instrument to the equipment under test. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. Measurements in the 5.725–5.895 GHz band are made over a reference bandwidth of 500 kHz or the 26 dB emission bandwidth of the device, whichever is less. Measurements in all other bands are made over a bandwidth of 1 MHz or the 26 dB emission bandwidth of the device, whichever is less. A narrower resolution bandwidth can be used, provided that the measured power is integrated over the full reference bandwidth.

* * * * *

(b) * * *

(4) For transmitters operating solely in the 5.725–5.850 GHz band:

* * * * *

(5) For transmitters operating solely in the 5.850–5.895 GHz band or operating on a channel that spans across 5.725–5.895 GHz:

(i) For an indoor access point or subordinate device, all emissions at or above 5.895 GHz shall not exceed an e.i.r.p. of 15 dBm/MHz and shall decrease linearly to an e.i.r.p. of –7 dBm/MHz at or above 5.925 GHz.

(ii) For a client device, all emissions at or above 5.895 GHz shall not exceed an e.i.r.p. of –5 dBm/MHz and shall decrease linearly to an e.i.r.p. of –27 dBm/MHz at or above 5.925 GHz.

(iii) For a client device or indoor access point or subordinate device, all emissions below 5.725 GHz shall not exceed an e.i.r.p. of –27 dBm/MHz at

5.65 GHz increasing linearly to 10 dBm/MHz at 5.7 GHz, and from 5.7 GHz increasing linearly to a level of 15.6 dBm/MHz at 5.72 GHz, and from 5.72 GHz increasing linearly to a level of 27 dBm/MHz at 5.725 GHz.

* * * * *

(e) Within the 5.725–5.850 GHz and 5.850–5.895 GHz bands, the minimum 6 dB bandwidth of U-NII devices shall be at least 500 kHz.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 7. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Subpart B—Public Safety Radio Pool

■ 8. In § 90.20 amend the table in paragraph (c)(3) by revising the table heading, removing the entry for “5850–5925” and adding in its place an entry for “5895–5925” to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

TABLE 1 TO § 90.20—PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *	* * * * *	* * * * *	* * * * *
5895–5925	Base or mobile	86	Not applicable.
* * * * *	* * * * *	* * * * *	* * * * *

* * * * *

Subpart C—Industrial/Business Radio Pool

■ 9. In § 90.35 amend the table in paragraph (b)(3) by revising the table

heading, removing the entry for “5850–5925” and adding in its place an entry for “5895–5925” to read as follows:

(b) * * *

(3) * * *

§ 90.35 Industrial/Business Pool.

* * * * *

TABLE 1 TO § 90.35—INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *	* * * * *	* * * * *	* * * * *
5895–5925	do	90, 91	Not applicable.
* * * * *	* * * * *	* * * * *	* * * * *

* * * * *

Subpart G—Applications and Authorizations

■ 10. Amend § 90.149 by revising paragraph (b) to read as follows:

§ 90.149 License term.

* * * * *

(b) Non-exclusive geographic area licenses for DSRCS Roadside Units (RSUs) under subpart M of this part in the 5895–5925 MHz band will be issued for a term not to exceed ten years from the date of original issuance or renewal. The registration dates of individual RSUs (see § 90.375) will not change the overall renewal period of the single license.

■ 11. Amend § 90.155 by revising paragraph (i) to read as follows:

§ 90.155 Time in which station must be placed in operation.

* * * * *

(i) DSRCS Roadside Units (RSUs) under subpart M of this part in the 5895–5925 MHz band must be placed in operation within 12 months from the effective date of registration (see § 90.375) or the authority to operate the RSUs cancels automatically (see § 1.955 of this chapter). Such registration date(s) do not change the overall renewal period of the single license. Licensees must notify the Commission in accordance with § 1.946 of this chapter when registered units are placed in

operation within their construction period.

Subpart H—Policies Governing the Assignment of Frequencies

■ 12. Amend § 90.175 by revising paragraph (j)(16) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(j) * * *

(16) Applications for DSRCS licenses (as well as registrations for Roadside Units) under subpart M of this part in the 5895–5925 MHz band.

* * * * *

Subpart I—General Technical Standards

■ 13. Amend § 90.203 by redesignating paragraph (a)(2) as paragraph (a)(3) and adding new paragraph (a)(2) to read as follows:

§ 90.203 Certification Required.

* * * * *

(a) * * *

(2) Effective July 5, 2022, an equipment approval may no longer be obtained for DSRCS equipment (RSUs and OBUs) operating under the provisions of this part.

* * * * *

■ 14. Amend § 90.205 by revising paragraph (q) to read as follows:

§ 90.205 Power and antenna height limits.

* * * * *

(q) 5895–5925 MHz. Power and height limitations are specified in subpart M of this part.

* * * * *

■ 15. In § 90.210 amend table 1 to § 90.210 by revising the entry for “5850–5925” and footnote 4 to read as follows:

§ 90.210 Emission masks.

* * * * *

TABLE 1 TO § 90.210—APPLICABLE EMISSION MASKS

Applicable emission masks frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
5895–5925 ⁴ .		

⁴DSRCS Roadside Units in the 5895–5925 MHz band are governed under subpart M of this part.

* * * * *

■ 16. In § 90.213 amend table 1 to § 90.213(a) by revising footnote 10 to read as follows:

§ 90.213 Frequency stability.

(a) * * *

TABLE 1 TO § 90.213 (a)—MINIMUM FREQUENCY STABILITY

* * * * *

¹⁰Frequency stability for DSRCS equipment in the 5895–5925 MHz band is specified in subpart M of this part. For all other equipment, frequency stability is to be specified in the station authorization.

* * * * *

Subpart M—Intelligent Transportation Systems Radio Service

■ 17. Amend subpart M by revising the undesignated center heading following § 90.365 to read as follows:

* * * * *

Regulations Governing the Licensing and Use of Frequencies in the 5895–5925 MHz Band for Dedicated Short-Range Communications Service (DSRCS)

* * * * *

■ 18. Add § 90.370 to subpart M to read as follows:

§ 90.370 Permitted frequencies.

(a) Dedicated Short-Range Communications Service (DSRCS) systems are permitted to operate in the 5895–5925 MHz band.

(b) DSRCS authorizations granted prior to the July 2, 2021 may remain on existing frequencies in the 5850–5895 MHz band until July 5, 2022, at which time they may only operate in the 5895–5925 MHz band.

(c) Frequencies in the 5895–5925 MHz band will not be assigned for the exclusive use of any licensee; Channels are available on a shared basis only for use in accordance with the Commission's rules. All licensees shall cooperate in the selection and use of channels in order to reduce interference. This includes monitoring for communications in progress and any other measures as may be necessary to minimize interference.

(d) Licensees of Roadside Units (RSUs) suffering or causing harmful interference within a communications zone, as defined in § 90.375 of this part, are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable

to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height and direction, additional filtering, or area or hours of operation of the stations concerned. The use of any channel at a given geographical location may be denied when, in the judgment of the Commission, its use at that location is not in the public interest; use of any such channel may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization.

■ 19. Amend § 90.371 by revising paragraphs (b) and (c) to read as follows:

§ 90.371 Dedicated Short Range Communications Service.

* * * * *

(b) DSRCS Roadside Units (RSUs) operating in the band 5850–5925 MHz shall not receive protection from Government Radiolocation services in operation prior to the establishment of the DSRCS station. Operation of DSRCS RSU stations within the radius centered on the locations listed in the table below must be coordinated through the National Telecommunications and Information Administration.

TABLE 1 TO § 90.371(b)—COORDINATION LOCATIONS

Location	Latitude	Longitude	Coordination zone radius
Anclote, Florida	28–11–18	82–47–40	45
Cape Canaveral, Florida	28–28–54	80–34–35	47
Cape San Blas, Florida	29–40–31	85–20–48	47
Carabelle Field, Florida	29–50–38	84–39–46	36
Charleston, South Carolina	32–51–48	79–57–48	16
Edwards, California	34–56–43	117–54–50	53

TABLE 1 TO § 90.371(b)—COORDINATION LOCATIONS—Continued

Location	Latitude	Longitude	Coordination zone radius
Eglin, Florida	30–37–51	86–24–16	103
Fort Walton Beach, Florida	30–24–53	86–39–58	41
Kennedy Space Center, Florida	28–25–29	80–39–51	47
Key West, Florida	24–33–09	81–48–28	12
Kirtland AFB, New Mexico	34–59–51	106–28–54	15
Koikepark, Hawaii	22–07–35	159–40–06	5
MacDill, Florida	27–50–37	82–30–04	47
NV Test Training Range, Nevada	37–18–27	116–10–24	186
Patuxent River, Maryland	38–16–55	76–25–12	6
Pearl Harbor, Hawaii	21–21–17	157–57–51	16
Pillar Point, California	37–29–52	122–29–59	36
Poker Flat, Alaska	65–07–36	147–29–21	13
Port Canaveral, Florida	28–24–42	80–36–17	19
Port Hueneme, California	34–08–60	119–12–24	24
Point Mugu, California	34–07–17	119–09–1	18
Saddlebunch Keys, Florida	24–38–51	81–36–22	29
San Diego, California	32–43–00	117–11–00	11
San Nicolas Island, California	33–14–47	119–31–07	195
Tonopah Test Range, Nevada	37–44–00	116–43–00	2
Vandenberg, California	34–34–58	120–33–42	55
Venice, Florida	27–04–37	82–27–03	50
Wallops Island, Virginia	37–51–23	75–30–41	48
White Sands Missile Range, New Mexico	32–58–26	106–23–43	158
Yuma, Arizona	32–54–03	114–23–10	2

(c) NTIA may authorize additional station assignments in the federal radiolocation service and may amend, modify, or revoke existing or additional assignments for such service. Once a federal assignment action is taken, the Commission's Universal Licensing System database will be updated accordingly and the list in paragraph (b) of this section will be updated as soon as practicable.

■ 20. Delayed indefinitely, add § 90.372 to subpart M to read as follows:

§ 90.372 DSRCS notification requirement.

(a) DSRCS licensees authorized pursuant to 90.370(b) must notify the Commission that as of the transition deadline of July 5, 2022, they have

ceased operating in the 5.850–5.895 GHz portion of the band. This notification must be filed via ULS within 15 days of the expiration of the transition deadline.

(b) Continued operation in the 5.850–5.895 GHz portion of the band after the transition deadline, will result in automatic termination of that licensee's authorization without specific Commission action.

■ 21. Amend § 90.375 by revising paragraphs (a) and (c) to read as follows:

§ 90.375 RSU license areas, communication zones, and registrations.

(a) Roadside Units (RSUs) in the 5895–5925 MHz band are licensed on the basis of non-exclusive geographic

areas. Governmental applicants will be issued a geographic area license based on the geo-political area encompassing the legal jurisdiction of the entity. All other applicants will be issued a geographic area license for their proposed area of operation based on county(s), state(s) or nationwide.

* * * * *

(c) Licensees must operate each RSU in accordance with the Commission's rules and the registration data posted on the ULS for such RSU. Licensees must register each RSU for the smallest communication zone needed for the intelligent transportation systems application using one of the following four communication zones:

TABLE 1 TO § 90.375(c)—COMMUNICATION ZONES

RSU class	Maximum output power (dBm) ¹	Communications zone (meters)
A	0	15
B	10	100
C	20	400
D	28.8	1000

¹ As described in the IEEE 802.11p-2010 (incorporated by reference, see § 90.395).

■ 22. Revise § 90.379 to read as follows:

§ 90.379 Technical standards for Roadside Units.

DSRCS Roadside Units (RSUs) operating in the 5895–5925 MHz band must comply with the technical standard Institute of Electrical and

Electronics Engineers (IEEE) 802.11p-2010 (incorporated by reference, see § 90.395).

■ 23. Amend § 90.383 by revising the introductory text and paragraph (b) to read as follows:

§ 90.383 RSU sites near the U.S./Canada or U.S./Mexico border.

Until such time as agreements between the United States and Canada or the United States and Mexico, as applicable, become effective governing border area use of the 5895–5925 MHz band, authorizations to operate

Roadside Units (RSUs) are granted subject to the following conditions:

* * * * *

(b) Authority to operate RSUs is subject to modifications and future agreements between the United States and Canada or the United States and Mexico, as applicable.

■ 24. Add § 90.395 to subpart M to read as follows:

§ 90.395 Incorporation by reference.

Certain material required in this section is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the address of the FCC's main office indicated in 47 CFR 0.401(a) and is available from the sources indicated in this section. It is also available for inspection 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 www.archives.gov/federal-register/cfr/ibrlocations.html.

(a) Institute of Electrical and Electronics Engineers (IEEE), 3025 Boardwalk Drive, Suite 220, Ann Arbor, MI 48108, 1-855-999-9870, www.techstreet.com/ieee.

(1) IEEE 802.11p-2010, IEEE Standard for Information technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements—Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications Amendment 6: Wireless Access in Vehicular Environments, 15 July, 2010; into §§ 90.375(c), 90.379.

(2) [Reserved]

(b) [Reserved]

PART 95—PERSONAL RADIO SERVICES

■ 25. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 307.

Subpart L—DSRCS On-Board Units

■ 26. Revise § 95.3101 to read as follows:

§ 95.3101 Scope.

This subpart contains rules that apply only to On-Board Units (OBUs) transmitting in the 5895–5925 MHz frequency band in the Dedicated Short-Range Communications Services (DSRCS) (see § 90.371 of this chapter).

§ 95.3159 [Removed and Reserved]

■ 27. Remove and reserve § 95.3159.

■ 28. Revise § 95.3163 to read as follows:

§ 95.3163 OBU frequencies.

DSRCS On-Board Units (OBUs) are permitted to operate in the 5895–5925 MHz band.

■ 29. Revise § 95.3167 to read as follows:

§ 95.3167 OBU transmit power limit.

(a) The maximum output power for portable DSRCS On-Board Unit (OBU) transmitter types is 1.0 mW.

(b) The power limits in paragraph (a) of this section may be referenced to the antenna input, so that cable losses are taken into account.

(c) For purposes of this section, a portable unit is a transmitting device designed to be used so that the radiating structure(s) of the device is/are within 20 centimeters of the body of the user.

■ 30. Revise § 95.3189 to read as follows:

§ 95.3189 OBU technical standard.

(a) DSRCS On-Board Unit (OBU) transmitter types operating in the 5895–5925 MHz band must be designed to comply with the technical standard Institute of Electrical and Electronics Engineers (IEEE) 802.11p-2010.

(b) 802.11p-2010, IEEE Standard for Information technology—Local and metropolitan area networks—Specific requirements—Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications Amendment 6: Wireless Access in Vehicular Environments, 15 July 2010 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the address of the FCC's main office indicated in 47 CFR 0.401(a) and is available from Institute of Electrical and Electronics Engineers (IEEE), 3025 Boardwalk Drive, Suite 220, Ann Arbor, MI 48108, 1-855-999-9870, www.techstreet.com/ieee. It is also available for inspection 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 www.archives.gov/federal-register/cfr/ibrlocations.html.

Appendix A to Part 95 [Amended]

■ 31. Amend the table in appendix A to part 95 by removing the entry for “95.1509—ASTM E2213-03 DSRC Standard”.

[FR Doc. 2021-08802 Filed 4-30-21; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 86, No. 83

Monday, May 3, 2021

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.

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 2021–07]

Rulemaking Petition: Candidate Salaries

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition; notification of availability.

SUMMARY: On March 23, 2021, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend its existing regulations regarding candidate salaries and permissible uses of campaign funds. The proposed amendments would: Extend the period during which a candidate can draw a salary from campaign funds; establish a minimum salary for candidates from campaign funds; and designate the payment of certain healthcare costs as permissible uses of campaign funds. The Commission seeks comment on the petition.

DATES: Comments must be submitted on or before July 2, 2021.

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission's website at <http://sers.fec.gov/fosers/>, reference REG 2021–01.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or

commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Rothstein, Assistant General Counsel, or Mr. Kevin Paulsen, Attorney, Office of the General Counsel, at CandidateSalaries@fec.gov.

SUPPLEMENTARY INFORMATION: On March 23, 2021 the Commission received a Petition for Rulemaking from Nabilah Islam ("Petition"). The Petition asks the Commission to amend 11 CFR 113.1(g), which, in part, lists certain permissible and impermissible expenses for which campaign funds may and may not be used and sets forth the conditions under which candidates may pay themselves a campaign salary. Petition at 1. Each of the Petition's proposals is addressed in turn below.

A. Candidate Salary Period

Existing Commission regulations permit candidates to draw salaries from their principal campaign committees using campaign funds, subject to certain conditions. 11 CFR 113.1(g)(1)(i)(I). If these conditions are met, an eligible candidate may begin receiving a campaign salary on the date of "the filing deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by state law, or in those states that do not conduct primaries, on January 1 of each even-numbered year." *Id.* "If the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election, up to and including the date of any general election runoff." *Id.* If, however, the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, no salary may be paid beyond the date he or she is no longer a candidate. *Id.* In odd-numbered years in which a special election for a Federal office occurs, the candidate's principal campaign committee may pay him or her a salary from the date the special election is set through the date of the special election. *Id.*

The Petition asserts that ballot access deadlines for state primaries "vary wildly based on state law." Petition at 3–4. According to the Petition, during the 2018 election cycle, the date on which a candidate could begin drawing a campaign salary under Commission regulations "ranged from December 4,

2017 in Illinois to July 10, 2018 in Delaware, a difference of 218 days." *Id.* at 4. The Petition asks the Commission to amend 11 CFR 113.1(g)(1)(i)(I) to "standardize and expand the ability for candidates to draw a salary" from their campaigns. *Id.* The Petition proposes that the regulations be amended to permit a candidate to begin drawing a campaign salary "at least 180 days before the primary election, but a full year would be optimal." *Id.* (emphasis in original).

B. Minimum Candidate Salary

The same provision of the Commission's existing regulations limits the amount of salary payments that a candidate may receive from his or her principal campaign committee. 11 CFR 113.1(g)(1)(i)(I). Under the regulation, salary payments may not exceed "the lesser of: The minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks; or the earned income that the candidate received during the year prior to becoming a candidate." *Id.* The regulation further states that "[a]ny earned income that a candidate receives from salaries or wages from any other source shall count against the foregoing limit of the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks." *Id.* Any salary payments must also "be computed on a pro-rata basis." *Id.*

The Petition alleges that the current maximum salary limitation "leaves candidates who are full time caretakers or who have had gaps in employment out in the cold." Petition at 4–5. The Petition asks the Commission to amend 11 CFR 113.1(g)(1)(i)(I) by creating a minimum "floor" for the salary that a candidate may draw from his or her principal campaign committee at an amount "no less than the annualized salary of \$15 per hour." *Id.*

C. Healthcare Premiums

The Federal Election Campaign Act, 52 U.S.C. 30101–45 ("FECA"), provides that a candidate's authorized committee may use its funds for several specific purposes, including "otherwise authorized expenditures in connection with the campaign for Federal office of the candidate." 52 U.S.C. 30114(a)(1). An authorized committee may not, however, convert campaign funds to "personal use." 52 U.S.C. 30114(b); 11 CFR 113.1(g)(1)(ii). FECA defines

“personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign.” 52 U.S.C. 30114(b)(2); *see also* 11 CFR 113.1(g). FECA and Commission regulations provide a non-exhaustive list of expenses that, when paid using campaign funds, constitute per se conversion to personal use. 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i). For expenses not listed, the Commission determines on a case-by-case basis whether the expense would exist irrespective of the candidate’s campaign. 11 CFR. 113.1(g)(1)(ii). Neither FECA nor Commission regulations explicitly address health insurance premiums.¹

The Petition alleges that rising healthcare costs act as a barrier to the prospective candidacies of “working class people.” Petition at 5. Accordingly, the Petition asks the Commission to amend 11 CFR 113.1(g) to expressly permit a candidate to use campaign funds to pay the costs of “any health benefit plan already provided to other campaign employees” beginning on the date on which the candidate is eligible to receive a campaign salary.² *Id.* The Petition also requests that such amendment “clarify that any payments for health insurance premiums that are not otherwise taxable under Internal Revenue Service rules should not count against any compensation cap set by the Commission.” *Id.*

The Commission seeks comment on the Petition. The public may inspect the Petition on the Commission’s website at <http://sers.fec.gov/fosers/>.

The Commission will not consider the Petition’s merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding.

¹ As the Petition notes, the Commission recently determined in the context of an enforcement matter that the existing candidate salary provision at 11 CFR 113.1(g)(1)(i)(I) does not permit the use of campaign funds to reimburse a candidate’s out-of-pocket payments of health insurance premiums. *See Factual & Legal Analysis at 10, MUR 7068 (Mowrer for Iowa, et al.) (Dec. 20, 2017), https://www.fec.gov/files/legal/murs/7068/1804452908.pdf.* The Commission further concluded that the candidate’s use of campaign funds to pay his health insurance premiums was a prohibited “personal use” under 11 CFR 113.1(g)(1)(ii), because these expenses would exist irrespective of the candidate’s campaign. *Id.*

² The For the People Act of 2021, which was passed by the House of Representatives this year, would amend Section 30114 of FECA to expressly permit the use of a candidate’s authorized committee’s funds to pay for the candidate’s health insurance premiums. For the People Act of 2021, H.R. 1, 117th Cong. § 5302 (2021). If this legislation becomes law, the Petition notes that this particular aspect of the request would become moot.

The Commission will announce any action that it takes in the **Federal Register**.

Dated: April 23, 2021.

On behalf of the Commission,

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

[FR Doc. 2021–08866 Filed 4–30–21; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0259; Project Identifier AD–2020–01128–E]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2013–26–01, which applies to all CFM International, S.A. (CFM) CFM56–3 and CFM56–7B model turbofan engines with a certain accessory gearbox assembly (AGB) not equipped with a handcranking pad oil dynamic seal assembly. AD 2013–26–01 requires an independent inspection to verify re-installation of the handcranking pad cover after removal of the pad cover for maintenance. Since the FAA issued AD 2013–26–01, a dual-engine oil loss event occurred, prompting CFM to revise its service information to provide procedures for reworking and reidentifying the AGB. The FAA has also evaluated the requirement to install a redesigned handcranking pad oil dynamic seal assembly in response to the dual-engine oil loss event. This proposed AD would continue to require independent inspection to verify re-installation of the AGB handcranking pad cover after maintenance. This proposed AD would require the replacement of the affected AGB as a terminating action to the inspection requirement. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 17, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493–2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: fleetsupport@ge.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0259; 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 NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7120; fax: (781) 238–7199; email: Chris.McGuire@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2021–0259; Project Identifier AD–2020–01128–E” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>.

www.regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Christopher McGuire, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2013–26–01, Amendment 39–17710 (78 FR 79295, December 30, 2013), (AD 2013–26–01), for all CFM CFM56–3 and CFM56–7B model turbofan engines equipped with a certain AGB not equipped with a handcranking pad oil dynamic assembly. AD 2013–26–01 requires an independent inspection to verify re-installation of the AGB handcranking pad cover after any maintenance involving the removal and reinstallation of the AGB handcranking pad cover. As an optional terminating action to the inspection requirements, AD 2013–26–01 allowed the installation of an AGB that incorporates a handcranking pad oil dynamic seal assembly. AD 2013–26–01 resulted from 42 events of total loss of engine oil from CFM56 model turbofan engines while in flight. The FAA issued AD 2013–26–01 to prevent loss of

engine oil while in flight, which could result in engine failure, loss of thrust control, and damage to the airplane.

Actions Since AD 2013–26–01 Was Issued

Since the FAA issued AD 2013–26–01, a dual-engine oil loss event occurred, prompting the FAA to propose the mandatory installation of a redesigned handcranking pad oil dynamic seal assembly. In addition, CFM revised its service information to provide procedures for replacing the starter drive pad assembly and handcranking cover assembly and for reworking and reidentifying an affected AGB to a part eligible for installation.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed CFM International CFM56–7B Service Bulletin (SB) 72–0879, Revision 6, dated March 1, 2018 (CFM SB 72–0879); CFM International SB CFM56–3 SB 72–1129, Revision 7, dated May 5, 2020 (CFM SB 72–1129); and CFM International SB CFM56–7B SB 72–0564 Revision 8, dated May 6, 2020 (CFM SB 72–0564). CFM SB 72–1129 describes procedures for the introduction of a new starter drive pad, new handcranking cover assembly, and reworking and reidentifying an AGB installed on CFM56–3 model turbofan engines. CFM SB 72–0879 and CFM SB 72–0564 describe procedures for the introduction of a new starter drive pad, new handcranking cover, and reworking and reidentifying an AGB installed on CFM56–7B model turbofan engines. CFM SB 72–0879 and CFM SB 72–0564 are differentiated by the part numbers of the AGBs eligible for rework and the new part numbers by which these AGBs will be reidentified once rework is complete. 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.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2013–26–01. This proposed AD would require the performance of an independent inspection to verify re-installation of the AGB handcranking pad cover after maintenance. Alternatively, this proposed AD would require the insertion of an independent inspection as a required inspection item in the approved continuous airworthiness maintenance program for the aircraft not later than the next time the AGB handcranking pad cover is removed for maintenance. This proposed AD would also remove the optional terminating action in AD 2013–26–01 and add a mandatory terminating action for certain model turbofan engines, requiring the removal and replacement of an affected AGB with an AGB that incorporates the oil dynamic seal assembly.

For all CFM56–3B and the majority of CFM56–7B turbofan engine models, this proposed AD would require replacement of the AGB as a mandatory terminating action to the inspection requirement of this AD. This proposed AD does not require this terminating action for CFM56–7B27A, CFM56–7B27A/3 and CFM56–7B27AE model turbofan engines because these model engines, which are installed only in military airplanes, do not have a replacement AGB eligible for installation.

Costs of Compliance

The FAA estimates that this AD, as proposed, would affect 700 engines installed on airplanes of U.S. registry. The FAA estimates that the majority of operators will perform the repair and reidentification of the AGB rather than replace the AGB with a zero hour part. For the purpose of this cost estimate, the FAA estimates that 95% of AGBs will be repaired and reidentified while 5% of AGBs will be replaced with a zero hour AGB.

The FAA estimates the following costs to comply with this proposed AD:

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Independent Inspection	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$59,500
Insert inspection item into aircraft maintenance program.	1 work-hour × \$85 per hour = \$0	0	85	59,500
Rework and reidentify AGB	4 work-hours × \$85 per hour = \$340	12,000	12,340	8,206,100
Replace AGB with zero hour AGB	4 work-hours × \$85 per hour = \$340	526,700	527,040	18,446,400

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

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would 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.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

- a. Removing airworthiness directive 2013–26–01, Amendment 39–17710 (78 FR 79295, December 30, 2013); and
- b. Adding the following new airworthiness directive:

CFM International, S.A.: Docket No. FAA–2021–0259; Project Identifier AD–2020–01128–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by June 17, 2021.

(b) Affected ADs

This AD replaces AD 2013–26–01, Amendment 39–17710 (78 FR 79295, December 30, 2013).

(c) Applicability

This AD applies to CFM International, S.A. CFM56–3 and CFM56–7B model turbofan engines equipped with an accessory gearbox (AGB) assembly with the following part numbers (P/Ns):

(1) For CFM56–3, CFM56–3B, and CFM56–3C model turbofan engines, AGB P/N: 335–300–103–0, 335–300–105–0, 335–300–106–0, 335–300–107–0, 335–300–108–0, 335–300–109–0, or 335–300–110–0, installed.

(2) For CFM56–7B20, CFM56–7B20/2, CFM56–7B20/3, CFM56–7B22, CFM56–7B22/2, CFM56–7B22/3, CFM56–7B22/3B1, CFM56–7B22/B1, CFM56–7B24, CFM56–7B24/2, CFM56–7B24/3, CFM56–7B24/3B1, CFM56–7B24/B1, CFM56–7B26, CFM56–7B26/2, CFM56–7B26/3, CFM56–7B26/3B1, CFM56–7B26/3B2, CFM56–7B26/3B2F, CFM56–7B26/3F, CFM56–7B26/B1, CFM56–7B26/B2, CFM56–7B27, CFM56–7B27/2, CFM56–7B27/3, CFM56–7B27/3B1, CFM56–7B27/3B1F, CFM56–7B27/3B3, CFM56–7B27/3F, CFM56–7B27/B1, and CFM56–7B27/B3 model turbofan engines, AGB P/N: 340–046–503–0, 340–046–504–0, or 340–046–505–0, installed.

(3) For CFM56–7B27A, CFM56–7B27A/3, or CFM56–7B27AE model turbofan engines, AGB P/N: 340–188–601–0, 340–188–603–0, or 340–188–605–0, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7260, Turbine Engine Accessory Drive.

(e) Unsafe Condition

This AD was prompted by a dual engine loss of oil event and 42 prior events of total loss of engine oil during flight. The FAA is issuing this AD to prevent loss of engine oil while in flight. The unsafe condition, if not addressed, could result in engine failure, loss of thrust control, reduced control of the aircraft, and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) After the effective date of this AD, after any maintenance that involves removal and re-installation of the AGB handcranking pad cover, perform an independent inspection to verify re-installation of the AGB handcranking pad cover; or

(2) Prior to the next removal of the AGB handcranking pad cover from the engine, insert the independent inspection required by paragraph (g)(1) of this AD as a required inspection item in the existing approved continuous airworthiness maintenance program for the aircraft.

(h) Mandatory Terminating Action

As a mandatory terminating action to the requirements of paragraph (g) of this AD:

(1) For affected CFM56–3, CFM56–3B, and CFM56–3C model turbofan engines, at the next engine shop visit, or before December 31, 2026, whichever occurs first after the effective date of this AD, replace the affected AGB with a part eligible for installation.

(2) For affected CFM56–7B model turbofan engines, except for CFM56–7B27A, CFM56–7B27A/3 and CFM56–7B27AE model turbofan engines, at the next engine shop visit, or before December 31, 2024, whichever occurs first after the effective date of this AD, replace the affected AGB with a part eligible for installation.

(i) Definition

(1) For the purpose of this AD, an "engine shop visit" is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit:

(i) Separation of engine flanges solely for the purposes of transportation of the engine without subsequent maintenance.

(ii) Separation of engine flanges solely for the purpose of replacing the fan or propulsor without subsequent maintenance.

(2) For the purpose of this AD, for affected CFM56–3, CFM56–3B, and CFM56–3C model turbofan engines, a part eligible for installation is:

(i) An AGB with a part number other than 335–300–103–0, 335–300–105–0, 335–300–106–0, 335–300–107–0, 335–300–108–0, 335–300–109–0, 335–300–110–0, or

(ii) An affected AGB that has been reworked and reidentified to a part number eligible for installation using CFM International Service Bulletin (SB) CFM56–3 SB 72–1129, Revision 7, dated May 5, 2020.

(3) For the purpose of this AD, for affected CFM56–7B model turbofan engines, except for CFM56–7B27A, CFM56–7B27A/3 and CFM56–7B27AE model turbofan engines, a part eligible for installation is:

(i) An AGB with a part number other than 340–046–503–0, 340–046–504–0, or 340–046–505–0, or

(ii) An affected AGB that has been reworked and reidentified to a part number eligible for installation using, as applicable, CFM International SB CFM56–7B SB 72–0879, Revision 6, dated March 1, 2018, or CFM International SB CFM56–7B SB 72–0564 Revision 8, dated May 6, 2020.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.1914. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District

Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. You may email your request to: ANE-AD-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

(1) For more information about this AD, contact Christopher McGuire, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7120; fax: (781) 238-7199; email: Chris.McGuire@faa.gov.

(2) For service information identified in this AD, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432-3272; email: fleetsupport@ge.com. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238-7759.

Issued on March 30, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-08747 Filed 4-30-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2021-OESE-0044]

Proposed Priorities and Definitions— Education Innovation and Research— COVID-19 and Equity

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities and definitions.

SUMMARY: The Department of Education (Department) proposes priorities and definitions under the Education Innovation and Research (EIR) program, Assistance Listing Numbers 84.411A/B/C. The Department may use these priorities and definitions for competitions in fiscal year (FY) 2021 and later years. The Department proposes these priorities and definitions to support competitions under the EIR program for the purpose of developing, implementing, and evaluating projects designed to enhance instructional practice and improve achievement and attainment for high-need students in two key policy areas: Innovative approaches to addressing the impact of

the novel coronavirus 2019 (COVID-19) pandemic on students and educators (namely, the interruption of traditional patterns of education due to school closures and the disproportionate social, emotional, physical and mental health, and academic impacts on particular student groups); and promoting equity in students' access to educational resources and opportunities. The Department believes that these priorities and definitions are essential to enable applicants to respond to the COVID-19 pandemic and address equity issues.

DATES: We must receive your comments on or before June 2, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- **Federal eRulemaking Portal:** Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

- **Postal Mail, Commercial Delivery, or Hand Delivery:** If you mail or deliver your comments about the proposed priorities and definitions, address them to Ashley Brizzo, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E334, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Ashley Brizzo, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E344, Washington, DC 20202. Telephone: (202) 453-7122. Email: EIR@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: *Invitation to Comment:* We invite you to submit comments regarding the proposed priorities and definitions. To ensure that your comments have maximum effect in

developing the notice of final priorities and definitions, we urge you to clearly identify the priority and definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities and definitions by accessing Regulations.gov. Due to the COVID-19 pandemic, the Department buildings are currently not open to the public. However, upon reopening you may also inspect the comments in person at 400 Maryland Avenue SW, Room 3E344, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially larger numbers of students. The EIR program includes Expansion grants (84.411A), Mid-phase grants (84.411B), and Early-phase grants (84.411C).

Program Authority: Section 4611 of the ESEA, 20 U.S.C. 7261.

Proposed priorities:

This notice contains two proposed priorities.

Proposed Priority 1—Innovative Approaches to Addressing the Impact of COVID-19 on Underserved Students and Educators.

Background: COVID-19 has caused unprecedented disruption in schools across the country and drawn renewed attention to the ongoing challenges for underserved students (as defined in this notice). In response to the pandemic, educators have mobilized and continue to address the needs of all students. Researchers and educators are now working to understand and address the impact of inconsistent access to instruction, services, and supports, and other challenges.

State educational agencies, local educational agencies, and nonprofit organizations play essential roles in building capacity at the State and local level both to respond to current crises and also create the systems and structures to support long-term change. The Department is interested in projects that develop and evaluate evidence-based innovations for addressing the impact of COVID-19 in ways that accelerate learning for students and address students' social, emotional, physical and mental health, and academic needs, with a focus on targeting resources and supports to underserved students. The EIR program statute refers to "high-need students." In addressing the needs of underserved students, the requirement for serving "high-need students" can also be addressed.

The Department seeks innovative strategies under this priority that support students' success in the classroom; are delivered by qualified individuals (based on requirements established by the applicant) who receive adequate training and support; and are aligned with the district's curriculum and effective practices.

Proposed Priority:

Projects designed to address the needs of underserved students and educators most impacted by COVID-19 through—

(a) Collaborating with key stakeholders, such as families, caretakers, students, educators, and community leaders, to assess and understand students' social, emotional, physical and mental health, as well as academic needs, in light of historical educational inequities and the impact of the COVID-19 pandemic; and,

(b) Developing and implementing strategies to address those needs through one or more of the following:

(1) Re-engaging students and strengthening relationships between educators and students.

(2) Supporting district- and school-wide use of personalized learning (as defined in this notice).

(3) Utilizing multi-tier systems of support (as defined in this notice).

(4) Providing educators with professional development and resources to use trauma-informed practices.

(5) Creating or supporting equitable and inclusive learning environments in schools.

(6) Ensuring students have access to additional specialized instructional support personnel (as defined in this notice) during their school day, at their school site.

(7) Finding and supporting students experiencing homelessness, including those not attending school during the pandemic.

(7) Providing additional supports to educators to address their mental health and well-being and instructional practice needs.

(9) Providing evidence-based supports and educational opportunities to accelerate grade-level student learning (especially for underserved students) through instructional practice, including those supported by technology in ways that do not contribute to tracking or remediation, which may include one or both of the following—

(i) High-quality tutoring (as defined in this notice), summer learning and enrichment, or opportunities for high-quality expanded learning time (as defined in this notice) as well as implementation of embedded, high-quality formative assessment to support personalization.

(ii) Providing targeted supports for high school students to prepare for post-secondary education transition and success.

Proposed Priority 2—Promoting Equity and Adequacy in Student Access to Educational Resources and Opportunities.

Background: Improving educational equity and adequacy is a priority for the Nation's education system, with particular emphasis on supporting underserved students. For example, the Department's 2018 news release on STEM course taking reported that of students enrolled in Calculus courses, 8 percent were black, when black students represent 16 percent of high school enrollment. A similar trend exists for physics courses in which 12 percent of black students were enrolled. (<https://www2.ed.gov/about/offices/list/ocr/docs/stem-course-taking.pdf>).

Additionally, during the 2015–16 school year, African American male students comprised 8 percent of students enrolled and 25 percent of

students who received an out-of-school suspension. National data show that African American girls are 5.5 times more likely and Native American girls are 3 times more likely to be suspended from school than White girls (<https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>). Research shows, however, that these disparities are not the result of differences in behavior, but rather perceptions of student behavior. The Department is interested in projects that address these discipline disparities given that one among many concerns is the missed learning opportunities.

Although multiple factors influence teacher impact on student achievement, data related to experience and certification illuminate this is one area of equity concern. Schools with high enrollments of students of color were four times as likely to employ uncertified teachers as were schools with low enrollments of students of color. Students in schools with high enrollments of students of color also have less access to experienced teachers. In these schools, nearly one in every six teachers is just beginning his or her career, compared to one in every 10 teachers in schools with low enrollments of students of color (https://learningpolicyinstitute.org/sites/default/files/product-files/CRDC_Teacher_Access_REPORT.pdf). The Department is interested in projects that address issues of disparities in teacher certification and experience given research indicating that fully certified and experienced teachers relate to student achievement (Boyd, et al., 2006; Clotfelter, et al., 2007; Darling-Hammond, et al., 2005; Kini & Podolsky, 2016; Goe, 2007; Ladd & Sorenson, 2017; Podolsky, et al., 2019).

The Department seeks to support projects that propose innovative ways to address the various inequities in this country's education system. This type of innovation will better enable educators to work toward closing achievement gaps and helping all students succeed in school and reach toward their future goals.

Underserved students have less access to the educational opportunities they need to succeed in multiple ways including access to well-rounded and rigorous coursework; how discipline policies are applied; and students' more limited access to certified, experienced, and effective teachers.

The Department seeks projects that develop and evaluate evidence-based innovations to remedy the inequities in our education system.

Proposed Priority:

Projects designed to promote equity in access to critical resources for underserved students in prekindergarten through grade 12 through one or more of the following:

(a) Addressing inequities in access to fully certified, experienced, and effective teachers through one or more of the following activities:

(1) Improving the preparation, recruitment, early career support, and development of teachers in high-need or hard-to-staff schools.

(2) Reforming hiring, compensation, and advancement systems.

(3) Improving the retention of fully certified (including teachers certified in the area they are assigned to teach), experienced, and effective teachers in districts, schools, and classrooms serving high concentrations of underserved students through one or more of the following activities:

(i) Providing comprehensive, high-retention pathways into the profession.

(ii) Creating or enhancing opportunities for teachers' professional growth and leadership opportunities.

(iii) Delivering collaborative, job-embedded, and sustained professional development.

(iv) Improving workplace conditions to create opportunities for successful teaching and learning.

(b) Addressing inequities in access to and success in rigorous, engaging, and culturally and linguistically responsive teaching and learning environments that prepare students for college and career through one or both of the following activities:

(1) Increasing access to and success in middle school courses that are foundational to advanced coursework in high school; advanced courses and programs, including Advanced Placement, International Baccalaureate, high-quality dual or concurrent enrollment (as defined in this notice), and high-quality early college high school (as defined in this notice), programs; high-quality STEM programs; or high-quality career and technical education pathways that are integrated into the curriculum.

(2) Developing, and expanding access to, programs designed to provide a well-rounded education (as defined in this notice).

(c) Addressing bias (e.g., implicit and explicit) and creating inclusive, supportive learning environments.

(d) Including diverse stakeholders (including students) in State and local education decisions.

(e) Supporting discipline and resource equity through one or both of the following activities:

(1) Identifying and addressing, in collaboration with students, families, and educators, policies that result in the disproportionate use of exclusionary discipline through data collection and analysis (including school climate surveys) disaggregated by race, sex, English learner, disability status, gender-identity, and sexual orientation, in compliance with 20 U.S.C. 1232h and 34 CFR part 98, and other important variables.

(2) Identifying and addressing issues of equity in access to and the use of innovative tools, rigorous content, and effective teaching and learning practices, including by providing job-embedded professional development to educators on strategies for equitably integrating educational technology in ways that elevate student engagement beyond passive use and over-reliance on drill-and-practice to a more robust, creative, and playful medium.

(f) Addressing policies, practices, and procedures that contribute to significant disproportionality in special education or programs for English learners based on race or ethnicity.

(g) Improving the quality of educational programs in juvenile justice facilities (such as detention facilities and secure and non-secure placements) or supporting re-entry after release, by linking youth to education or job training programs.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority is as follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Definitions:

Background:

We propose specific definitions for this program to promote a shared understanding of the scope of activities that could be supported by this program.

Proposed Definitions:

We propose to establish three definitions for this program ("high-quality tutoring," "personalized learning," and "underserved students"). We may apply one or more of these definitions in any year in which this program is in effect. We also intend to use definitions from section 8101 of the ESEA, and we provide the specific ESEA citations in parentheses.

Dual or concurrent enrollment means a program offered by a partnership between at least one institution of higher education and at least one local educational agency through which a secondary school student who has not graduated from high school with a regular high school diploma is able to enroll in one or more postsecondary courses and earn postsecondary credit that—

(a) Is transferable to the institutions of higher education in the partnership; and

(b) Applies toward completion of a degree or recognized educational credential as described in the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*) (Section 8101(15) of the ESEA)

Early college high school means a partnership between at least one local educational agency and at least one institution of higher education that allows participants to simultaneously complete requirements toward earning a regular high school diploma and earn not less than 12 credits that are transferable to the institutions of higher education in the partnership as part of an organized course of study toward a postsecondary degree or credential at no cost to the participant or participant's family. (Section 8101(17) of the ESEA)

Expanded learning time means using a longer school day, week, or year schedule to significantly increase the total number of school hours, in order to include additional time for—

(a) Activities and instruction for enrichment as part of a well-rounded education; and

(b) Instructional and support staff to collaborate, plan, and engage in professional development (including professional development on family and community engagement) within and across grades and subjects. (Section 8101(22) of the ESEA)

High-quality tutoring means tutoring that is based on evidence-based strategies to support students' success in the classroom; is delivered in individualized or small-group settings; reflects differentiated support based on

student need; is aligned with the district's curriculum; has established standards of intensity and dosage based on level of need; is delivered by tutors who are well-trained, who are supported with resources and personnel (such as a tutor coordinator), and who work closely with the student's teacher of record; and includes instruments to examine instructional quality and quantity.

Multi-tier system of supports means a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students' needs, with regular observation to facilitate data-based instructional decision-making. (Section 8101(33) of the ESEA)

Personalized learning means instruction that is aligned with rigorous college- and career-ready standards so that the pace of learning and the instructional approach are tailored to the needs of individual learners. Learning objectives and content, as well as the pace, may all vary depending on a learner's needs. Personalized learning may also draw on a number of student-centered blended learning models (e.g., competency-based education, project-based learning, universal design for learning). In addition, learning activities are aligned with specific interests of each learner. Data from a variety of sources (including formative assessments, student feedback, and progress in digital learning activities), along with teacher recommendations, are often used to personalize learning.

Specialized instructional support personnel means—

(a) School counselors, school social workers, and school psychologists; and

(b) Other qualified professional personnel, such as school nurses, speech language pathologists, and school librarians, involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)) as part of a comprehensive program to meet student needs. (Section 8101(47)(A) of the ESEA)

Underserved students means high-need students as determined by the applicant, which may include one or more of the following:

(a) Students who are living in poverty, especially those students who are also served by schools with high concentrations of students living in poverty.

(b) Students of color.

(c) Students who are members of federally recognized Indian Tribes.

(d) English learners.

(e) Students with disabilities.

(f) Disconnected youth, including but not limited to (1) students who lost significant amounts of in-person instruction as a result of the COVID-19 pandemic and, or (2) students who did not consistently participate in remote instruction when offered during school building closures.

(g) Migrant students.

(h) Students experiencing homelessness.

(i) Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) students.

(j) Students in foster care.

(k) Students without documentation of immigration status.

(l) Pregnant, parenting, or caregiving students.

(m) Students impacted by the justice system including formerly incarcerated students.

(n) Students who are the first in their family to attend postsecondary education.

(o) Students enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(p) Students who are working full-time while enrolling in postsecondary education.

(q) Students who are enrolling in or seeking to enroll in postsecondary education who are eligible for a Pell Grant.

(r) Adult students with low skills, including those with limited English proficiency.

Well-rounded education means courses, activities, and programming in subjects such as English, reading or language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, arts, history, geography, computer science, music, career and technical education, health, physical education, and any other subject, as determined by the State or local educational agency, with the purpose of providing all students access to an enriched curriculum and educational experience. (Section 8101(52) of the ESEA)

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Final Priorities and Definitions:

We will announce the final priorities and definitions in a document in the **Federal Register**. We will determine the final priorities and definitions after considering responses to the proposed priorities and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities and definitions, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities and definitions we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed priorities and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net

benefits. Based on an analysis of anticipated costs and benefits, we believe that this proposed regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Potential Costs and Benefits

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Proposed Priorities 1 and 2 would give the Department the opportunity to support applicants seeking to address the COVID-19 pandemic and equity issues. We believe that these proposed priorities and definitions could result in a number of changes, including infusing funds to support key areas of need related to pandemic-related learning loss and ongoing challenges of historically underserved students. We also believe that applicants will be able to leverage these priorities to propel current efforts to respond to the COVID-19 pandemic and explore innovative approaches to promoting equity. Such changes have the potential to change educational opportunities and outcomes for high-need students.

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priorities and definitions would not impose any particular burden except when an entity voluntarily elects to apply for a grant. We believe the benefits would outweigh any associated costs.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?

- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are public or private nonprofit agencies and organizations, including institutions of higher education, that may apply. We believe that the costs imposed on an applicant by the proposed priorities and definitions would be limited to paperwork burden related to preparing an application and that the benefits of these proposed priorities and definitions would outweigh any costs incurred by the applicant. Therefore, these proposed priorities and definitions would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed priorities and requirement contain information collection requirements that are approved by OMB under OMB control numbers 1894-0006 and 1810-0021. The Expansion grants (84.411A) and Mid-phase grants (84.411B) programs are approved under OMB control number 1894-0006. The Early-phase grants program (84.411C) is approved under the OMB control number 1810-

0021. The Department will request OMB approval under 1894–0006 for the Early-phase grants program (84.411C) around the same time this notice publishes.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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 the 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.

Ruth Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2021–09371 Filed 4–30–21; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0310; FRL–10019–11–OAR]

40 CFR Part 81

Response to Clean Air Act Section 176A Petition From Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed action on petition.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a Clean Air Act (CAA) section 176A petition submitted by the state of Maine on February 24, 2020. The petition requests that the EPA remove a large portion of Maine from the Ozone Transport Region (OTR) based on that area's continued attainment with ozone National Ambient Air Quality Standards (NAAQS) and technical analyses demonstrating that the additional control of emissions from that portion of the state will not significantly contribute to ozone attainment in any area in the OTR. The OTR was established by the 1990 Clean Air Act (CAA or Act) Amendments and includes the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia, and portions of northern Virginia.

DATES: *Comments.* Comments must be received on or before June 17, 2021.

Public Hearing. A virtual public hearing will be held upon request. To request a public hearing, please notify Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, (C504–01), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, email address long.pam@epa.gov, no later than May 13, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0310, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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 <https://www2.epa.gov/dockets/submitting-comments>.

Out of an abundance of caution, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. The EPA Docket Center and Reading Room has since started the reopening process. Visitors will be considered on an exception basis and allowed entrance by appointment only. Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Questions concerning this proposed notice should be directed to Holly DeJong, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–4353; email at dejong.holly@epa.gov.

For more information pertaining to a public hearing on this document, contact Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, (C504–01), Research Triangle Park, NC 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email at long.pam@epa.gov (preferred method of contact).

SUPPLEMENTARY INFORMATION:

I. General Information

Throughout this document wherever “we,” “us,” or “our” is used, we mean the U.S. EPA.

The information in this Supplementary Information section of this preamble is organized as follows:

I. General Information

A. Where can I get a copy of this document and other related information?

B. What acronyms, abbreviations and units are used in this preamble?

II. Executive Summary of the EPA's Proposed Decision on the Maine CAA Section 176A Petition

III. Background and Legal Authority

- A. Ozone Formation and Impacts
- B. Sections 176A and 184 of the CAA and the OTR Process
- C. Legal Standard for this Action
- D. Previous Actions
- IV. Maine CAA Section 176A Petition
 - A. Summary of the Maine CAA Section 176A Petition
 - B. Provisions Impacted by the Maine CAA Section 176A Petition
- V. The EPA's Technical Assessment of the Maine CAA Section 176A Petition
 - A. Description of the Technical Analysis Included in the Maine CAA Section 176A Petition
 - B. The EPA's Technical Assessment of the Maine Section 176A Petition
- VI. The EPA's Proposed Action on the Maine CAA Section 176A Petition
- VII. Judicial Review and Determinations Under Section 307(b)(1) of the CAA

A. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this document will be posted at <https://www.epa.gov/ozone-pollution/ozone-national-ambient-air-quality-standards-section-176a-petition-maine>.

B. What acronyms, abbreviations and units are used in this preamble?

APA Administrative Procedures Act
 BACT Best Available Control Technology
 CAA or Act Clean Air Act
 CAIR Clean Air Interstate Rule
 CSAPR Cross State Air Pollution Rule
 CFR Code of Federal Regulations
 CMR Code of Maine Regulations
 CTG Control Techniques Guideline
 D.C. Circuit United States Court of Appeals for the District of Columbia Circuit
 DEP Department of Environmental Protection
 EGU Electric Generating Unit
 EPA U.S. Environmental Protection Agency
 FIP Federal Implementation Plan
 FR Federal Register
 HYSPLIT Hybrid Single Particle Lagrangian Integrated Trajectory
 I/M program Inspection and Maintenance Program
 LAER Lowest Achievable Emission Rate
 NAAQS National Ambient Air Quality Standard
 NEI National Emissions Inventory
 NNSR Nonattainment New Source Review
 NO_x Nitrogen Oxides
 NSPS New Source Performance Standard
 NSR New Source Review
 ORVR Systems Onboard Refueling Vapor Recovery Systems
 OTAG Ozone Transport Assessment Group
 OTC Ozone Transport Commission
 OTR Ozone Transport Region
 PM Particulate Matter
 PTE Potential to Emit
 RACT Reasonably Available Control Technology
 SIP State Implementation Plan
 SO₂ Sulfur Dioxide
 VOC Volatile Organic Compound

II. Executive Summary of the EPA's Proposed Decision on the Maine CAA Section 176A Petition

On February 24, 2020, the state of Maine petitioned the EPA pursuant to Clean Air Act (CAA) section 176A(a)(2) for the removal of the state of Maine from the OTR except for 111 towns and cities comprising the Androscoggin Valley,¹ Down East² and Metropolitan Portland³ Air Quality Control Regions, commonly referred to as the "Portland and Midcoast Ozone Areas." Maine contends that emissions from northern and eastern Maine are not significant contributors to ozone nonattainment in other states nor do they interfere with maintenance of the ozone NAAQS in those Maine municipalities that would remain in the OTR. Therefore, removing these areas from the OTR would not degrade the air quality in Maine or in any other state. The petition includes monitoring data and technical analyses to support a demonstration that the areas requested to be removed from the OTR are in attainment with the ozone NAAQS and that emissions from these areas do not significantly contribute to ozone nonattainment in any area of the OTR. For the reasons described in this notice, the EPA is proposing to grant the petition on the basis that removing the areas of the state requested to be removed from the OTR would not result in emissions changes that would significantly contribute to nonattainment or interfere with maintenance in any area of the OTR.

Section 176A(a) of the CAA provides the Administrator with the authority to develop interstate transport regions for particular pollutants where the Administrator determines that interstate transport of air pollutants from one or more states contributes significantly to violations of air quality standards in other states. In the 1990 CAA Amendments, Congress created the OTR by statute under CAA section 184(a) to address the interstate transport of ozone pollution in the Northeast and Mid-Atlantic regions of the United States (U.S.).

¹ 40 CFR 81.90 defines the Androscoggin Valley Interstate Air Quality Control Region as Androscoggin County, Kennebec County, Knox County, Lincoln County, Waldo County and parts of Franklin County, Oxford County, Somerset County.

² 40 CFR 81.181 defines the Down East Intrastate Air Quality Control Region as Hancock County, Washington County and parts of Penobscot County and Piscataquis County.

³ 40 CFR 81.78 defines the Metropolitan Portland Intrastate Air Quality Control Region as Cumberland County, Sagadahoc County, York County, and the towns of Brownfield, Denmark, Fryburg, Hiram, and Porter.

The creation of an interstate transport region requires establishing a transport commission with representatives from each state who make recommendations to mitigate interstate pollution. Model rules and programs designed through the OTC (Ozone Transport Commission) may be adopted by the individual states through their own rulemaking processes. Under CAA section 184(c), the OTC may petition the EPA to approve additional control measures to be applied within all or part of the transport region. Maine seeks to remove portions of the state from the OTR, thereby releasing those areas from OTC recommendations and applicable control requirements established under CAA section 184.

Section 176A(a)(1) of the CAA provides the Administrator with authority to "add any state or portion of a state to any [transport] region . . . whenever the Administrator has reason to believe that the interstate transport of air pollutants from such state significantly contributes to a violation of the standard in the transport region." Conversely, CAA section 176A(a)(2) allows the Administrator to "remove any state or portion of a state from [a transport] region whenever the Administrator has reason to believe that the control of emissions in that state or portion of the state . . . will not significantly contribute to the attainment of the standard in any area in the region."

For the reasons fully described in this notice, and in consideration of monitoring data, technical demonstrations, and impacts to air quality control regimes in the areas to be removed, the EPA believes that the portion of Maine requested for removal from the OTR does not contribute to a violation of any ozone standard in any area of the OTR, and that further control of emissions from that portion of Maine will not significantly contribute to attainment of any ozone standard in any area of the OTR. Accordingly, the EPA is proposing to grant the CAA section 176A petition filed by the state of Maine to remove a portion of Maine from the OTR.

III. Background and Legal Authority

A. Ozone Formation and Impacts

Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and several morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure may cause visible foliar

injury, decrease plant growth, and affect ecological community composition.

Ground-level ozone is predominantly a secondary air pollutant created by chemical reactions between ozone precursors including nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the presence of sunlight. Emissions from electric generating utilities (EGUs), industrial facilities, motor vehicles, non-road equipment, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. The potential for ground-level ozone formation tends to be highest during months with warmer temperatures and stagnant air masses; therefore, ozone levels are generally higher during the summer months.⁴ Increased temperatures may also increase emissions of anthropogenic and biogenic VOC emissions and can indirectly increase anthropogenic NO_x emissions as well (e.g., through increased electricity generation to power air conditioning).

The EPA has regulated ozone pollution and the precursor emissions that contribute to ozone for the last five decades.⁵ Currently, there are two NAAQS in effect for ozone.⁶ On March 12, 2008, the EPA promulgated a revision to the ozone NAAQS, lowering both the primary and secondary standards to 75 ppb.⁷ On October 1, 2015, the EPA lowered the primary and secondary standards to 70 ppb.⁸

In accordance with CAA section 107(d), the EPA designates areas as “attainment” (meeting the standard), “nonattainment” (not meeting the standard) or “unclassifiable” (insufficient data to classify). States with areas designated as nonattainment must develop and submit State Implementation Plans (SIPs) to the EPA with the goal of attaining and maintaining the level of the NAAQS by the applicable attainment deadline. In

this way, the EPA and states work collaboratively to establish and implement nonattainment area planning requirements that are designed to bring areas into attainment of the NAAQS by the applicable attainment deadline. A key step in ensuring that areas attain and maintain ozone NAAQS is to assess and understand the potential for ozone source formation in a given area, including the potential for upwind states’ emissions to impact ozone formation in downwind states.

Precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone or secondary ozone precursors. Studies have established that ozone formation, atmospheric residence, and transport can occur on a regional scale (i.e., hundreds of miles) over much of the eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas.⁹ Additionally, observational studies have demonstrated the presence of ozone and ozone precursor transport, and documented the impact that upwind emissions have on high concentrations of ozone pollution.¹⁰ As a result of ozone transport, ozone pollution levels in a given location are impacted by a combination of local emissions and emissions from upwind sources. The transport of ozone across state borders compounds the difficulty for downwind states to be in attainment with ozone NAAQS. While substantial progress has been made in reducing ozone in many urban areas, regional-scale ozone transport is still a major component of peak ozone concentrations during the summer ozone season.

B. Sections 176A and 184 of the CAA and the OTR Process

Subpart 1 of part D of title I of the CAA provides the general plan requirements for designated nonattainment areas. This subpart includes provisions governing the development of transport regions to address the interstate transport of pollutants that contribute to NAAQS violations. In particular, section 176A(a) of the CAA provides that, on the EPA’s own motion or by a petition from the Governor of any state, whenever the EPA has reason to believe that the interstate transport of air pollutants

from one or more states contributes significantly to a violation of the NAAQS in one or more other states, the EPA may establish, by rule, a transport region for such pollutant that includes such states. The provision further provides that the EPA may add any state or portion of a state to any transport region whenever the Administrator has reason to believe that the interstate transport of air pollutants from such state significantly contributes to a violation of the standard in the transport region.

Section 176A(b) of the CAA provides that when the EPA establishes a transport region, the Administrator shall establish an associated transport commission, comprised of (at a minimum) the following: The Governor or her or his designee of each covered state, the EPA Administrator or a designee, the Regional EPA Administrator or a designee, and an air pollution control official appointed by the Governor of each state. The purpose of the transport commission is to assess the degree of interstate transport throughout the transport region and assess and recommend control strategies to the EPA to mitigate such interstate transport.

Subpart 2 of part D of title I of the CAA provides plan requirements specific to the ozone NAAQS. Consistent with CAA section 176A, found in subpart 1, subpart 2 includes specific provisions focused on the interstate transport of ozone. CAA section 184(a) establishes a single transport region for ozone—the OTR—comprising the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area for the District of Columbia, which includes certain portions of northern Virginia. The Virginia counties and cities included in the OTR are Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

Section 184(b) of the CAA establishes specific control requirements that each state in the OTR is required to implement within the state, including certain controls on sources of NO_x and VOCs. These control requirements are required to be implemented statewide in any state included within the OTR, regardless of ozone attainment status.¹¹

⁴ Rasmussen, D.J. et. al. (2011) Ground-level ozone-temperature relationship in the eastern US: A monthly climatology for evaluating chemistry-climate models. *Atmospheric Environment* 47: 142–153.

⁵ Primary and secondary NAAQS were first established for photochemical oxidants in 1971. 36 FR 8186 (April 30, 1971). In 1979, the EPA revised the NAAQS to change the indicator from photochemical oxidants to O₃ and to revise the primary and secondary standards. 44 FR 8202 (February 8, 1979). In 1997, the EPA once again revised the primary and secondary standards for ozone NAAQS. 62 FR 38856 (July 18, 1997). In 2015, the 1997 ozone NAAQS were revoked. 80 FR 12264 (March 6, 2015).

⁶ The 1997 ozone NAAQS were revoked in 2015. 80 FR 12264 (March 6, 2015).

⁷ See National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008).

⁸ See National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015).

⁹ National Research Council. 1991. *Rethinking the Ozone Problem in Urban and Regional Air Pollution*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/1889>.

¹⁰ Downs, T., R. Fields, R. Hudson, I. Kheirbek, G. Kleiman, P. Miller, and L. Weiss. 2010. *The Nature of the Ozone Air Quality Problem in the Ozone Transport Region: A Conceptual Description*. Northeast States for Coordinated Air Use Management.

¹¹ We note that one exception to the statewide applicability of these control requirements applies

Under CAA section 184(b)(1)(A), OTR states must include enhanced vehicle emissions inspection and maintenance (I/M) programs in their SIPs.¹² Under CAA section 184(b)(2), major stationary sources of VOCs in OTR states are subject to the same requirements that apply to major sources in designated ozone nonattainment areas classified as Moderate.¹³ Thus, the state must adopt rules to apply nonattainment new source review (NNSR) and reasonably available control technology (RACT) (pursuant to CAA section 182(b)(2)) provisions for major VOC sources statewide. Under CAA section 184(b)(2) states must also implement Stage II gasoline refueling vapor recovery programs, incremental to vehicle Onboard Refueling Vapor Recovery achievements, or measures that achieve comparable emissions reductions for both attainment and nonattainment areas.¹⁴

Section 182(f) of the CAA requires states to apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of VOCs under subpart 2. Thus, the same NNSR and RACT requirements that apply to major stationary sources of VOC in the OTR also apply to major stationary sources of NO_x.¹⁵ CAA section 182(f) provides for a NO_x waiver, or an exemption to the NO_x requirements, where the Administrator determines that such NO_x reductions would not contribute to the attainment of the NAAQS in an area. Areas granted a NO_x waiver under CAA section 182(f) may be exempt from certain requirements of the EPA's motor vehicle I/M program regulations and from certain federal requirements of general and transportation conformity.¹⁶

C. Legal Standard for This Action

Section 176A(a)(2) of the CAA states that the Administrator may remove any

state or portion of a state from the Ozone Transport Region whenever the Administrator has reason to believe that the control of emissions in that state or portion of that state pursuant to its inclusion in the transport region will not significantly contribute to the attainment of the standard in any area in the region. The provision does not provide further methodology or criteria for the Administrator to apply other than this language when determining whether to remove a state or portion of a state from the OTR. Therefore, the meaning of this language is ambiguous, and the EPA has the authority to exercise discretion in its expertise to interpret this language and identify relevant criteria and develop a reasonable methodology in doing so. *See, e.g., Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842–43 (1984); *Smiley v. Citibank*, 517 U.S. 735, 744–45 (1996). As explained in this action, in determining whether to grant the state of Maine's petition the EPA intends to draw upon its interpretations of the CAA's suite of interstate pollution transport provisions, taking into account any legal precedents established by prior EPA actions and associated court decisions.

The EPA has never taken final action to remove any state or portion of a state from the OTR under section 176A(a)(2) of the CAA.¹⁷ The Agency has in recent years acted pursuant to CAA section 176A(a)(1) to deny a request to expand the OTR,¹⁸ but did not in that action have cause to interpret the operative language in CAA section 176A.¹⁹

Section 176A(a)(2) of the CAA does not expressly reference other statutory provisions, but the EPA believes it is

appropriate to interpret the key terms in the section (*i.e.*, “control of emissions . . . will not significantly contribute to the attainment of the standard” and “in any area in the region”) within the context of and consistently with other parts of the CAA that govern the interstate transport of ozone pollution, taking into account relevant facts and circumstances and the EPA's past approaches to addressing interstate ozone transport.

The CAA provision that states and the EPA have primarily relied upon to address interstate pollution transport is section 110(a)(2)(D)(i)(I) of the CAA, often referred to as the “good neighbor” provision. The provision requires all states to submit SIPs that contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which “will contribute significantly” to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. Thus, each state is required to submit a SIP that demonstrates the state is adequately controlling sources of emissions that would impact another states' air quality relative to the NAAQS in violation of the good neighbor provision. However, if a state does not adequately address the good neighbor provision requirements in a SIP submission, the CAA requires that the EPA must address the requirements of the good neighbor provision in the state's stead. Specifically, if the EPA disapproves a state's SIP submission or if the EPA finds that a state has failed to submit a required SIP, then the EPA must promulgate a federal implementation plan (FIP) within two years, unless the state corrects the deficiency, and the EPA approves the plan or plan revision before the EPA promulgates a FIP.²⁰

To address the regional transport of ozone pursuant to the CAA's good neighbor provision, the EPA has promulgated four regional interstate transport rules focusing on the reduction of NO_x emissions, as the primary meaningful precursor to address regional ozone transport across state boundaries, from certain sources located in states in the eastern half of the U.S.^{21 22} The four interstate transport

to Virginia, as only a portion of that state is included within the OTR.

¹² In the OTR, enhanced vehicle inspection and maintenance programs are required in metropolitan statistical areas in the OTR with a 1990 Census population of 100,000 or more.

¹³ Section 184(b)(2) of the CAA provides that, for purposes of implementing these requirements, a major stationary source shall be defined as any source that emits or has the potential to emit at least 50 tons per year of VOCs.

¹⁴ *See* 72 FR 28772, May 16, 2012, Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver.

¹⁵ *See* 57 FR 55622 (Nitrogen Oxides Supplement to the General Preamble, published November 25, 1992).

¹⁶ As stated in the EPA's I/M (November 5, 1992; 57 FR 52950) and conformity rules (60 FR 57179 for transportation rules and 58 FR 63214 for general rules), certain NO_x requirements in those rules do not apply where the EPA grants an areawide exemption under CAA section 182(f).

¹⁷ On August 5, 2013, the EPA issued a proposed rule, “Approval and Promulgation of Air Quality Implementation Plans; Maine; Oxides of Nitrogen Exemption and Ozone Transport Restructuring” (78 FR 47253). In this notice, the EPA proposed to approve Maine's request for a limited “restructuring” to remove the OTR-related VOC nonattainment new source requirements (NNSR), but the EPA did not take final action on this proposal.

¹⁸ 82 FR 51238 (November 3, 2017).

¹⁹ The EPA denied the request from several states in the OTR to add an additional nine states to the transport region on the basis that Congress' use of the term “may” in CAA section 176A(a) granted the Administrator reasonable discretion in determining whether or not to grant the petition, and that other statutory authorities the EPA had historically relied upon to address interstate transport provided advantages over expanding the OTR. The D.C. Circuit upheld the EPA's denial of the section 176A petition to expand the OTR, noting that its review of the EPA's denial was “extremely limited and highly deferential,” and that even if petitioners had met CAA section 176A(a)(1)'s criterion for expanding the OTR, “the statute provides only that EPA ‘may’ expand the region, not that it ‘shall’ or ‘must’ do so.” *New York v. EPA*, 921 F.3d 257, 261–62 (D.C. Cir. 2019).

²⁰ CAA section 110(c)(1).

²¹ For purposes of these rulemakings, the western U.S. (or the West) consists of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

²² Two of these rulemakings also addressed the reduction of annual NO_x and sulfur dioxide (SO₂) emissions for the purposes of addressing the interstate transport of particulate matter pollution pursuant to the good neighbor provision.

rulemakings are the NO_x SIP Call,²³ Clean Air Interstate Rule (CAIR),²⁴ the Cross-State Air Pollution Rule (CSAPR),²⁵ and the Cross-State Air Pollution Rule Update (CSAPR Update).^{26, 27}

Through the development and implementation of CSAPR and the CSAPR Update, the EPA, working in partnership with the states, developed a four-step interstate transport framework to interpret and address the requirements of the good neighbor provision. The four steps are: (1) Identifying downwind air quality monitors (known as “receptors”) that are expected to have problems attaining or maintaining clean air standards (*i.e.*, NAAQS); (2) identifying upwind states that impact those downwind air quality problems sufficiently such that they are considered “linked” and therefore warrant further review and analysis; (3) identifying the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopting permanent and enforceable measures needed to achieve those emissions reductions.

Given the use of the phrase “significantly contribute to [] attainment” in CAA section 176A(a)(2), the EPA believes it is reasonable to look to the 4-step interstate transport framework to guide its analysis of whether a state or portion of a state has met the necessary condition for removal from the OTR in CAA section 176A(a)(2). Under Step 1 of the interstate transport framework, the EPA has interpreted the term “will” in the phrase “will significantly contribute” in section 110(a)(2)(D)(i)(I) by looking at current downwind air quality problems and whether those air quality problems will persist in a future year, *i.e.*, by focusing its analysis regarding downwind interstate transport impacts on an analytic year in the future. In its transport rulemakings, the EPA has considered current monitored air quality data in addition to future projections “because ‘will’ can mean

either certainty or indicate the future tense,” and considering present-day data to inform the projected identification of downwind air quality problems “give[s] effect to both interpretations of the word.” *North Carolina v. EPA*, 531 F.3d 896, 913–14 (D.C. Cir. 2008). *See* 63 FR 57356, 57375 (Oct. 27, 1998) (NO_x SIP Call) (relying on both monitored and modeled data); 70 FR 25162, 25241 (May 12, 2005) (CAIR); 81 FR 74504, 74517 (October 26, 2016) (CSAPR Update).²⁸ Specifically, in those rules, the EPA explained that it had the most confidence in its projections of nonattainment for those counties that also measure nonattainment for the most recent period of available ambient data. 81 FR 74517, 74531. In the CSAPR Update, receptors that had clean measured data but were projected to have nonattainment problems in the future-year modeling were denoted by the EPA as maintenance-only receptors, acknowledging that while currently attaining the NAAQS, such areas could violate the standard in the future under certain meteorological conditions. The D.C. Circuit has upheld this balance struck by the EPA in considering historical monitored data as well as future projected modeled data as a method for identifying downwind air quality problems at Step 1. *See, e.g., Wisconsin v. EPA*, 938 F.3d 303, 326 (D.C. Cir. 2019).

In CSAPR and the CSAPR Update, the EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was “linked” at step 2 of the four-step interstate transport framework and would, therefore, contribute to downwind nonattainment and maintenance sites identified in step 1. If a state’s impact did not equal or exceed the one percent threshold, the upwind state was not “linked” to a downwind air quality problem, and the EPA therefore concluded that the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state’s impact equaled or exceeded the one percent threshold, the state’s emissions were further evaluated in step 3, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

²⁸ The EPA did not consider current monitored data in conjunction with modeled projections of air quality in a future year in CSAPR because the most recent monitoring data prior to CSAPR’s promulgation reflected effects of the unlawful CAIR. 76 FR 48208, 48230 (August 8, 2011).

In this action, these first two steps of the 4-step interstate transport framework are particularly informative to analyze the standard for removal of areas from the OTR established by CAA section 176A(a)(2). We acknowledge that the specific inquiry posed by the OTR removal provision does not perfectly align with the inquiry in the CAA section 110 good neighbor provision or in CAA section 176A(a)(1). Read literally, rather than identify significant contribution of emissions to nonattainment or maintenance receptors—that is, determining whether a state’s emissions are large enough that they negatively impact air quality in another state and thus may warrant the imposition of control measures—CAA section 176A(a)(2) presents a different but related question: Whether OTR controls in a state will not significantly contribute to attainment anywhere in the OTR. Despite the framing of CAA section 176A(a)(2) as significant contribution to attainment rather than significant contribution to nonattainment, we think CAA section 176A(a)(2) is best read within the context of the statutory section as a whole, and in conjunction with the other CAA provisions addressing interstate pollution transport, and therefore focused on impacts to areas that are struggling with attaining or maintaining the NAAQS. We acknowledge that one could read CAA section 176A(a)(2) as asking the EPA to only analyze OTR areas that are already in attainment and determine whether such areas would remain so after the removal of a state or portion of a state from the OTR per CAA section 176A(a)(2).²⁹

However, we think a better interpretation of CAA section 176A(a)(2) is that it is establishing a standard that is the inverse of the question presented in CAA section 176A(a)(1). At base, CAA section 176A(a) presents two authorities—the Administrator may add a state or a portion of a state to the transport region whenever the Administrator has reason to believe that pollutants from that state significantly contribute to a violation of the NAAQS in the transport region and may remove a state or a portion of a state whenever the Administrator has reason to believe

²⁹ We note that this interpretation would not address whether the reductions achieved by OTR controls in a state are also effective at ameliorating air quality in areas that are in nonattainment. In addition, it would require the EPA to establish an entirely new framework to analyze how emissions control measures “significantly contribute” to attainment—a standard that would not necessarily be equivalent to or in harmony with the “significant contribution” standard of CAA section 110(a)(2)(D)(i)(I).

²³ 62 FR 57356 (October 27, 1998).

²⁴ 70 FR 25162 (May 12, 2005).

²⁵ 76 FR 48208 (August 8, 2011).

²⁶ 81 FR 74504 (October 26, 2016).

²⁷ In December of 2018, the EPA also promulgated a determination regarding remaining good neighbor obligations under the 2008 ozone NAAQS for the CSAPR region (referred to as the “CSAPR Close Out”) at 83 FR 65878, but that determination was vacated by the D.C. Circuit. *New York v. EPA*, No. 19–1019, Judgement at 4 (D.C. Circuit October 1, 2019).

that the state's continued inclusion in the OTR will not be required for attainment in the transport region, *i.e.*, that the petitioning state is not significantly contributing to air quality problems in the region and *will not* so contribute if the state is removed from the OTR. Interpreting the statute in this way means that under CAA section 176A(a)(2), although there is no explicit reference to significant contribution to nonattainment or maintenance, the EPA's inquiry focuses on whether the state, or portion of the state, to be removed is significantly contributing or will contribute to nonattainment of the standard in the OTR. This inquiry, therefore, does not solely focus on consequences to areas that are already in attainment.

In determining whether removal is warranted under section 176A(a)(2), the EPA must also interpret the phrase "control of emissions in that state or portion of that state pursuant to this section." The EPA proposes that "controls" refers to new controls that would be required under CAA section 184(b) if the state or portion of the state were to remain in the OTR, as opposed to controls that the state has already adopted as required by the CAA due to its inclusion in the OTR. We believe interpreting "controls" in this manner gives effect to the forward-looking nature of the provision, which asks the Administrator to analyze whether removal of the state or portion of the state from the OTR "will" have the effect of contributing to air quality problems in any area in the OTR. In undertaking that forward-looking analysis, we think it is reasonable to assume that existing, SIP-approved controls that were adopted by the state due to its inclusion in the OTR will remain in place. Under the CAA, a state seeking to revise its SIP must undergo a section 110(l) demonstration. Section 110(l) of the CAA states that the Administrator cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. Therefore, the EPA will only approve a SIP revision that removes or modifies control measures after the state has demonstrated that such removal or modification will not interfere with attainment of the NAAQS, Rate of Progress (ROP), RFP or any other applicable requirement of the CAA.

States may demonstrate a revision's noninterference with NAAQS-related requirements by substituting one measure with another that achieves equivalent or greater emissions

reductions or air quality benefit or by preparing an air quality analysis showing that removing the measure will not interfere with other applicable requirements (*i.e.*, without a substitute measure).³⁰ Additionally, for areas that do not have an attainment demonstration, the EPA would consider alternative analyses to demonstrate noninterference on a case-by-case basis. The level of rigor in the alternative demonstration would vary depending on the nature of the requirement, its potential impact on air quality in the area, and the air quality of the area in which the requirement applies.

Moreover, this interpretation of CAA section 176A(a)(2) is consistent with the EPA's treatment of nonattainment areas seeking redesignation to attainment under CAA section 107(d)(3). States seeking redesignation of a nonattainment area to attainment are required to demonstrate that the area will maintain the NAAQS, per CAA section 107(d)(3)(E)(iv) and CAA section 175A. In making demonstrations of maintenance, states perform air quality modeling or emissions projections showing that *existing* control requirements are sufficient to maintain the NAAQS in question. However, once redesignated, a state may seek revision of its SIP to remove nonattainment SIP measures that are not necessary to maintain the NAAQS, subject to a section 110(l) demonstration.³¹ We, therefore, think the analysis under CAA section 176A(a)(2) should, like a CAA section 175A maintenance demonstration, assume continued implementation of existing OTR-control measures even though such measures would no longer be statutorily mandated once the EPA removes a state or portion of the state from the OTR. As in the case of an area redesignated to attainment, a state could only stop actively implementing those measures and remove them from its SIP after satisfying its obligation under section 110(l), as discussed earlier. We note that in submitting its petition to the EPA to remove portions of the state from the OTR, Maine committed to retaining all existing OTR control measures in its SIP.

To establish the proper geographic scope of the EPA's CAA section

176A(a)(2) "significant contribution" analysis, another phrase in the provision must be interpreted: "any area in the region." The EPA proposes to interpret the phrase "any area in the region" to mean all existing areas in the OTR, including areas within the petitioning state. Here, this would include all areas of Maine, because the entire state is included in the OTR as established under section 184. However, we recognize that it is possible that Congress intended the EPA to focus primarily on *interstate* impacts within the OTR, rather than impacts within the petitioning state. Therefore, the Agency is requesting comment on this alternative interpretation, as set forth in more detail below.

Read literally, "any" is a broad term that, in this context, encompasses areas within the petitioning state because they are currently in the OTR. However, case law recognizes that "'any' means different things depending upon the setting." *Nixon v. Missouri Municipal League*, 541 U.S. 125, 132 (2004); *see also Small v. U.S.*, 544 U.S. 385, 388 (2005) ("The word 'any' considered alone cannot answer [the] question"). Here, aspects of the statutory structure and context indicate that "any" may reasonably be interpreted to have a narrower scope than all areas of the current OTR. For instance, it could be relevant that the provision at issue is part of CAA section 176A, which is titled, "Interstate Transport Commissions," and the provision at issue is located within the subsection entitled "Authority to Establish Interstate Transport Regions." The basis under CAA section 176A(a) for creating or expanding a transport region is the *interstate* effects of air pollution. Further, under the CAA's cooperative federalism scheme, states retain the primary regulatory role in developing and implementing the necessary emissions reductions within their borders to meet the air quality standards established by the EPA. *See* CAA section 101(a)(3). If a state's removal from the OTR were projected to have negative impacts on other areas within the state, under the CAA that state would retain jurisdiction, authority, and responsibility to address such air quality problems in the first instance. *See, e.g.*, CAA sections 110, 172, 181, and 182. Rejecting a state's petition to be removed from the OTR solely on the basis of intrastate impacts could be seen as going beyond the purpose of CAA section 176A, which was promulgated to address the interstate effects of air pollution, *i.e.*, a problem in which

³⁰ 78 FR 68378, 68382 (November 14, 2013).

³¹ Per CAA section 175A(d) and the EPA's longstanding guidance, control measures that the state shows are no longer necessary for maintenance of the NAAQS must be retained as contingency provisions in the maintenance plan, to be implemented in the event of a subsequent violation of the NAAQS. *See* Procedures for Processing Requests to Redesignate Areas to Attainment, September 4, 1992.

affected states might otherwise have no recourse.

Nonetheless, it is also possible that Congress envisioned that the grounds for removing an area from the OTR should require a different bar (*i.e.*, a demonstration that removal would not cause air quality problems in other states *and* in one's own state) than the conditions for adding a new area to a transport region (which are limited to out-of-state impacts). This broader reading of the term "any" in this context also comports with the overall public health and welfare purposes of the CAA. In this action, as explained below, under either interpretation, the EPA proposes that Maine's petition may be granted, because its own emissions' impact on itself do not—and are not expected to if the petition is granted—contribute to ozone NAAQS attainment problems within the state. Therefore, we propose to apply the broader interpretation, wherein "any area of the region" encompasses all current areas of the OTR, including the state of Maine. We request comment on both interpretations of the phrase "any area of the region."

Turning back to the provision as a whole, informed by the backdrop and context of other CAA provisions addressing interstate pollution transport and the states' and the EPA's actions addressing those provisions, we think it is reasonable to interpret CAA section 176A(a)(2) in a manner consistent with EPA's 4-step interstate transport framework, and in particular here, Steps 1 and 2. Under this interpretation, the EPA determines whether air quality problems exist in the transport region (including the state or area of a state petitioned to be removed) based on projected air quality modeling and also current monitored data. If so, the EPA then determines whether the state (or portion of a state) to be removed from the OTR is contributing less than one percent of the NAAQS to those problems, indicating that the state (or portion of a state) is not significantly contributing to air quality problems in the OTR, and that additional OTR controls in that state (or portion of that state) and continued OTR membership are, therefore, unnecessary for attainment of the NAAQS in the OTR. Applying that framework to the question presented by CAA section

176A(a)(2), we think a reasonable interpretation requires the Administrator to identify whether there are ambient air monitoring sites in the OTR that either are projected to be in nonattainment based on modeling data, or potentially struggle with maintenance or are currently violating the NAAQS based on monitored data, and whether the area petitioned to be removed from the transport region contributes below one percent of the NAAQS to those monitors.

D. Previous Actions

Consistent with the 1990 CAA Amendments, nine Maine counties were designated as nonattainment of the now-revoked 1979 1-hour NAAQS (0.12 parts per million (ppm)). York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln Counties were classified as Moderate nonattainment areas. Waldo and Hancock Counties were classified as Marginal nonattainment areas.

Maine had two nonattainment areas under the now-revoked 1997 8-hour ozone standard. The Portland Ozone Nonattainment area consisted of 56 cities and towns in York, Cumberland, and Sagadahoc Counties, along with the town of Durham in Androscoggin County, and was classified as Marginal for the 1997 ozone standard. The Hancock, Knox, Lincoln, and Waldo Counties Ozone Nonattainment Area (also known as the Midcoast area) consisted of 55 coastal towns and islands in Hancock, Knox, Lincoln, and Waldo counties and was designated as nonattainment under Subpart 1 for the 8-hour ozone standard. Maine was designated "Attainment/Unclassifiable" statewide for both the 2008 and 2015 8-hour ozone standards of 0.075 ppm and 0.070 ppm, respectively.

As previously discussed, Section 184(b) of the CAA established certain control requirements that each state in the OTR is required to implement within the state. Section 182(f) of the CAA Amendments allows for the suspension of the OTR stationary source NO_x requirements based on a demonstration that additional NO_x reductions would not produce net ozone air quality benefits in the OTR. Maine has petitioned for and has been granted the following CAA section 182(f) NO_x waivers.

On December 26, 1995 (60 FR 66748), the EPA approved an exemption request for the Northern Maine area from CAA section 182(f) NO_x requirements. This action exempted the Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo counties from the requirements to implement NO_x control measures for existing stationary sources, NNSR for new sources and modifications that are major for NO_x, NO_x RACT requirements, the NO_x-related general conformity provisions, and the NO_x-related transportation conformity provisions now contained in 40 CFR 93.119.³²

On February 3, 2006 (71 FR 5791), the EPA approved a request for an exemption for a similar area in northern Maine (specifically Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties) under the 1997 ozone standard.

On July 29, 2014 (78 FR 43945), the EPA approved the state of Maine's request for an exemption from the NO_x requirements contained in section 182(f) of the CAA for the entire state of Maine for the 2008 ozone standard. The CAA does not provide a similar VOC waiver process, and major stationary sources of VOC remain subject to NNSR and RACT requirements throughout the entire state of Maine.

In addition to the NO_x waivers under CAA section 182(f), Maine requested and was granted an OTR restructuring with respect to enhanced I/M requirements.³³ (66 FR 1873; January 10, 2001). While the Maine I/M rule did not meet all requirements of the EPA's final rule for enhanced I/M, the EPA determined that the implementation of an enhanced I/M program in Maine in place of the approved Maine I/M rule would not significantly contribute to attainment in any other state in the OTR.

IV. Maine CAA Section 176A Petition

A. Summary of the Maine CAA Section 176A Petition

On February 24, 2020, the state of Maine petitioned the EPA pursuant to CAA section 176A(a)(2) for the removal of the state of Maine from the OTR with the exception of the 111 towns and cities listed in Table 1 comprising the Portland and Midcoast Ozone Areas.

³² Transportation and general conformity requirements only apply in nonattainment areas and areas redesignated to attainment with an approved CAA section 175A maintenance plan. See CAA section 176(c)(5). Transportation and general conformity do not apply in attainment areas in the OTR.

³³ The EPA's I/M rule was established on November 5, 1992 (57 FR 52950). The EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). Maine is subject to the requirements of the Act for an I/M program in the Portland, Maine area.

TABLE 1—MAINE TOWNS AND CITIES TO REMAIN IN THE OZONE TRANSPORT REGION

Androscoggin County (includes only the following town): Durham.

Cumberland County (includes only the following towns and cities): Brunswick, Cape Elizabeth, Casco, Cumberland, Falmouth, Freeport, Frye Island, Gorham, Gray, Harpswell, Long Island, New Gloucester, North Yarmouth, Portland, Pownal, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, and Yarmouth.

Hancock County (includes only the following towns and cities): Bar Harbor, Blue Hill, Brooklin, Brooksville, Cranberry Isles, Deer Isle, Frenchboro, Gouldsboro, Hancock, Lamoine, Mount Desert, Sedwick, Sorrento, Southwest Harbor, Stonington, Sullivan, Surry, Swans Island, Tremont, Trenton, and Winter Harbor.

Knox County (includes only the following towns and cities): Camden, Criehaven, Cushing, Friendship, Isle au Haut, Matinicus Isle, Muscle Ridge Shoals, North Haven, Owls Head, Rockland, Rockport, St. George, South Thomaston, Thomaston, Vinalhaven, and Warren.

Lincoln County (includes only the following towns and cities): Alna, Boothbay, Boothbay Harbor, Breman, Bristol, Damariscotta, Dresden, Edgecomb, Monhegan, Newcastle, Nobleboro, South Bristol, Southport, Waldoboro, Westport, and Wiscasset.

Sagadahoc County (includes all towns and cities).

Waldo County (includes only the following town): Islesboro.

York County (includes only the following towns and cities): Alfred, Arundel, Berwick, Biddeford, Buxton, Dayton, Eliot, Hollis, Kennebunk, Kennebunkport, Kittery, Limington, Lyman, North Berwick, Ogunquit, Old Orchard Beach, Saco, Sanford, South Berwick, Wells, and York.

The Maine Department of Environmental Protection (Maine DEP) provided an analysis purporting to demonstrate that Maine's emissions are an insignificant contributor to the nonattainment for the 8-hour ozone NAAQS in other states and in those areas in Maine that will remain in the OTR. Maine's analysis consists of modeling "back trajectories" for ozone exceedance days in the 2016–2018 period recorded at monitoring locations in southern New England and in Maine, EPA source-apportionment modeling results, and emissions-inventory data for Maine and the OTR.³⁴ The EPA's assessment of the CAA section 176A petition is discussed in Section V.

B. Provisions Impacted by the Maine CAA Section 176A Petition

If the EPA takes final action granting Maine's petition, the following consequences would result. First, for areas to be removed from the OTR, different requirements would become applicable under the New Source Review (NSR) construction permitting program. In these areas, Maine's minor NSR and Prevention of Significant Deterioration (PSD) permitting programs would apply to ozone (NO_x and VOC) in lieu of the Nonattainment New Source Review (NNSR) permitting requirements that currently apply. However, the areas remaining in the OTR would continue to be subject to the NNSR permitting requirements. In addition, Maine could alter the geographic applicability of its motor vehicle I/M program through a SIP revision. Such a change would only have a minimal impact as the majority of the counties will remain within the

OTR.³⁵ Regarding stage II refueling vapor recovery programs for motor vehicles, granting Maine's petition would not impact emissions because the EPA previously approved the state's request to decommission the program, under the reasoning that emissions reductions resulting from the program are now accomplished with on-board vapor recovery equipment installed at the time of vehicle manufacture.³⁶ Finally, upon approval of Maine's petition, only the portion of the state remaining in the OTR would be required to adopt ozone RACT requirements. However, RACT requirements already adopted in Maine's SIP could only be removed if the state submitted a SIP revision and satisfies the CAA's anti-backsliding provisions of section 110(l).

In the February 24, 2020, petition to remove areas of the state from the OTR, Maine confirmed that no current control requirements in the SIP will be relaxed as a result of the petition request. To date, Maine has not submitted any SIP revisions to modify current OTR control requirements and should the EPA grant final approval of Maine's petition, this would not in itself have the effect of revising Maine's existing SIP requirements. A more detailed discussion of the changes follows.

i. NSR

The NSR provisions of the CAA are a combination of air quality planning and air pollution control technology provisions that require stationary sources of air pollution to obtain permits before they are first constructed or engage in a modification of an existing facility. Part C of title I of the CAA contains the PSD program, which reflects the requirements for the

preconstruction review and permitting of new and modified major stationary sources of air pollution (specifically, sources emitting specific amounts of regulated NSR pollutants) located in areas meeting the NAAQS ("attainment" areas) and, areas for which there is insufficient information to classify an area as either attainment or nonattainment ("unclassifiable" areas). Under the PSD program, new major stationary sources and major modifications of existing sources must apply best available control technology (BACT) for each regulated NSR pollutant emitted above specific thresholds and conduct an air quality analysis to demonstrate that the proposed source will not cause or contribute to a violation of any NAAQS or PSD increment.³⁷

Part D of title I of the CAA contains the NNSR program, reflecting the requirements for the preconstruction review and permitting of new and modified major stationary sources of air pollution locating in areas designated as not meeting the NAAQS ("nonattainment" areas). Under the NNSR program, new major sources and major modifications of existing sources in a nonattainment area must apply control technology that meets the statutory definition of Lowest Achievable Emissions Rate (LAER) and must obtain emissions reductions from existing sources to offset the emissions increase from the new or modified source and ensure that the emissions increase will not interfere with a state's reasonable further progress toward attainment of the NAAQS.³⁸

The permit program for non-major sources and minor modifications to major and non-major sources is known as the minor NSR program. CAA section 110(a)(2)(C) requires states to develop a permitting program to regulate the

³⁴ Back trajectory analyses use interpolated measured or modeled meteorological fields to estimate the most likely central path over geographical areas that an air parcel travels before reaching a specific location at a given time.

³⁵ The six towns within Cumberland county that are part of the petition contain only five percent of the county's population.

³⁶ See FR 82 32480 (July 14, 2017).

³⁷ See CAA section 165(a).

³⁸ See CAA section 173(a) and (c).

construction and modification of any stationary source “as necessary to assure that [NAAQS] are achieved.”

To comply with the requirements of the CAA and the NSR implementing regulations at 40 CFR 51.160 through 51.166, most states have EPA-approved SIPs in place to implement the PSD, NNSR, and minor NSR preconstruction permit programs. The state of Maine implements its NSR program requirements through 06–096 Code of Maine Regulations (CMR) in Chapter 100 (Definitions Regulation), Chapter 113 (Growth Offset Regulation), and Chapter 115 (Major and Minor Source Air Emission License Regulations). The EPA first approved Maine’s NSR program regulations as part of the state’s SIP on January 30, 1980 (45 FR 6784).³⁹ Together, Maine’s PSD, NNSR, and minor NSR permitting programs ensure that construction of new and modified stationary sources of air pollutant emissions do not significantly deteriorate air quality in “clean areas,” impede reasonable further progress in nonattainment areas, or interfere with maintenance of any NAAQS.

The applicability of the PSD, NNSR or minor NSR programs to a stationary source must be determined in advance of construction and is a pollutant-specific determination. Thus, a stationary source may be subject to PSD for certain pollutants, NNSR for some pollutants and minor NSR for others after assessing the quantity of emissions, the regulated NSR pollutants emitted and the area’s attainment status.

Pursuant to Maine’s NNSR program, sources with a potential to emit equal to or greater than 100 tons per year of NO_x or 50 tons per year of VOC qualify as major stationary sources.⁴⁰ New major stationary sources are subject to NNSR permitting requirements, including LAER and emissions offsets, for any pollutant (*i.e.*, NO_x or VOC) which the source has the potential to emit in amounts equal to or greater than the respective major source threshold. For existing major stationary sources in Maine, NNSR permitting requirements apply to construction projects that would result in a significant net emissions increase of NO_x or VOC, defined as an increase equal to or greater than 40 tons per year for either NO_x or VOC. Such projects qualify as a

major modification at an existing major stationary source.

The CAA requires PSD programs to apply to any major emitting facility, defined as a stationary source that emits, or has a potential to emit, at least 100 tpy of a regulated NSR pollutant, if the source is in one of 28 listed source categories, or, if the source is not, then at least 250 tpy of a regulated NSR pollutant. *See* 42 U.S.C. 7479(1); 40 CFR 51.166(b)(1); and 40 CFR 52.21(b)(1). Maine’s PSD program is more stringent than the federal program in that it sets the major stationary source threshold (for purposes of determining applicability to PSD permit requirements) at 100 tpy of a regulated NSR pollutant regardless of source category. *See* Chapter 100 (125)(B). New major stationary sources are subject to PSD permitting requirements, including BACT and air quality impacts analysis, for any regulated NSR pollutant that the source has the potential to emit in an amount equal to or greater than pollutant-specific significant emissions rates contained in the regulations. For both NO_x and VOC, the significant emissions rate under PSD is 40 tons per year. Because the OTR is treated as moderate nonattainment for ozone, the precursors NO_x and VOC are not currently subject to PSD permitting requirements in Maine.⁴¹ *See* 40 CFR 51.166(i)(2).

Maine’s minor NSR program regulates construction activities and resulting emissions at some new and existing sources not subject to NNSR or PSD. The emissions threshold for minor NSR applicability is 10 pounds per hour or 100 pounds per day.⁴² The applicable control technology standard under Maine’s minor NSR program is BACT, which uses the same definition of BACT as the state’s PSD-program regulations. Thus, in Maine, BACT must be applied by all new major stationary sources and major modifications under the PSD program and to new non-major sources and minor modifications at both major and non-major sources under the state’s minor NSR program. Under the

definition in both programs, BACT is an emissions limitation based on the maximum degree of control that can be achieved for a particular pollutant taking into account energy, environmental, and economic impacts. BACT can be add-on control equipment or a design, equipment, work practice, or operational standard if imposition of an emissions standard is infeasible.

The applicable control technology standard under Maine’s NNSR program is the Lowest Achievable Emissions Rate (LAER). With regard to NO_x and VOC, LAER is applicable to new major stationary sources and major modifications because of the state’s current inclusion in the OTR (even though all areas in Maine are designated attainment or unclassifiable for ozone). Maine defines LAER within Chapter 100 as meaning the more stringent rate of emissions based on the following:

The most stringent emission limitation which is contained in the implementation plan of any State for that class or category of source, unless the owner or operator of the proposed source demonstrates that those limitations are not achievable; or

The most stringent emission limitation which is achieved in practice by that class or category of source, whichever is more stringent. In no event may LAER result in emission of any pollutant in excess of those standards and limitations promulgated pursuant to CAA section 111 or 112, or any emission standard established by the Maine Department of Environmental Protection.⁴³

Because of Maine’s location in the OTR, LAER is currently required if emissions of NO_x or VOC from a project at a major source exceed Maine’s NNSR applicability thresholds, and BACT is required if project emissions are below those thresholds but above the state’s minor NSR thresholds. One result of granting Maine’s petition to remove some portions of the state from the OTR is that PSD will apply to major sources and BACT will be required for NO_x and VOC emissions in all NSR permitting actions (major and minor) for sources located in those areas removed from the OTR. However, existing LAER requirements contained in existing permits located in areas that would no longer be part of the OTR (*i.e.*, in final permits issued prior to the effective date of Maine’s petition, should it be granted) would remain in effect. In addition to LAER, another requirement that is unique to NNSR is the requirement for new major sources and major modifications at existing sources to secure offsetting emissions reductions. Such emissions offsets must be obtained from “the same source or

³⁹ The EPA last approved revisions to the program on August 1, 2016 (81 FR 50353).

⁴⁰ Lower applicability thresholds apply for NO_x and VOC in areas designated as Serious, Severe, and extreme nonattainment for a particular ozone standard. However, currently, no areas in Maine are classified as such, nor are any areas subject to lower thresholds as a result of prior NAAQS nonattainment status.

⁴¹ Because NO_x is also a regulated NSR pollutant corresponding to the NO₂ NAAQS, under the current OTR status in Maine, new major sources and major modifications can be subject to both NNSR (for NO_x as an ozone precursor) and PSD (for NO₂, measured as total NO_x for applicability purposes). In general, this means that in addition to LAER and emission offsets, the source would also be required to demonstrate that their significant emissions of NO_x would not cause or contribute to a violation of the NO₂ NAAQS or PSD increments.

⁴² Maine’s minor NSR program also contains applicability thresholds for fuel burning devices, *i.e.*, boilers and engines, and applicability of the minor source program for these devices is determined based on maximum heat input.

⁴³ *See* Chapter 100 section (78), definition of LAER.

other sources in the same nonattainment area,” except that the state may allow emissions offsets derived from another nonattainment area if “(A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.” 42 U.S.C. 7502(c). For ozone, the CAA requires that the amount of emissions offsets obtained increase with the severity of the area’s nonattainment status. Areas within the OTR are treated as “moderate.” Thus, the emissions offsets that must be obtained in Maine is calculated by applying a ratio of 1.15 to 1 for NO_x and VOC.⁴⁴

If the EPA grants Maine’s petition to remove parts of the state from the OTR, new stationary sources locating in the affected area would be subject to PSD for NO_x and VOC if the source is major under Maine’s definition by virtue of it having a potential to emit 100 tons per year or more of any regulated NSR pollutant and 40 tons per year or more of NO_x and VOCs. If triggered, PSD permitting requirements for NO_x and/or VOC would include the application of BACT and a demonstration that the allowable emissions increase(s) would not cause or contribute to a violation of the ozone NAAQS. Modifications at existing major stationary sources that result in an increase of 40 tons per year or more of NO_x or VOC by itself and on a net basis would be subject to the same PSD permitting requirements. New non-major sources and minor modifications at existing sources (major and non-major) would be subject to the minor NSR permitting requirements for NO_x and/or VOC, including BACT, if emissions exceed the applicable minor NSR thresholds discussed previously.

Based on the foregoing, if the EPA finalizes its proposal to grant Maine’s petition, some sources and modifications located in the part of the state no longer in the OTR would be subject to BACT instead of LAER for NO_x and VOC. While there are not always significant differences between the level of control determined under BACT and LAER, BACT determinations must consider factors, such as energy, environmental, and economic impacts and other costs, that are not considered for LAER determinations. Because of differences between BACT and LAER, in individual determinations, it is not necessarily the case that LAER is always more stringent than BACT.

Some sources previously required to obtain emissions offsets under the NNSR program would not be required to do so under the PSD or minor NSR program. While the NNSR emissions offsets requirement would no longer apply in the portion of the state to be removed from the OTR, under PSD, new major stationary sources and major modifications would be required to demonstrate that proposed emissions increases will not cause or contribute to a violation of the ozone NAAQS. For projects subject to minor NSR, Maine’s minor NSR program also requires at Chapter 115 section (7)(C)(1) air quality impact analyses of NO_x for new minor sources and minor modifications at existing sources if emissions exceed 50 tons per year of NO_x. Maine also has discretionary authority to require an ambient air quality analysis for sources that emit less 50 tons per year of NO_x (see Chapter 115 subsection (7)(B)(3)).

Procedurally, granting Maine’s petition would not materially alter opportunities for public involvement, as Maine’s PSD and NNSR pre-construction regulations contain procedures for the opportunity for public participation in the permitting process whether a stationary source is subject to minor NSR, PSD, or NNSR permitting regulations.

ii. Maine I/M Program

Section 184(b)(1)(A) of the Act requires certain areas in the OTR to adopt and implement an inspection and maintenance program meeting EPA’s enhanced I/M performance standard. The EPA’s I/M rule was established on November 5, 1992 (57 FR 52950). The EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States subject to the I/M requirement to submit an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373. Maine is subject to the OTR requirements for a vehicle I/M program in the Portland, Maine area.

Maine’s I/M program provides for the implementation of I/M in Maine’s Cumberland County, which includes the Portland area, beginning on January 1, 1999. Maine implemented an annual, test and repair I/M program, which the state designed to meet the requirements of the EPA’s performance standard and other requirements contained in the federal I/M rule. Testing is overseen by the Department of Public Safety (DPS) and implemented by individual garages in the existing safety inspection

network. Aspects of the Maine I/M program include: Antitampering testing for catalytic converters on 1983 and newer light duty vehicles and trucks, gas cap pressure testing on 1974 and newer vehicles, and On-Board Diagnostic (OBD2) checks (beginning in January 2000), enforcement by the existing windshield safety inspection stickers, requirements for testing convenience, quality assurance, data collection, no cost waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, inspector training and certification, penalties against inspectors which perform faulty inspections, and emissions recall enforcement. However, Maine did not meet the enhanced I/M requirements due to the lack of a required registration-based enforcement program. The EPA determined that even though Maine’s I/M program did not meet the requirements for the EPA’s enhanced I/M program, the program contributes to air quality improvement. The EPA also determined that an enhanced I/M program in Maine would not significantly contribute to the attainment of the 1-hour ozone standard anywhere in the OTR. (66 FR 1871, January 10, 2001). If the EPA grants Maine’s 176A petition, the impacts on Maine’s I/M program would likely be minimal. Cumberland County is the only county in Maine with an I/M program, and, as noted previously, only six towns in Cumberland County are included in the portion of the state requesting to opt out of the OTR, and those six towns contain only five percent of the county’s population. Even if the state were to request to remove I/M requirements for those six towns in the future, subject to CAA section 110(l), the majority of Cumberland County would remain in the OTR and will continue to implement Maine’s existing I/M program.

iii. Stage II Refueling Vapor Recovery

Stage II refueling vapor recovery systems and vehicle onboard refueling vapor recovery (ORVR) systems were initially both required by the 1990 Amendments to the CAA. Section 182(b)(3) requires ozone nonattainment areas classified Moderate and above to implement Stage II refueling vapor recovery programs. Under CAA section 184(b)(2), states in the OTR were also required to implement Stage II or comparable measures. CAA section 202(a)(6) required EPA to promulgate

⁴⁴ Chapter 113 section (3)(E)(1)(c)(ii).

regulations for ORVR for light duty vehicles (passenger cars).⁴⁵

Maine's SIP approved Stage II program requirements were codified in Maine's Chapter 118, Gasoline Dispensing Facilities Vapor Control.⁴⁶ Maine's rule required gasoline dispensing facilities located in the counties of York, Cumberland, and Sagadahoc to install Stage II vapor recovery systems. With the widespread use of ORVR, Maine's revised Chapter 118 decommissioning Stage II vapor recovery requirements was approved into the SIP. (82 FR 32480, July 14, 2017). EPA's proposed grant of Maine's 176A petition would have no impact on Stage II requirements due to the decommissioning of the program in Maine.

iv. RACT

Sections 182(b)(2) and 184(b)(1)(B) of the CAA require states with ozone nonattainment areas that are classified as Moderate or above, as well as areas in the OTR, to submit a SIP revision requiring the implementation of RACT for sources covered by a control techniques guideline (CTG) and for all major sources of VOCs and NO_x. A CTG is a document issued by the EPA which establishes a "presumptive norm" for RACT for a specific VOC source category. RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The CTGs usually identify a particular control level, which the EPA recommends as being RACT. States in the OTR are required to address RACT for the source categories covered by CTGs through adoption of rules as part of the SIP, and they are also required to adopt RACT for major sources of VOCs (50 tpy) and major sources of NO_x (100 tpy) even if a CTG does not apply.

The EPA has approved: The Maine VOC RACT for the 1-hour ozone

standard (65 FR 20753, April 18, 2000) and (67 FR 35441, May 20, 2002); the Maine NO_x RACT for the 1-hour ozone standard (60 FR 66755, December 26, 1995, and 67 FR 57154, September 9, 2002); the Maine VOC and NO_x RACT for the 1997 8-hour ozone standard (77 FR 30216, May 22, 2012); and the Maine VOC RACT for the 2008 8-hour ozone standard (84 FR 38558, August 7, 2019). We note that Maine's petition includes a commitment to implement existing RACT and to adopt future RACT requirements statewide, for both the 2015 ozone NAAQS and any future ozone NAAQS. The state's deadline to submit a RACT SIP for the 2015 ozone standard was August 3, 2020 (83 FR 62998, 63001, December 6, 2018).

Notwithstanding the stated intention in Maine's petition to adopt statewide RACT for the 2015 ozone standard and to adopt statewide RACT for future ozone NAAQS, in this case the EPA does not believe it is necessary for the state to adopt such additional RACT to meet the test set forth in CAA section 176A(a)(2). The state's technical demonstration submitted with its petition, which shows that Maine does not and will not contribute to nonattainment or interfere with maintenance anywhere in the OTR, does not reflect the adoption of statewide RACT to address the 2015 ozone NAAQS (or additional RACT controls for future standards). As stated in CAA section 176A(a)(2), and discussed in Section III.C of this notice, the Administrator may exercise the OTR removal provision "whenever the Administrator has reason to believe" that additional OTR controls will not contribute significantly to attainment in the OTR. The EPA interprets this language to permit the Administrator to consider whether to approve a state's petition even if the state has not met, and the EPA has not fully approved, all applicable OTR requirements to date.

If finalized, the EPA's grant of Maine's petition would terminate Maine's federal obligation under CAA section 184 to adopt further RACT requirements for the portion of the state no longer in the OTR, including for the 2015 ozone NAAQS. The portion of the state remaining in the OTR, however, remains obligated under CAA section 184 to submit a SIP revision to address both NO_x and VOC RACT for the 2015 ozone NAAQS, and for any future ozone NAAQS so long as the area remains in the OTR. Of course, the state could still elect to adopt SIP-strengthening control measures (either at the state level or as SIP-strengthening measures) for sources in the portion of the state that is no longer in the OTR, even if that portion

of the state is not obligated to meet RACT under section 184(b). In addition, if the EPA's grant is finalized, the state could seek to relax or remove RACT requirements in its SIP for the portion of the state no longer in the OTR, but as noted in section III.C, any such revision would be required to satisfy a demonstration of noninterference under section 110(l).

V. The EPA's Technical Assessment of the Maine CAA Section 176A Petition

A. Description of the Technical Analysis Included in the Maine CAA Section 176A Petition

As noted previously, the Maine petition included detailed technical analyses for VOC and NO_x emissions in the state, including an analysis of whether emissions from Maine impact other areas in the OTR. The state uses the following techniques to analyze those emissions and their impacts: Back trajectories using the National Oceanic and Atmospheric Administration (NOAA) Air Resources Laboratory's Hybrid Single Particle Lagrangian Integrated Trajectory (HYSPPLIT) model⁴⁷ and photochemical source apportionment modeling. These analyses are in keeping with steps 1 and 2 of the interstate transport framework described in Section III.C of this document. In both the trajectory and modeling analyses, air quality monitors that either measured elevated ozone concentrations or were projected to have design values that violated the NAAQS or struggled to maintain the NAAQS were identified (step 1). Maine then used HYSPPLIT trajectory model and photochemical source apportionment modeling to identify whether Maine contributed to those problem monitors (step 2). Further inspection of Maine's emissions trends supports the conclusions made using the HYSPPLIT and source apportionment modeling analyses.

The air trajectories used by Maine DEP are four-dimensional representations of the path an air parcel follows, in time, based on surface and upper-level meteorological data during the day of and days prior to the measured exceedances. A back trajectory, as used by Maine DEP in this case, represents the path an air parcel takes to reach a specific point in time and space. Using the HYSPPLIT back trajectory model, Maine DEP air quality meteorologists analyzed back

⁴⁵ The EPA adopted these requirements in 1994. ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998 and starting with model year 2001 for light-duty trucks and most heavy-duty gasoline powered vehicles. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks, and heavy-duty vehicles since 2006. During the phase-in of ORVR controls, Stage II provided volatile organic compound (VOC) reductions in ozone nonattainment areas and certain attainment areas of the OTR. Congress recognized that ORVR systems and Stage II vapor recovery systems would eventually become largely redundant technologies and provided authority to the EPA to allow states to remove Stage II vapor recovery programs from their SIPs when the EPA finds that ORVR is in "widespread use."

⁴⁶ 61 FR 53636 October 15, 1996

⁴⁷ For more information about HYSPPLIT please refer to the following document by Roland R. Draxler and G.D. Hess: *Description of the HYSPPLIT 4 Modeling System*. (See <http://www.arl.noaa.gov/documents/reports/arl-224.pdf>.)

trajectories for 989 days from the 2016 through 2018 ozone seasons at monitoring locations in the OTR with current 8-hour ozone design values exceeding the 2015 ozone NAAQS of 70 ppb. For each such exceedance day at each monitoring site, 48-hour back trajectories originating from 10 and 500 meters above ground level were created for the hour of the maximum hourly ozone. As noted above in Section IV.A of this document, for this analysis, the “NAM 12 km pressure” gridded meteorological data was used, except for August 27, 2016, when no meteorological data was available so the “NAM 12 km hybrid” meteorology was used for that day. The trajectories were then plotted to determine the origin of the air on high-ozone days. The Maine petition included maps showing that none of the 989 10m back trajectories traveled over the state of Maine (Figure 7 of Maine petition) and that 2 out of the 989 back trajectories at 500 meters traversed the far western edge of Maine (Figure 9 of Maine petition). Maine asserted that the fact that air parcels at violating monitors on days greater than 70 ppb did not originate from or traverse the state of Maine in the preceding 48 hours provided support for the conclusion that Maine did not contribute significantly to ozone nonattainment at those violating monitors.

In addition, Maine provided similar HYSPLIT back trajectory analyses for Maine monitors (none of which recorded design values above the NAAQS) on days when maximum daily 8-hour average ozone concentrations exceeded 70 ppb. These back trajectories showed that most of the air parcels traveling to the Maine monitors on those high-ozone days were transported from the south and southwest direction along the coast of Maine and primarily traversed either offshore locations or portions of the state that will remain in the OTR.

In addition to the trajectory analysis discussed above, Maine’s petition referenced the EPA’s photochemical modeling for the CSAPR Update for the 2008 ozone NAAQS and results from the interstate transport modeling for the 2015 ozone NAAQS.^{48 49} The EPA’s

CSAPR Update modeling projected ozone design values in 2017 and modeled each state’s total contribution to that value for the 2008 8-hr ozone NAAQS of 75 ppb. The same was done for the 2015 8-hour ozone NAAQS of 70 ppb interstate transport assessment for the year 2023. The maximum contribution from the entire state of Maine to any monitoring site in any other state in the OTR is 0.47 ppb in New Hampshire, based on the EPA’s contribution modeling for 2017, and 0.13 ppb in Massachusetts based on the EPA’s contribution modeling for 2023. The modeling further estimated that the maximum total contribution of the state of Maine to any monitors projected to have nonattainment or maintenance problems within the OTR was 0.01 ppb for both 2017 and 2023.

Finally, Maine provided graphical figures showing NO_x and VOC historical emissions trends as well as projected emissions trends out to 2028. These data include statewide emissions inventories as well as a break-out of emissions for the Portland and Midcoast Ozone areas. Furthermore, the petition provides emissions data broken out into four source types (on-road vehicles, non-road equipment, point sources and nonpoint sources), and shows that emissions of on-road vehicles, which were the largest source of anthropogenic NO_x emissions in the state of Maine between 2005 and 2014, are expected to continue to decline. Maine’s emissions analysis also shows that nonpoint and non-road sectors were the largest sources of VOC emissions in the state of Maine in 2005 and 2014.

B. The EPA’s Technical Assessment of the Maine Section 176A Petition

As noted in Section III.C of this document, the EPA views the inquiry under CAA section 176A(a)(2) as necessitating the identification of current and future air quality problems in the OTR, determining whether the petitioning area is significantly contributing to those problems, and examining whether removal of the petitioning area from the OTR will significantly contribute to nonattainment or maintenance problems in the future. The EPA proposes to find that the technical analyses submitted by Maine in its CAA section 176A petition, in conjunction with additional analysis performed by the EPA, support Maine’s petition to remove a portion of the state from the OTR.

The HYSPLIT analyses performed by Maine and summarized in Section V.A.

are a technically sound and appropriate method to support showing the potential (or lack of potential) of an area to contribute to high-ozone values at a downwind location. This type of trajectory analysis is a commonly used method to examine potential source-receptor relationships based on air transport patterns. In this case, we agree that the analysis provided by Maine showed that in 2016–2018 air parcels containing high-ozone concentrations at violating monitors in the OTR rarely if ever originated from Maine.

The EPA’s ozone source apportionment air quality modeling conducted for the CSAPR Update, and the EPA’s interstate transport modeling for the 2015 ozone NAAQS both further support the conclusions that (1) Maine has historically contributed below the one percent threshold of 0.70 ppb to all other states and contributes well below that threshold to any receptors currently⁵⁰ identified as having a potential nonattainment or maintenance problem, and that (2) the state will continue to contribute below that threshold to all other states in the OTR in the future. Further, EPA’s analysis demonstrates that there are no ozone nonattainment or maintenance receptors in Maine, either now, or going forward, even if the petition is granted. The EPA’s source apportionment modeling employs enhanced techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The strength of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.

Data from the contribution analysis are summarized within Table 2 of the state’s submittal, showing the maximum modeled ozone contribution from Maine’s emissions in other OTR states. The data indicate a maximum modeled impact of only 0.47 ppb in 2017 in New Hampshire, which is well below the one percent threshold of 0.70 ppb used to establish significant contribution linkages, and, additionally, occurs in a state, New Hampshire, that is attaining and projected to continue to attain both the 2008 and 2015 ozone NAAQS. The EPA also examined its 2023 contribution modeling to identify the highest contribution from Maine to any

⁴⁸ See Air Quality Modeling Technical Support Document for the Final CSAPR Update, available in the docket for this action or at <https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-final-cross-state-air-pollution-rule>.

⁴⁹ See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at <https://www.epa.gov/>

interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-noticees.

⁵⁰ Based on official 2019 ozone design values (<https://www.epa.gov/air-trends/air-quality-design-values>).

projected nonattainment or maintenance receptor in another state. The data show that the highest contribution from Maine to a nonattainment or maintenance receptor in another state based on modeling is 0.01 ppb in 2017 at the receptor in Greenwich, Fairfield County, CT and 0.01 ppb in 2023 at the receptor in Babylon, Suffolk County, NY (site 361030002). This amount (*i.e.*, 0.01 ppb) is well below a 0.70 ppb (*i.e.*, one percent of the 2015 NAAQS) contribution threshold.

Second, Maine's HYSPLIT back trajectory analyses included an evaluation of Maine monitors that indicates that high-ozone concentrations in the state are largely due to out-of-state contributions. Maine's petition provides back trajectory air parcel paths from monitors in the state on days when those monitors recorded maximum daily 8-hour average ozone concentrations that exceeded the 2015 NAAQS. The air parcels traveling to these Maine monitors on those high-ozone days did not typically traverse the portions of Maine proposed to be removed from the OTR. Rather, the air parcels were carried by winds from the south and southwest and, on most days traversed either marine locations or the portion of the state that will remain in the OTR (*i.e.*, the Portland and Midcoast areas).

We also propose to find that the NO_x and VOC historical emissions trends and projected future emissions trends information to 2023 and 2028 provided in Maine's submittal further support removal of the petitioning area from the OTR. VOC and NO_x emissions in Maine have declined since 2005 and are expected to continue to decline into the future. The historical and projected downward trend is driven, in large part, by emissions reductions from the point source and on-road mobile source categories.

Maine's documentation shows that statewide point source emissions of NO_x and VOC decreased 51 and 45 percent, respectively from 2005 to 2016. Maine's projections predict that NO_x and VOC emissions will continue to decrease into the future. For example, Maine's analysis of statewide emissions shows NO_x and VOC reductions of 46 and 34 percent respectively between 2011 and 2023. These reductions are primarily coming from on-road vehicles, EGU point sources, and non-road equipment. The reduction in emissions from on-road vehicles is largely the result of several mobile source programs such as the Tier 3 emissions and gasoline standards for light-duty vehicles, the mobile source air toxics rule and the heavy-duty highway

vehicle rule⁵¹ which have resulted in newer vehicles having lower emissions than vehicles previously sold in the U.S. As more of those newer, lower-emitting vehicles replace older, higher-emitting vehicles, mobile source emissions are expected to further decline. It should be noted that none of these regulations were affected by the recent finalization of "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program"⁵² or "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,"⁵³ which addressed greenhouse gas emissions standards, corporate average fuel economy standards and the ability of states to adopt greenhouse gas standards and related regulations for light-duty vehicles.

We note that the source apportionment air quality modeling cited by Maine has been at issue in various legal challenges to EPA actions. See *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019); *Maryland v. EPA*, 958 F.3d 1185 (D.C. Cir. 2020). In both of those cases, the D.C. Circuit remanded the EPA's final actions to the extent that those actions failed to require upwind states to eliminate their significant contributions in accordance with the attainment dates found in CAA section 181 by which downwind states must come into compliance with the relevant NAAQS. *Wisconsin*, 938 F.3d at 313; *Maryland*, at 958 F.3d at 1203–04. The two statutory provisions at issue in *Wisconsin* and *Maryland*—*i.e.*, CAA section 110(a)(2)(D)(i)(I) (the good neighbor provision), and CAA section 126, which by its terms incorporates the substantive requirements of the good neighbor provision—require that the states and the EPA consider statutory downwind attainment dates in determining the deadline by which upwind significant contribution must be eliminated. See CAA section 110(a)(2)(D)(i)(I) (State plans must "contain adequate provisions prohibiting, *consistent with the provisions of this subchapter*," emissions which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such NAAQS) (*emphasis added*). By contrast,

CAA section 176A has no reference to other provisions of the CAA, the attainment dates in title I, or a defined timeframe for analysis. See CAA section 176A(a)(1) and (2) (the Administrator may add any state *whenever* he has reason to believe that the interstate transport of air pollutants . . . "significantly contributes to a violation of the standard in the transport region"; and the Administrator may remove any state from the region *whenever* he has reason to believe that the OTR control of emissions in the state will not "significantly contribute to the attainment of the standard in any area in the region") (*emphasis added*). In addition, while the selected analytic year for the EPA's air quality modeling can in some instances have a material impact on determining whether receptors are in attainment and/or whether areas are linked to those receptors, this is not the case for Maine. Maine has not been linked as contributing above the one percent of the NAAQS threshold to downwind nonattainment or maintenance based on air quality contribution modeling performed by the EPA for either the 2008 or 2015 ozone NAAQS. We, therefore, do not think that the legal issues identified with the EPA's air quality modeling in *Wisconsin* and *Maryland*, which were solely concerned with the relationship of that modeling to the statutory attainment dates, undermines Maine's use of that modeling in its petition. Moreover, we note that the D.C. Circuit upheld the EPA's air quality modeling with respect to the many technical challenges raised by petitioners in the *Wisconsin* case. 938 F.3d at 323–331.

The EPA, therefore, proposes to find that granting Maine's petition to remove portions of the state from the OTR, and the resulting changes in the extent of emissions controls that would result (discussed in detail in section IV), will not significantly contribute to nonattainment or maintenance problems for any area in the OTR. As noted, the emissions trends in Maine indicate continued declines in emissions of ozone precursors associated with on-the-books emissions controls, and do not depend on any new emissions limitations that would be driven by OTR control requirements under CAA section 184(b). In addition, Maine's highest modeled contribution to any receptor in the OTR that is expected to struggle with attainment or maintenance of the 2015 ozone NAAQS is only 0.01 ppb. This suggests that the ozone contribution from anthropogenic ozone precursor emissions in Maine would

⁵¹ *E.g.*, Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, 79 FR 23414 (April 28, 2014); Control of Hazardous Air Pollutants From Mobile Sources, 72 FR 8428 (February 26, 2007); and Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, 66 FR 5002 (January 18, 2001).

⁵² 84 FR 51310 (September 27, 2019).

⁵³ 85 FR 24174 (April 30, 2020).

have to increase by a factor of 70 for Maine to potentially contribute above the one percent threshold to an existing or projected nonattainment or maintenance problem in the OTR. This observation is made merely to provide an indication of the general magnitude of emissions increases from Maine that would be needed in order for existing trends in improving air quality to be halted and reversed to the extent that such an increase may create new air quality problems closer to, or within, Maine. The EPA believes that granting the petition would not result in such a change in emissions resulting from either removal of existing emissions controls or unchecked growth in new source emissions. The historic emissions trends in Maine, the CAA's section 110(l) anti-backsliding provisions for SIP revisions and the new source PSD permitting provisions that would apply in the removed portion of the state provide assurances that a substantial increase in emissions is highly unlikely, and would represent an unprecedented reversal in overall emissions reductions for any state, whether in the OTR or not.

Further, as discussed in Section IV of this document, the primary change in the ozone control regime that will result from granting the petition is to switch from NNSR requirements for new sources of emissions to PSD NSR requirements, in the areas of the state to be removed. This change would mean the application of BACT rather than LAER controls for new sources and removal of the requirement to obtain emissions offsets. This change would be primarily impactful for VOCs rather than NO_x emissions. This is because Maine has, in the past, obtained NO_x waivers under CAA section 182(f), which suspended NNSR requirements (and RACT requirements) for major NO_x emissions sources. During the periods when Maine was under NO_x waivers, its NO_x emissions and ozone levels generally continued to decline. Thus, while Maine has not obtained a NO_x waiver for the 2015 ozone NAAQS, this does not affect the EPA's overall assessment that the switch to PSD NSR from NNSR would not be expected to result in a substantial change from historical levels of NO_x emissions. With respect to VOC emissions, any new source growth under PSD NSR rather than NNSR cannot be reasonably anticipated to cause such a dramatic increase in emissions as to result in new air quality problems where none currently exist—where such improvements in Maine's air quality have primarily been driven by

reductions in out-of-state emissions and non-OTR related control strategies such as federal mobile source standards.

Additionally, Maine's petition shows that a substantial portion of Maine's anthropogenic VOC and NO_x emissions occur in the Portland and Midcoast ozone areas, which Maine is not proposing to remove from the OTR.⁵⁴ The fact that the petition shows contributions from the entire state to be insignificant, while a substantial portion of those emissions originate from areas that will remain in the OTR makes an even stronger case that there is reason to believe that granting Maine's petition will not result in significant contributions to ozone violations anywhere in the OTR.

VI. The EPA's Proposed Action on the Maine CAA Section 176A Petition

Based on the information discussed in this notice, the EPA is proposing to grant Maine's CAA section 176A petition. In consideration of monitoring data, emissions data, technical demonstrations (including air quality monitoring and trajectory analyses), and the potential impact to air quality control regimes, the EPA proposes to find that additional OTR controls under CAA section 184(b) for the portion of the state that Maine is seeking to remove from the OTR will not significantly contribute to attainment of any ozone NAAQS in any area of the OTR. In support of this proposed conclusion, the EPA finds that removing the requested areas from the OTR will not result in emissions changes that would significantly contribute to nonattainment or interfere with maintenance of any ozone NAAQS in any area of the OTR. All areas of the state proposed for removal from the OTR have been designated in attainment of the ozone NAAQS since 2004, and the entire state of Maine has been designated as in attainment with the

⁵⁴ While Maine's petition does not provide precise emissions for the Portland and Midcoast ozone areas, comparing Figures 14 and 15 in the petition with the state's overall emissions in Figures 12 and 13 shows that in 2005, NO_x emissions in the Portland and Midcoast areas accounted for over half of the state's overall NO_x emissions and VOC emissions from those areas comprised about half of the state's overall VOC emissions. Similarly, in 2014, NO_x emissions from the Portland and Midcoast ozone areas accounted for about half of the state's overall NO_x emissions, and the areas' VOC emissions accounted for a little under half of the state's overall VOC emissions. We note that the figures in the petition provide Maine's total emissions in tons/day while the figures regarding the Portland and Midcoast areas provide emissions in summer tons/day, but the EPA believes the overall state emissions are likely summer tons/day because such reporting would be in line with the EPA's longstanding guidance to states on how to prepare emission inventories for ozone NAAQS.

ozone NAAQS since 2007. Technical demonstrations from Maine's HYSPLIT back trajectory analysis, the EPA's ozone source apportionment modeling, and emissions trends all support the assertion that emissions from the areas requested to be removed from the OTR will not significantly contribute to nonattainment or maintenance problems in any area in the OTR, either within or outside the state of Maine, in the foreseeable future. Furthermore, removing those areas from the OTR will not result in unchecked relaxation of existing NO_x and VOC controls included in Maine's SIP or revoke permitted emissions limits at existing facilities. Any future revisions to Maine's SIP would be subject to CAA section 110(l) anti-backsliding demonstrations. Accordingly, the EPA proposes to grant the CAA section 176A petition filed by the state of Maine.

VII. Judicial Review and Determinations Under Sections 307(b)(1) and 307(d) of the CAA

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, if finalized, must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication of any final action. Filing a petition for reconsideration by the Administrator of this rule, if finalized, will not affect the finality of the rule for the purposes of judicial review nor will it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. The Administrator of the EPA hereby determines that this action is subject to CAA section 307(d), as authorized by section 307(d)(1)(V).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Particulate matter.

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

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Part 81 is amended by adding new Subpart E to read as follows:

Subpart E—Identification of Interstate Transport Regions

Sec.

81.455 Scope.

81.457 Ozone Transport Region.

§ 81.455 Scope.

This subpart identifies interstate transport regions established for national ambient air quality standards pursuant to section 184 or section 176A of the Clean Air Act.

§ 81.457 Ozone Transport Region.

Except as provided in paragraph (a), the Ozone Transport Region is comprised of the areas identified by Congress under 42 U.S.C. 7511c(a). The EPA Administrator removed a portion of Maine from the Ozone Transport Region, by rule, in response to a petition submitted by Maine under section 176A(a).

(a) Ozone Transport Region Boundary

As of [30 DAYS AFTER PUBLICATION OF FINAL ACTION IN **FEDERAL REGISTER**], the boundary for the Ozone Transport Region consists of the entire states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont; [PORTIONS OF MAINE INCLUDED IN OTR AS IDENTIFIED AT [CITATION xxx]]; and the Consolidated Metropolitan Statistical Area [DOCUMENTATION DATE] that includes the District of Columbia and the following counties and cities in Virginia: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

(b) Applicability

As of [30 DAYS AFTER PUBLICATION OF FINAL ACTION IN **FEDERAL REGISTER**], the provisions of 42 U.S.C. 7511c will no longer be applicable in the following areas of Maine: [PORTIONS OF MAINE TO BE REMOVED FROM OTR AS IDENTIFIED AT [CITATION xxx]].

[FR Doc. 2021-08825 Filed 4-30-21; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 15, 90, and 95****[ET Docket No. 19-138; FCC 20-164; FRS 17508]****Use of the 5.850–5.925 GHz Band****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: In this document, the Commission addresses issues remaining to finalize the restructuring of the 5.9 GHz band. Specifically, the Commission addresses: The transition of ITS operations in the 5.895–5.925 GHz band from Dedicated Short Range Communications (DSRC) based technology to Cellular Vehicle-to-Everything (C-V2X) based technology; the codification of C-V2X technical parameters in the Commission's rules; other transition considerations; and the transmitter power and emissions limits, and other issues, related to full-power outdoor unlicensed operations across the entire 5.850–5.895 GHz portion of the 5.9 GHz band. The Commission modified the *Further Notice* released on November 20, 2020, with an Erratum released on December 11, 2020. The Commission released a Second Erratum on February 9, 2021. The corrections from these errata are included in this document.

DATES: Interested parties may file comments on or before June 2, 2021; and reply comments on or before July 2, 2021.

ADDRESSES: You may submit comments, identified by ET Docket No. 19-138, by any of the following methods:

- *Federal Communications Commission's website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Jamie L. Coleman of the Office of Engineering and Technology, at 202-418-2705 or Jamie.Coleman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further

Notice of Proposed Rulemaking (*Further Notice*) in ET Docket No. 19-138, FCC 20-164 adopted November 18, 2020, and released November 20, 2020. The full text of the *Further Notice*, including all Appendices, is available by downloading the text from the Commission's website at <https://docs.fcc.gov/public/attachments/FCC-20-164A1.pdf>. When the FCC Headquarters reopens to the public, the full text of this document also will be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public

Notice, DA 20–304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Ex Parte Rules—Permit-But-Disclose

The proceeding this *Further Notice* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex*

parte presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Synopsis

I. Introduction

1. Simultaneous with this *Further Notice*, the Commission adopted a *First Report and Order* that revised the band plan for the 5.9 GHz band, authorizing unlicensed use in the lower 45 megahertz of the band (5.850–5.895 GHz) and retaining the upper 30 megahertz of the band (5.895–5.925 GHz) for the Intelligent Transportation System (ITS) radio service. As of the effective date of the *First Report and Order*, unlicensed indoor operations are permitted in the 5.850–5.895 GHz portion of the 5.9 GHz band, under specified power and other technical limitations designed to protect incumbent ITS service and federal radar operations from harmful interference. The Commission decided to consider requests for unlicensed outdoor operations in the 5.850–5.895 GHz band through the Commission’s existing regulatory process for individualized and temporary access to spectrum, to be coordinated with the National Telecommunications and Information Administration (NTIA) to ensure that federal incumbents are protected from harmful interference.

2. The Commission implemented a period of one year from the effective date of the *First Report and Order* for the ITS licensees to transition all operations into the 5.895–5.925 GHz portion of the band. The Commission further adopted rules designating C–V2X technology as the ITS delivery system once the Commission adopts a deadline and the transition to the revised ITS band is complete. Pending resolution of the transition of ITS operations to C–V2X, ITS licensees will be able to continue their DSRC-based operations or, alternatively, to seek to deploy C–V2X-based operations through the Commission’s existing regulatory processes.

3. In this *Further Notice*, we address the remaining issues to finalize the 5.9 GHz band restructuring. Specifically, the *Further Notice* addresses: (1) The transition of all ITS operations to C–V2X-based technology; (2) the codification of C–V2X technical

parameters in the Commission’s rules; (3) other transition considerations; and (4) the transmitter power and emissions limits, and other issues, related to full-power outdoor unlicensed operations across the 5.850–5.895 GHz band.

II. Discussion

A. Transitioning Licensed ITS Operations in the 5.9 GHz Band to C–V2X Technology

4. Under the *First Report and Order*, all existing ITS operations using channels in the lower 45 megahertz of the 5.9 GHz band (5.850–5.895 GHz) are required to transition out of that spectrum into the upper 30 megahertz of the 5.9 GHz band (5.895–5.925 GHz) that will continue to be designated for ITS. ITS licensees must take necessary steps to assess their existing equipment and infrastructure and either retune their devices to access only the spectrum in the 30 megahertz that will remain available for ITS operations or replace their equipment with transmitters designed to use only the revised ITS band. In this *Further Notice*, we propose to address remaining issues that must be resolved regarding the transition of ITS from DSRC to C–V2X operations in the 5.895–5.925 GHz band, including the timing and procedures needed to ensure a smooth transition. We also seek comment on additional or alternative measures that may be helpful, appropriate, or necessary.

5. *Timeline.* In the *First Report and Order*, we require that ITS operations in the 5.895–5.925 GHz band ultimately must use C–V2X technology. In order to complete the transition of the band to C–V2X, we propose that all ITS operations in the 5.895–5.925 GHz band either convert to C–V2X or cease operating two years after the effective date of a *Second Report and Order* to be adopted in response to this *Further Notice*. We seek comment on this proposal.

6. Since the Commission first proposed in December 2019 to authorize C–V2X operations in the 5.9 GHz band, manufacturers and licensees have had significant time to begin planning for the possible entry of C–V2X into the band. We seek comment on the state of development and availability of C–V2X equipment, both roadside units (RSUs) and on-board units (OBUs). We believe that two-years beyond the effective date of the rules the Commission will adopt in the *Second Report and Order* will allow the ITS supply chains to become replete with C–V2X equipment. This timeframe is consistent with the Department of Transportation’s view

that vehicle manufacturer product cycles necessitate two years lead time to ensure new V2X equipment is installed in new vehicles. And in some instances, this timeframe may not be needed as some commenters have explained that they have already deployed equipment that is both DSRC and C-V2X compatible. We seek comment on whether manufacturers can distribute C-V2X equipment through their existing supply chains, and on whether vehicle manufacturers can install C-V2X equipment into new vehicles, within this timeframe. Moreover, we expect that many licensees will begin planning for the eventual transition to C-V2X now and, thus, may take advantage of available opportunities to immediately operate C-V2X facilities in the upper 30 megahertz of the band under our STA, experimental licensing, or other existing regulatory process without first implementing interim DSRC operations. We seek comment on the number of licensees that may decide to operate in such a fashion and the number that plan to continue offering DSRC in the 30-megahertz band during the transition period. We assume that the transition process to C-V2X would primarily involve replacing DSRC transmitters with C-V2X transmitters, since we propose C-V2X technical rules consistent with the current rules for DSRC and therefore no antenna changes are needed to cover the same area based on the identical propagation characteristics between DSRC and C-V2X. We seek comment on the steps involved with converting all ITS operations in the 5.9 GHz band to C-V2X technology and the expected time to complete the entire process. We note that, as stipulated in the *First Report and Order*, licensees will not need to initiate changes to their authorizations when they transition to C-V2X; they simply will need to use equipment that meets the operational and technical rules the Commission will adopt in the *Second Report and Order* for C-V2X technology. If, however, a licensee needs to concurrently make adjustments to its system to add sites, increase power, or modify emissions, those changes will require modifications to the underlying RSU registration information.

7. We also seek comment on how to treat DSRC OBUs at the final transition date. Can manufacturers or DSRC system operators send over-the-air instructions to these units to turn off? Can OBUs be modified through software or hardware changes to operate using C-V2X-based technology? Absent other operating DSRC infrastructure (such as

RSUs), would OBUs continue to communicate with each other and, if so, what would such communications entail? Is there any potential for harmful interference into C-V2X operations that could occur if DSRC OBUs continue to operate after the final transition date and, if so, how can such interference best be prevented? We seek comment on our proposed two-year sunset date for DSRC-based OBU operations and any alternative date that commenters might suggest. Commenters should be specific as to the merits of any date they recommend for ceasing DSRC operations in the 5.9 GHz band.

8. We note that OBUs are licensed-by-rule under the part 95 Personal Radio Services rules. “Licensed-by-rule” means that an authorized user can access the entire available spectrum without an individual station license document and is instead authorized to operate as long as the operations are in accordance with the applicable service rules. As a result, the Commission does not have detailed information and records on the exact number and location of users of such equipment. We seek comment on whether there are any specific issues related to modifying OBUs that are not reflected in the questions already raised. As an initial matter, we assume that most OBUs should be easily identified because very few vehicles sold to date are equipped with OBUs and the vast majority of existing units are associated with the various ITS trial programs occurring throughout the U.S. We seek comment on this notion. Are there estimates of the number of vehicles on the road today that incorporate DSRC-based OBUs independent of a trial or pilot program (*i.e.*, as part of a commercial deployment of DSRC services)? Does the Commission need to take steps to make owners of these vehicles aware of the changes being adopted? Or would automobile manufacturers take primary responsibility for notifying their customers of these rule changes? If the Commission should make owners aware of rule changes affecting OBUs, then how should the Commission conduct such consumer outreach? Commenters should provide specific details to justify their positions regarding our proposals.

9. *Technical Parameters.* The Commission’s ITS rules set forth basic technical parameters such as power, height, and available channels. Further, to ensure interoperability within the ITS, DSRC operations are required to adhere to the provisions specified in the ASTM E2213–03 Standard (ASTM–DSRC), which is incorporated by reference in the Commission’s rules. These rules divide the current 5.9 GHz

band into seven, 10-megahertz channels, with an allowance to combine two pairs of channels into 20-megahertz channels. Further, specific channels are intended for public safety use only; one channel in particular, the “control channel,” which is outside the modified ITS band plan, is intended to be used for messages that coordinate channel usage and prioritize public safety messages. The modified ITS band plan eliminates the lower four, 10-megahertz channels, including the current control channel, and one of the public safety channels. These changes necessitate that we further propose to modify the ITS technical rules to ensure that ITS delivers its intended safety-related applications to the American public.

10. Our goal is to facilitate a smooth transition and ensure that existing ITS services continue with minimal or no interruption. Accordingly, we must address the technical rules through the transition process whereby C-V2X will replace DSRC technology in the 5.9 GHz band and after that transition when C-V2X is the sole technology in the 5.9 GHz ITS band. In the sections below, we seek comment on the technical considerations related to the simultaneous operation of DSRC and C-V2X in the 5.895–5.925 GHz portion of the 5.9 GHz band and, ultimately, exclusive operation of C-V2X in that band. In particular, as commenters consider the various technical issues addressed here, they should also frame their comments around considerations necessary during and after the transition. Specifically, for each technical issue, commenters should also answer whether there are technical issues that preclude simultaneous DSRC and C-V2X operations in this band. What spectral and/or geographic separation requirements, if any, are necessary to prevent harmful interference between the two types of operations? As ITS licenses generally specify a defined geographic area and are required to operate within as small a “communications zone” as necessary, can we permit existing licensees to modify to C-V2X operations premised simply on not exceeding their existing footprint? Can new licensees be authorized to use C-V2X before the final transition date, provided that they avoid existing geographic licensed areas or simply avoid existing registered RSUs? Are there any adjacent-channel issues that need to be considered between DSRC and C-V2X to enable nearby operation? For example, do C-V2X operations in the upper 30 megahertz need to initiate any mitigation measures to accommodate DSRC operations that

continue in the lower 45 megahertz during the one-year transition period? What accommodations can be made to protect RSU sites operated pursuant to the four incumbent nationwide ITS authorizations? Commenters should consider how best to balance C-V2X band entry and co-existence with DSRC during the transition period, in light of the technical rules we are proposing herein and recommend if there are any interim measures that may be needed to ensure short-term compatibility prior to exclusive C-V2X use. We also seek information informed by current C-V2X tests being conducted under experimental licenses as to how best to enable a smooth transition from DSRC to C-V2X.

11. *Bandwidth.* We propose light touch changes to minimize disruption and simplify the transition from DSRC-based technology to C-V2X-based technology. The existing ITS band plan contains three, 10-megahertz channels that will comprise the new ITS band: Channels 180, 182, and 184 corresponding to 5.895–5.905, 5.905–5.915 and 5.915–5.925 GHz, respectively. We seek comment on whether this band plan, specifying three 10-megahertz channels, should continue for C-V2X. We also seek comment on whether the band plan should continue to accommodate combining two channels to provide a single 20-megahertz channel. Currently, channels 180 and 182 can be combined into channel 181 (5.895–5.915 GHz). Should such channel combining be permitted under the modified ITS band plan? Alternatively, should channels 182 and 184 be permitted to combine into a single 20-megahertz channel spanning 5.905–5.925 GHz? Should the Commission permit maximum flexibility by allowing each of these potential channel combinations to be used as necessary to accommodate various ITS applications and services? What about allowing all three channels to be combined and used as a single 30-megahertz channel? What are the consequences for any of these channel bandwidth choices on the deployment and adoption of C-V2X? How would a completely flexible band plan versus a prescriptive band plan affect the ability of C-V2X to maximize efficient use of the band? We seek comment on each of these possibilities and how best to strike the right balance to ensure efficient and effective band use can be maximized. Further, commenters should provide sufficient detail regarding their preferred band plan and how that may work with C-V2X and all other operational and technical rules that are

addressed herein, such as power limits, out-of-band emissions (OOBE) limits, and channel use designations.

12. *The control channel and the public safety priority channel.* Currently the rules designate channel 178 (5.885–5.895 GHz) as the control channel and channel 184 (5.915–5.925 GHz) as a public safety channel. We seek comment on whether there is a compelling reason to have specific use designations on any or all of the channels used by C-V2X. Would designating any of the channels for a specific purpose, e.g., a control channel, help maximize band use efficiency? Does C-V2X need access to a control channel in a similar fashion as DSRC? If so, what is the best alternative for accommodating a control channel for C-V2X? Commenters should provide specific reasoning to support their preference. How would any channel designation work with the potential flexibility to combine any two or all three channels?

13. Commenters in favor of any channel designations should include detail regarding which designations they prefer we retain, which channel(s) those designations should pertain to, why they make those particular choices and how those choices will maximize use of the band and promote safety-related vehicular services. Alternatively, we could leave the issue of how best to use any of the channels to the standards-setting process and permit the industry to agree on use standards, but not designate those in our rules. We seek comment on the advantages and disadvantages of deferring to industry standardization processes in lieu of adopting prescriptive rules. Commenters in favor of using the standards process should also comment on expected timeframes for such bodies to produce relevant standards and how those timeframes complement the transition timeframe we propose in this *Further Notice*.

14. Relatedly, the existing ITS rules lay out a hierarchical priority system for messages. Communications involving the safety of life have access priority over all other ITS communications. Communications involving public safety have the next priority level with a presumption that RSUs operated by state or local governmental entities are engaged in public safety priority communications. At the lowest tier of the hierarchy are non-priority communications, which are all other communications. We seek comment on whether to retain this message priority hierarchy for C-V2X deployment. Because the stated purpose of the ITS is to promote safety, our inclination is that

this message prioritization system should be retained as it helps to ensure that the most important messages are successfully transmitted. This may become even more important as ITS operations must adjust to delivering service in less spectrum than under the current band plan. We seek comment on this position. Would such a system work with C-V2X? If we retain the channel designations, do they need to be modified for C-V2X? More broadly, are the existing channel designations and operating protocols still technically relevant under the new band plan? Further, commenters should address whether this priority system should be modified in any way. Should there be more granularity in the priority tiers? If so, then how should such messages be designated? Should they continue to be associated with specific types of licensees or should the message type be the determining factor? Should we continue to maintain a priority system based on our expectation that dedicated ITS spectrum will be used primarily (if not exclusively) for safety-of-life applications?

15. *Power and antenna height.* The 5.9 GHz band ITS spectrum is shared and licensed on a non-exclusive geographic area basis based on geopolitical boundaries. To maximize the use within this shared spectrum, the rules require that each registered RSU designate its intended area of operation or “communication zone” and that such communication zones be the smallest necessary. The rules provide for four communication zones designated “A” through “D” for coverage areas ranging from 15 meters to 1000 meters. Correspondingly, each zone is associated with a maximum permitted output power ranging from 0 dBm to 28.8 dBm. While this rule specifies output power, which is power supplied to the antenna, another rule specifies the maximum radiated power permitted on each channel ranging generally from 23 dBm to 33 dBm, but permitting state and local government entities to radiate at higher levels on the control channel (channel 178) at up to 44.8 dBm and on the public safety priority channel (channel 184) at up to 40 dBm. The Commission’s rules also limit RSU antenna height as another way of ensuring these units do not transmit beyond their designated zone. RSU antenna height is limited to 8 meters at full power and may be as high as 15 meters with a corresponding power reduction. Notably, these rules working together require licensees in many cases to use directional antennas to attain the highest radiated power levels, which

also serves to focus the energy to only the desired coverage areas.

16. We seek comment on what the appropriate power levels under the modified ITS band plan should be. As an initial matter, to maximize spectrum use among all users, we propose to retain the “communication zone” designations currently in the rules and require RSUs to specify their intended zone. We believe this will continue to ensure that stations only cover their intended area and provide opportunities for other licensees to install RSUs for other nearby areas without mutually interfering. We seek comment on this proposal and what effect, if any, it will have on C-V2X. 5GAA in a recent filing modified its initial position and now requests that the Commission delete the “communication zone” rules. Thus, we ask commenters to address whether the current communication zone distance limits should be retained or are there reasons to modify or eliminate them? Should they provide for more extended coverage areas? Or smaller areas? Or are they effective without change? Commenters advocating changes to the communication zones should provide specific information on what limits they favor and why and what effect those changes will have on the ability for C-V2X to deploy new systems and continue operating into the future.

17. We also seek comment on the appropriate output and radiated power levels that should be associated with each communication zone, channel, and user. The Commission, based on 5GAA’s waiver petition, proposed in the 5.9 GHz NPRM power limits based on the most recent 3GPP standard (which at the time was Release 14). Specifically, the Commission proposed that C-V2X devices limit output power to no more than 20 dBm and limit EIRP to no more than 33 dBm. We are not aware of any changes to the power requirements in subsequent iterations of the 3GPP standard and thus, propose that C-V2X RSUs comply with that limit. Should the rules continue to permit higher radiated power for state and local governmental entities? Or should the rules be consistent among all users as a way of maximizing spectrum use and controlling potential interference between users? Should we limit radiated power to 23 dBm as specified for some channels, 33 dBm as specified for others or some other value, such as permitting higher power on a control channel? Likewise, should we continue to specify both output power and radiated power levels for communication zone/channel combinations? Or would it be more appropriate to specify only a radiated

power limit, as requested by 5GAA in its comments? Based on how parties envision future use of the ITS band, are there advantages to continuing to specify both limits and requiring certain installations to use directional antennas to reach maximum power?

18. An alternative would be to specify power as a power density to normalize power for wider bandwidth channels, if we continue to permit such operations. We seek comment on whether that would serve C-V2X better than the current method, which associates a lower power density with wider bandwidth channels. We also seek comment on whether the current antenna height limitations are justified. Are there reasons to permit higher antenna heights? Should we continue to require that licensees reduce their power for higher antenna heights as a way of controlling coverage area and reducing the potential for interference? Further, we seek comment on whether we should specify measurement standards for equipment approval and compliance purposes. For example, should the Commission specify that these values should be measured as root mean square (*i.e.*, average) or peak values? And should the Commission specify the resolution bandwidth settings for compliance measurements in the rules? Commenters should address these questions in conjunction with their comments regarding retention or modifications of the existing communication zones and provide technical information regarding their preference for rules and how they would work to ensure maximum access to the band.

19. Finally, we seek comment on whether we should modify the power rules for C-V2X OBUs. The current rules specify a 1 mW output power maximum for portable OBUs. As with RSUs, the Commission proposed in the 5.9 GHz NPRM limits compatible with the 3GPP Release 14 standard for C-V2X vehicular and portable (*i.e.* on-board) units, which would limit output power to no more than 20 dBm and EIRP to no more than 23 dBm. We believe these power levels continue to be appropriate for C-V2X vehicular and portable devices and propose those levels here. 5GAA, however, recently requested that the Commission eliminate the output power requirement and increase the OBU EIRP limit to 33 dBm. Should we adopt this higher power level instead? What effect would such an increase have on the ability of C-V2X RSUs to co-exist with and protect federal radiolocation stations? In commenting on these power levels, commenters should keep in mind the need to

simultaneously ensure that such portable OBUs comply with the Commission’s RF radiation exposure limits.

20. We also seek comment on how we should handle the standards issue with respect to C-V2X. The 5.9 GHz NPRM sought comment on incorporating 3GPP Release 14 by reference in the Commission’s rules. We did not receive significant comment on this issue. Subsequent to the NPRM, in July 2020, 3GPP announced the completion of Release 16, which further enhanced the 5G network capabilities, including C-V2X that were addressed in Release 15.

21. The 3GPP Release 14 standard referenced in this Notice is formally known as: 3GPP TR 21.914 V14.0.0 (2018–05) 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; Release 14 Description; Summary of Rel-14 Work Items (Release 14). Release 14, *inter alia*, focuses on introducing Vehicle-to-Everything (V2X) communications, in particular Vehicle-to-Vehicle (V2V) communications. The V2X feature encompasses all aspects of the 3GPP work needed to support vehicle-based communications: Enhancements of the air interface, protocols, and impacts on the Long Term Evolution (LTE) core network. Release 14 defines two modes of operation for V2X communication (V2X communication via direct over-the-air connections between user equipment and V2X communication over the LTE network interface), which may be used by user equipment independently for transmission and reception. Release 14 also defines service requirements (*e.g.*, message transfer latency) for typical V2X applications; specifies architecture enhancements for LTE support of V2X services (*e.g.*, V2X architectures, functional entities involved for V2X communications, interfaces, provisioned parameters, and procedures); and specifies security aspects (*e.g.*, security aspects for LTE-based V2X communication, including security architecture, security requirements, as well as procedures and solutions to meet those requirements). Release 14 specifies core network and user equipment protocol aspects, including protocols for V2X authorization between user equipment and the V2X Control Function, communication among user equipment, and communication between the user equipment and the V2X Application Server over the LTE interface. Release 14 also describes support for V2V services based on LTE sidelink communications (direct communication

between two LTE devices without going through a base station).

22. In light of the evolution of the C-V2X standard to a 5G network technology, we seek comment on whether our rules should incorporate the 3GPP standard by reference. Commenters in favor of incorporation by reference should also provide details regarding which version should be incorporated—Release 14 which is based on LTE technology or Release 16 which incorporates 5G technology. Commenters who advocate for Release 16 should address how vehicular safety applications will be delivered to all users given that 5G is not backwards compatible with LTE. One alternative could be to incorporate Release 14 now with a planned transition to Release 16 (or the current version) at some date certain in the future. We seek comment on such an option. Alternatively, is there a compelling argument for not incorporating any C-V2X standard into the rules? We seek comment on each of these options. Commenters should address how the option they favor would promote safety services among all users. Finally, we seek comment on whether we should only incorporate by reference specific aspects of either the 3GPP Release 14 or Release 16 standard? If so, which sections? Or if the Commission does not incorporate by reference any 3GPP standard, are there portions of the standard that need to be placed in our rules? Given our adoption of C-V2X as the sole technology permitted in the 5.9 GHz ITS band after the transition, Continental has raised concerns about the resolution of potential licensing disputes regarding that technology. We also request comment on this issue.

23. *C-V2X OOB limits.* Because the existing rules for DSRC do not specify OOB limits necessary to protect adjacent band services from harmful interference, the Commission sought comment in the 5.9 GHz NPRM on appropriate OOB limits for C-V2X devices. Regardless of whether we incorporate the 3GPP standard or not, we continue to believe it is good practice to adopt specific OOB limits into our rules. Doing so would provide equipment manufacturers with clear guidelines for equipment approval compliance. Furthermore, it would provide adjacent-channel licensees and equipment manufacturers with clear guidelines regarding the expected spectrum environment so they can incorporate appropriate filters and mitigation measures into their products to protect from harmful interference from adjacent channel emissions. Because our previous proposals were

consistent with the current 3GPP standard, we propose the same OOB limits for C-V2X here as we did in the 5.9 GHz NPRM. Specifically, we propose that all C-V2X equipment limit OOB limits measured at the antenna input (*i.e.*, conducted limits) to: -29 dBm/100 kHz at the band edge; -35 dBm/100 kHz ± 1 megahertz from the band edge; -43 dBm/100 kHz ± 10 megahertz from the band edge; and -53 dBm ± 20 megahertz from the band edge. We also propose to limit out-of-band radiated emissions to -25 dBm/100 kHz EIRP or less outside the band edges of 5.895 GHz and 5.925 GHz.

24. We seek comment on these OOB limits and whether they continue to be appropriate for C-V2X equipment. In this connection, we note that 5GAA recently requested that we adopt more relaxed OOB requirements. It specifically requests that RSUs limit OOB to: -16 dBm/100 kHz ± 1 megahertz of the band edge; -13 dBm/MHz ± 5 megahertz of the band edge; -16 dBm/MHz ± 30 megahertz of the band edge; and -28 dBm/MHz beyond 30 megahertz from the band edges.

25. Should we adopt these alternative OOB limits instead? What would the effect of these relaxed limits be on the ability to design and manufacture C-V2X equipment? How would they affect equipment cost? Will these limits ensure compatibility with adjacent U-NII devices in both the U-NII-4 and U-NII-5 bands, which are below and above the modified ITS band, respectively? What effect would these limits have on adjacent band fixed services in the 6 GHz band? We also seek comment on the measurement standards that should be associated with equipment approval compliance for verifying that C-V2X equipment meets whatever OOB limits we adopt.

26. *Other Transition Considerations.* In 5.9 GHz NPRM, we requested comment generally on the various transition-related considerations that we should take into account if we adopted our proposal to provide only 30 megahertz for ITS. For example, we asked about any re-channelization of DSRC-based operations in the upper 30 megahertz or the migration of ITS to C-V2X-based technology in the spectrum that remains reserved for ITS. To inform our consideration of issues relating to transitioning of ITS operations, we asked that commenters provide up-to-date information on actual DSRC operations under existing licenses (including the number of RSUs and OBUs) and the various uses that have been implemented. The Commission received several comments that involved some estimation of the

potential cost considerations associated with these transition issues.

27. We take this opportunity to update the record on our inquiry in the 5.9 GHz band NPRM regarding transition cost considerations in light of the 5.9 GHz band plan that we have adopted in the *First Report and Order*. We recognize that, in light of our decision, commenters will be in a much better position to evaluate the necessary transitions of their respective systems. We note that many of the DSRC projects appeared to be associated with demonstration projects designed to address particular traffic and safety concerns, and we seek any updates about DSRC demonstration projects or deployment, as well as any C-V2X demonstration or pilot projects, including any funding grants that have been provided or are anticipated. As the U.S. DOT has indicated, ITS operations to date have received substantial research and deployment investments, including federal, state, and local investment, over the years, and we seek comment on the availability of that or similar funding for transitioning associated with the new band plan for ITS. To what extent can existing funding at the federal or state or local level readily be used with regard to the necessary transition costs, including use of C-V2X-based technology?

28. While we did not propose in the 5.9 GHz NPRM to provide compensation for such relocation, we nonetheless seek further comment, including suggestions on which particular types of costs should be considered as appropriate for possible compensation (including how such costs would be documented) as well as the process by which such compensation might be determined or implemented. Finally, we request comment on any other actions the Commission should consider that would be helpful to ITS licensees with respect to these transition matters.

29. We seek comment on whether we should limit use of the 5.895–5.925 GHz band to non-commercial services or safety-of-life applications. Open Technology Institute at New America and Public Knowledge previously filed a petition for rulemaking asking the Commission to prohibit commercial operations in ITS spectrum. Should we modify our rules to prohibit commercial operations in this spectrum or otherwise limit services to safety-of-life applications? How would the Commission define “safety-of-life” applications? How would the Commission delineate between safety-of-life and non-safety-of-life applications? In such instances, would the Commission need to specifically list

permitted applications in its rules or would a general prohibition suffice? Or, could such a prohibition on commercial operations be accomplished by limiting license eligibility to only certain licensees, such as governmental entities or entities eligible for licensing in the Private Land Mobile Radio Service Public Safety Pool under part 90? At what point would a use or licensing restriction so alter the current authorizations so as to constitute a fundamental license change that would exceed the Commission's authority to effectuate under section 316 of the Communications Act, as amended? We seek comment on the challenges and benefits associated with adopting restrictions on the types of ITS services that may operate in the 5.895–5.925 GHz band.

B. More Flexible Use of Unlicensed Service

30. The *First Report and Order* takes an initial step at providing unlicensed U–NII device access to the 5.850–5.895 GHz band. Our decision to generally restrict U–NII devices to indoor locations until ITS operations transition to the 5.895–5.925 GHz band provides flexibility for unlicensed devices to begin using the 5.850–5.895 GHz band, but in a way that avoids the potential for harmful interference to vehicular safety-related applications. Once ITS operations have finished transitioning to the upper 30 megahertz, however, we can permit outdoor operations at full power, subject to such outdoor use protecting from harmful interference both co-channel federal radiolocation operations (which will remain in the band) and adjacent-band ITS operations.

31. *Federal Radiolocation System Protection from Outdoor Unlicensed Operations.* In the 5.9 GHz NPRM, we sought comment on whether there are any mitigation measures, such as technical or operational conditions or constraints that the Commission should consider for U–NII–4 operations to protect federal radars in the 5.9 GHz band. Comcast submitted that the Commission should adopt its proposal to implement the same technical rules as U–NII–3 with respect to U–NII–4 devices and federal DoD radar operations. WISPA agreed with the Commission's suggestion that no other mitigation measures are required to protect DoD radar operations in the 5.9 GHz band from U–NII–4 devices. NCTA stated that the Commission should adopt its proposal to authorize U–NII–4 devices without requiring any special frequency avoidance techniques or similar constraints since U–NII–3 devices have shared spectrum with co-

channel federal incumbents for years without any specialized frequency sharing has been successful.

32. NTIA reviewed the federal radar operations authorized in the 5.9 GHz band and determined that the number of radar sites needing protection could be reduced to from 59 to 30 sites. NTIA's analysis concludes that exclusion zones are needed to protect federal radiolocation systems only from U–NII–4 outdoor point-to-point (P2P) and point-to-multipoint (P2MP) devices. The exclusion zones recommended by NTIA are set forth in Table 2 of its Sept. 8, 2020 letter. To enforce the exclusion zones, NTIA recommends that interference mitigation techniques such as geo-fencing be employed to protect federal radiolocation operations. NTIA emphasizes that it is important that outdoor U–NII devices are not permitted to operate inside of these exclusion zones to ensure that federal radiolocation systems are protected from harmful interference. NTIA also requests that the new rules make clear that it may authorize additional exclusion zones or modify the existing exclusion zones listed in Table 2 as necessary to ensure federal radiolocation stations are protected.

33. We agree that some mitigation measures are needed to ensure that outdoor U–NII point-to-point and point-to-multipoint operations do not cause harmful interference to federal radiolocation systems. We seek comment on whether exclusion zones would be the best method for ensuring such protection. We note that some commenters express disagreement with the technical analysis provided by NTIA, including questioning whether NTIA's interference analysis is consistent with the assumptions in the 6 GHz Report and Order. We seek comment on NTIA's technical analysis, as well as comment on any alternate methods for determining the parameters of exclusion zones. Commenters advocating opinions that differ from NTIA's analysis should provide specific technical detail and analysis regarding how unlicensed devices would provide the required protection to federal radars. Alternatively, are other protection mechanisms, such as coordination, feasible methods of protecting federal operations in certain areas? Commenters favoring coordination or other methods should describe how such methods can be implemented and maintained such that federal radar operators have assurances that their installations are and continue to be protected from harmful interference in the future as more unlicensed devices may be

installed or existing devices may be relocated.

34. Compliance with an exclusion zone implies some degree of location awareness, either within a device or by an installer. In crafting rules for outdoor use, we seek to protect important DoD radars from harmful interference, provide flexibility to U–NII system operators, minimize equipment complexity and capitalize on the greatest degree of harmonization with U–NII–3 devices as possible. We seek comment on how best to adopt rules that satisfy each of these goals to the greatest extent possible.

35. The Commission has required other unlicensed devices to incorporate geographic awareness (*i.e.*, a geolocation capability) and use a database to avoid areas where the potential for causing harmful interference would exist. For example, white space devices are required to incorporate a geolocation capability and check a white space database for a list of available channels before they can operate and 6 GHz standard power U–NII devices are similarly required to incorporate a geolocation capability and consult an automated frequency coordination database prior to operating to avoid causing harmful interference to fixed service incumbents. Should the Commission require a similar system here? The advantage of using geolocation and a database is that such systems have already been successfully deployed and we believe protecting only 30 federal radiolocation sites would be a relatively simple undertaking under this regime. But incorporating geolocation capability does increase the complexity of a device and add overhead (both hardware and software) necessary for such a system to work. In addition, requiring U–NII–4 devices to operate in this manner would entail many differences from U–NII–3 device operation and could limit their usefulness in providing the ability to use a 160-megahertz wide channel that spans the U–NII–3 and U–NII–4 bands. On the other hand, we expect many devices to operate throughout all the U–NII bands including the 6 GHz U–NII–5 and U–NII–7 bands which would already require this capability. For example, we expect that new devices would have capability to operate across multiple bands including the 5.150–5.250 U–NII–1 band, the 5.725–5.850 U–NII–3 band, the 5.850–5.895 GHz U–NII–4 band, the 5.925–6.425 U–NII–5 band and the 6.525–6.875 U–NII–7 band. In this case, how difficult would it be to similarly add the geolocation and database capability to U–NII–4 devices? Would there be any

incremental cost for incorporating such a requirement? How would such a requirement affect the utility of U-NII-4 devices and their ability to work seamlessly with U-NII-3 devices to deliver applications over a 160-megahertz channel? If we were to adopt such a requirement, we anticipate the rules being consistent with the 6 GHz automatic frequency coordination rules, except that the exclusion zones are already known and do not need to be calculated by the automated frequency coordination system. We seek comment on using the 6 GHz framework for outdoor U-NII-4 devices.

36. Because the U-NII-4 band exclusion zones are known in advance, are there simpler methods for ensuring that outdoor U-NII-4 devices respect the need to avoid operating near the federal radiolocation systems? For example, could we simply rely on professional installation to ensure that outdoor U-NII-4 devices do not operate in those areas? Under a professional installation regime, what rules and requirements would the Commission need to put in place to ensure that U-NII-4 devices do not operate in any of the exclusion zones? Similarly, because these exclusion zones are known, could devices simply have a geolocation capability and either be preloaded with the exclusion zone coordinates and/or download those coordinates once or on a periodic basis, such as every time the device is turned on or at some set interval (e.g., once a week or once a month)? We seek comment on whether this is a viable alternative to the other suggested methods. Commenters in favor of such a mitigation method should provide detailed comment regarding how the internal device database would work, the necessary update frequency, and the costs involved in developing equipment. We also seek comment on other alternatives that achieve the same goal; that is, methods that achieve the required protection and are easy and cost effective to implement and maximize utility of the U-NII-4 band.

Outdoor Unlicensed Operations Transmitted Power and Emissions Limits

37. *Transmitter Power.* In the 5.9 GHz NPRM, the Commission proposed that U-NII-4 devices be permitted to operate at the same power levels (e.g., radiated power, power spectral density) as U-NII-3 devices and sought comment on whether it should adopt different power levels.

38. The Wi-Fi Alliance agrees that the Commission should adopt its proposal to apply the same power levels (radiated

power, PSD) to U-NII-4 devices as apply to U-NII-3 devices because their efficacy has been proven by years of application in practice. Wi-Fi Alliance contends that to recognize the full benefit of the U-NII-4 spectrum, including expanded operations of existing U-NII devices, the technical rules governing the band must be aligned with the rules covering the U-NII-3 band; permitting U-NII-4 devices to operate at the same power levels as U-NII-3 devices will maximize the utility of both bands. It states that if a different power level is adopted for the U-NII-4 band, U-NII devices would not be able to operate across both the U-NII-3 and U-NII-4 bands, eliminating the potential use of wider channels, equipment commonality, reduced cost and complexity, superior performance, and other benefits that may be realized by the Commission's proposal. WISPA states the Commission's proposal to allow U-NII-4 devices to operate at the same power level as U-NII-3 devices is a sensible and efficient approach and consistent with WISPA's recommendations in ET Docket No. 13-49 in that it would permit higher-EIRP fixed wireless operations that will enable use of the 5.9 GHz band for rural broadband deployment, including both outdoor point-to-point operations and point-to-multipoint operations. Comcast asserts that harmonizing the U-NII-4 technical rules with those of the U-NII-3 band, particularly the Commission's proposal to allow U-NII-4 devices to operate at the same power levels as U-NII-3 devices, would substantially improve its ability to bring the band into use for consumers quickly and to put it to its best use. NCTA states that applying the U-NII-3 power limits to U-NII-4 will enable network operators and device manufacturers to build on the success of U-NII-3. Microsoft states that extending the U-NII-3 technical rules to the U-NII-4 band, except for the existing OOB limits, will enable the public to realize the maximum benefits from the U-NII-4 band, including accelerating the timeline for initial deployments using this 45 megahertz of spectrum; establishing the same power levels in the U-NII-4 band as in the U-NII-3 band is essential for deployment of larger channels.

39. On the other hand, 5GAA and Qualcomm separately recommend that the Commission impose a power spectral density limit to protect C-V2X receivers from portable client devices that may be operating temporarily outdoors with relaxed OOB limits but connected to an indoor access point in

the U-NII-4 band, but did not recommend any specific limit. Car 2 Car and US Technical Advisory Group separately urge the Commission to revisit its proposals for maximum transmit power from U-NII-4 devices to avoid harmful interference to ITS operations, but did not recommend any specific level for the maximum transmit power. The Alliance for Automotive Innovation expresses concern that the National Highway Transportation Safety Administration's (NHTSA's) testing, which showed varying levels of harmful interference, underestimates the potential for harmful interference from unlicensed operations, since the NHTSA's tests were conducted with a 36 dBm EIRP, but fixed point-to-point U-NII devices could operate at power levels of 62 dBm EIRP using 5G antennas that have 32 dBi of gain. Qualcomm also expresses concern that outdoor point-to-point unlicensed operations with high EIRP signals in the U-NII-4 band could have serious performance impacts to installed RSUs and create C-V2X dead zones when vehicles pass nearby, regardless of the OOB level. Intelligent Transportation Society of America (ITSA) also expresses concern that outdoor unlicensed point-to-point U-NII-4 band operations from a tower or rooftop alongside a roadway could cause harmful interference to ITS receivers.

40. For outdoor operation of U-NII-4 access point device after ITS operations move out of the U-NII-4 band, we propose a radiated power of 23 dBm/MHz or 36 dBm radiated power for all bandwidths. When combined with U-NII-3-band spectrum, outdoor access point EIRP can scale to 36 dBm for 40, 80, and 160 megahertz channels. We agree with the Wi-Fi Alliance that permitting U-NII-4 devices to operate at the same power levels as U-NII-3 devices is essential to achieving the full benefits of the U-NII-4 band and maximizing the utility of both bands while protecting incumbent operations in the U-NII-4 band from harmful interference. Allowing outdoor U-NII-4 devices to operate at the full power level permitted for U-NII-3 devices will enable the use of wider channels, promote equipment commonality, reduce costs and complexity, and facilitate broadband deployments in rural areas, including both outdoor point-to-point operations and point-to-multipoint operations. However, to avoid the need for much larger unlicensed exclusion zones where unlicensed operations would be prohibited in order to protect federal radar operations from harmful

interference, we propose not to adopt the U-NII-3 point-to-point power limits in the U-NII-4 rules. We also propose that client devices be permitted to operate in the 5.850–5.895 GHz band at power levels that are 6 dB lower than those permitted for outdoor access point devices. We seek comment on these proposals.

41. *OOBE Limits.* In the 5.9 GHz NPRM, the Commission proposed that U-NII-4 devices, or devices that operate across a single channel that spans the U-NII-3 and U-NII-4 bands, meet the same OOBE limits as U-NII-3 devices at the upper and lower edges of those bands with no limit at the U-NII-3/U-NII-4 band edge. Proponents of ITS suggest that U-NII-4 devices, or devices that operate across a single channel that spans the U-NII-3 and U-NII-4 bands, meet OOBE limits that are much more restrictive than the existing U-NII-3 OOBE limits to protect adjacent-band ITS operations. Under GM's suggestion (–27 dBm/MHz at or above 5.905 GHz), U-NII-4 devices' OOBE would need to be 15 dB lower than the OOBE limit (–12 dBm/MHz) for a U-NII-3 device at the same frequency; under the suggestion from Car 2 Car, IEEE 1609 Working Group, US Technical Advisory Group, and Volkswagen (–40 dBm/MHz at 10 megahertz above the band edge), U-NII-4 devices' OOBE would need to be approximately 28 dB lower than the OOBE limit (–12 dBm/MHz) for a U-NII-3 device at the same frequency.

42. Proponents of unlicensed operations suggest more relaxed OOBE limits for outdoor unlicensed operations in the U-NII-4 band than proposed in the 5.9 GHz NPRM. WISPA submits that outdoor U-NII-4 operations' OOBE be limited to –5 dBm/MHz at or above 5.895 GHz. Broadcom, CableLabs, Facebook, and NCTA together suggest that OOBE for outdoor U-NII-4 operations be limited to 7 dBm/MHz at 5.895 GHz, decreasing linearly to –9 dBm/MHz at 5.925 GHz, measured using the root mean square (RMS) method (agreed to by 5GAA for the top of the 5.9 GHz band), to address concerns raised by ITS stakeholders. They claim that –9 dBm at 5.925 GHz will provide more than adequate protection for adjacent ITS operations and is consistent with the roll-off of the IEEE 802.11ac and 802.11ax emissions masks. They also assert that this limit would allow 5.9 GHz-capable Wi-Fi devices to deliver sufficient power and throughput to consumers to enable the wide range of use cases—including enhanced in-home Wi-Fi speeds and coverage to support remote learning, telemedicine, and other high-bandwidth

applications, as well as more accessible large-scale connectivity to support smart city and agricultural applications in communities across the country—that make the 5.9 GHz band a unique opportunity; too restrictive an OOBE limit would make these kinds of use cases impossible.

43. The Wi-Fi Alliance recommends a more nuanced approach based on a the –27 dBm/MHz limit at or above 5.925 GHz that the Commission has effectively applied to U-NII-3 transmissions to protect ITS operations. Specifically, for outdoor U-NII-4 band devices, Wi-Fi Alliance proposes OOBE limits that mirror the existing limits for U-NII-3 devices at and above 5.895 GHz (*i.e.*, –5 dBm/MHz at 5.895 GHz, decreasing linearly to –27 dBm/MHz at 5.925 GHz). The Wi-Fi Alliance asserts that these U-NII-3 OOBE limits have proven to be effective in protecting ITS; there is no basis for imposing more stringent OOBE limits on operations in the U-NII-4 band since the Commission has already affirmed that the U-NII-3 OOBE limits afford sufficient protection to DSRC systems and C-V2X operations do not require greater protection than DSRC operations. The Wi-Fi Alliance argues that the Commission should reject arguments for more restrictive OOBE limits because imposing prohibitively burdensome and unnecessary band coexistence measures on U-NII-4 devices would preclude commercial viability of this band and defeat the objective of making additional spectrum available for unlicensed operations. The Wi-Fi Alliance also supports applying the existing U-NII-3 OOBE limits at the lower edge of the U-NII-3 band for outdoor U-NII-4 devices, or devices that operate across a single channel that spans the U-NII-3 and U-NII-4 bands, *i.e.*, at 5.725 GHz, while not imposing any OOBE limit for U-NII-4 devices at the U-NII-3/U-NII-4 band edge (*i.e.*, at 5.850 GHz).

44. For outdoor U-NII-4 access point devices or outdoor access point devices that operate across a single channel that spans the U-NII-3 and U-NII-4 bands, we propose the outdoor U-NII-4 OOBE limits recommended by the Wi-Fi Alliance of –5 dBm/MHz at 5.895 GHz, decreasing linearly to –27 dBm/MHz at 5.925 GHz, measured using an RMS measurement. We are not convinced that the more relaxed OOBE limits suggested by unlicensed proponents would adequately protect ITS operations from harmful interference since they are less restrictive than existing U-NII-3 OOBE limits. We are also not convinced that the more stringent OOBE limits suggested by ITS

proponents are necessary to protect adjacent-band ITS operations since they are more restrictive than the existing U-NII-3 OOBE limits, which the Commission previously affirmed would protect DSRC operations and have already proven to be effective in protecting ITS operations from harmful interference. We also propose to apply the existing U-NII-3 OOBE limits at the lower edge of the U-NII-3 band for outdoor U-NII-4 devices, or devices that operate across a single channel that spans the U-NII-3 and U-NII-4 bands, *i.e.*, at 5.725 GHz, while not imposing any OOBE limits for U-NII-4 devices at the U-NII-3/U-NII-4 band edge, *i.e.*, at 5.850 GHz. We believe that these limits will protect adjacent-band ITS operations from harmful interference due to unlicensed operations in the U-NII-4 band, support separate U-NII-3 and U-NII-4 bands to provide flexibility for designing U-NII-3 equipment under the less stringent OOBE rules at the upper edge of the band, and provide flexibility for devices to operate across the U-NII-3 and U-NII-4 bands using the widest channel bandwidths permitted under the IEEE 802.11 standard. We seek comment on these proposals.

45. *Protection of Fixed-Satellite Service Operations.* In the *First Report and Order* in this proceeding, we declined to adopt SES Americom's and Intelsat's suggestion to establish a maximum permissible aggregate power limit for U-NII-4 band unlicensed devices' operations that would be monitored and controlled by an Automatic Frequency Coordination (AFC) system to help protect FSS operations. However, as a precautionary measure to further protect FSS operations from harmful interference, we propose to require U-NII-4 band outdoor access points to limit the maximum EIRP above a 30 degree elevation angle to 21 dBm, which is similar to what the Commission already requires in the U-NII-1, U-NII-5, and U-NII-7 bands to protect FSS operations. This skyward restriction should address SES Americom's and Intelsat's concerns about potential aggregate interference from U-NII-4 band unlicensed operations. Since we do not expect outdoor access points to radiate significant power skyward, we do not believe this requirement will impose a burden on or affect the utility of outdoor access point users.

46. We do not find it necessary to propose to restrict the power radiated upward from U-NII-4 client devices as we propose to require for outdoor access points. We believe it is unlikely that relatively low-power unlicensed devices

will cause harmful interference to receivers on geostationary satellites approximately 35,800 km above the equator and seek comment. We propose to limit upward power from outdoor U–NII–4 access points merely as a precautionary measure, as they are more likely to operate with higher power. While client devices can operate with an EIRP as high as 30 dBm (6 dB lower than access points' maximum allowed power), we find that they are less likely to cause interference to satellite receivers than similarly powered outdoor access points due to the nature of their operation. We expect them to generally operate at much lower power levels to maximize battery life and comply with radiofrequency (RF) exposure limits. In addition, client devices communicate with access points in an asymmetric nature, in that relatively little data is transmitted in the uplink direction (*i.e.* from the client device) as compared to the downlink direction where any single access point may be serving many client devices. Moreover, client devices typically operate with omnidirectional antennas at low antenna heights and in a mobile or portable mode (*i.e.*, not installed in permanent outdoor locations). Thus, we expect that upwardly directed client device emissions will often be at low power levels and shielded to some extent by buildings, foliage, or other obstructions. We seek comment on these proposals and conclusions.

47. *Increased Transmit Power for Indoor U–NII–4 Access Points.* In the *First Report and Order*, we adopt a 20 dBm/MHz limit for indoor U–NII–4 access points, largely to protect co-channel ITS incumbent operations. We propose that indoor U–NII–4 devices be permitted to increase power to 23 dBm/MHz or 36 dBm radiated power for all bandwidths upon the later of one year following the effective date of the *First Report and Order* (*i.e.*, the date by when ITS operations must transition out of the 5.850–5.895 GHz band) or the effective date of a *Second Report and Order* adopting these proposed power increases. We seek comment on this proposal. We note that these proposed limits are consistent with NTIA's radiolocation protection analysis. In making this proposal, we do not propose to change any other aspect of indoor U–NII–4 devices; they would still be required to incorporate all the mitigation features we adopted in the *First Report and Order*, including the requirement to obtain power from a wired connection, a prohibition on weatherized enclosures and a requirement for an integrated antenna.

Client devices would be limited to power levels 6 dB below the power limits for access points.

48. *U–NII–4 Client to Client Communications.* The rules adopted in the *First Report and Order* prohibit U–NII–4 client-to-client communications to protect co-channel incumbent ITS operations and federal radiolocation stations. But only the federal radiolocation stations will require protection after ITS operations transition out of the 5.850–5.895 GHz band. We seek comment on whether we can remove the client-to-client communications prohibition upon the later of one year following the effective date of the *First Report and Order* (*i.e.*, the date by when ITS operations must transition out of the 5.850–5.895 GHz band) or the effective date of a *Second Report and Order* eliminating the prohibition. As an initial matter, we note that NTIA's analysis for protecting these 30 radiolocation sites concludes that C–V2X OBUs can operate throughout the U.S. with no limitation. That analysis assumed that such OBUs operate with power levels up to 17 dBm/20 MHz or 50 mW. The equivalent power for wider channels is 20 dBm/40 MHz (100 mW), 23 dBm/80 MHz (200 mW) and 26 dBm/160 MHz (400 mW). Our proposal for C–V2X OBUs would limit power to no more than 23 dBm EIRP. We therefore seek comment on whether we can allow U–NII–4 client-to-client device communications at that same 23 dBm EIRP power level. Such communications could enable innovative new virtual reality or augmented reality applications in much the way similar applications have been envisioned under the Commission's proposals for ubiquitous operation of very low power devices in the 6 GHz U–NII bands.

49. Although U–NII–4 devices would not necessarily be in moving vehicles like C–V2X OBUs, would their operations still be functionally similar to such operations so as to allow the same power levels and still protect federal radiolocation operations? If concerns regarding potential harmful interference to federal operations persists, are there measures we could take to enable U–NII–4 client-to-client communications in areas outside the exclusion zones or with lower power within the exclusion zones? For example, because client devices are often smart phones with embedded geolocation technology, could an app or database connection or other mitigation method be used to control power or avoid certain areas where the potential for causing harmful interference is the greatest? We also note that 5GAA

requests that we permit OBUs to transmit with as much as 33 dBm EIRP. How would OBUs at higher power levels affect the ability to permit client-to-client communications? 5GAA also states that U–NII–4 client-to-client operations could reduce the effectiveness of adjacent band C–V2X safety services. We seek comment on whether we can permit client-to-client communication and under what conditions. Commenters should provide technical and operations details as to how devices operating in a client to client mode would avoid causing harmful interference to co-channel federal radiolocation operations as well as to adjacent band C–V2X safety services.

C. Other Spectrum for ITS

50. As discussed in the *First Report and Order*, the record supports 30 megahertz of spectrum as sufficient to provide basic safety functions of ITS currently deployed and under consideration in the near future. Commenters have suggested, however, that additional spectrum may be needed either to support simultaneous deployment of 4G and 5G–NR C–V2X service or to support other advanced capabilities beyond the basic safety messages currently available.

51. We seek comment on whether, notwithstanding our determination that current safety-of-life services can continue to operate using 30 megahertz of spectrum, we should consider allocating additional spectrum for ITS applications. For what purposes would additional spectrum be needed? We note that the record evidence indicates that several categories of transportation-related communications and other ITS applications are currently being met through spectrum outside of the 5.9 GHz band. For example, capabilities like blind spot detection, lane-keep assist, and features that do not operate in the 5.9 GHz band, which provide substantial automotive and vehicular safety functions. Panasonic in its comments states that technologies like LiDAR, 76–81 GHz band radar, or other line-of-sight sensors can support advance driver assistance systems (*e.g.* automatic emergency braking or lane-keeping). To the extent some ITS applications (or their functional equivalent) are currently being provided using alternative spectrum bands, commenters should explain with specificity why existing spectrum resources are inadequate and what specific safety benefits would result from making additional spectrum available for such services.

52. Panasonic suggests that harnessing the advantages of fully automated transportation requires cooperation between different vehicles with different levels of automation and the transportation infrastructure. Similarly, the U.S. DOT stated that in-vehicle sensors are susceptible to “blind spots” when they are operating outside of line-of-sight scenarios. U.S. DOT claims that the combination of sensors and V2X, with access to dedicated spectrum, will best provide enhancements to driver safety and will support automated driving behavior in the future.

53. We have already recognized that C-V2X is the preferred choice for deployment in the upper 30 megahertz portion of the band. How, in particular, would additional spectrum be used to leverage this technology and aid in its deployment? Should we determine that additional spectrum is needed to provide advanced ITS applications, what spectrum band(s) should we consider? Open Technology Institute and Public Knowledge have mentioned the 3450–3550 MHz band. Other commenters, like Dynamic Spectrum Alliance and NCTA, proposed allowing C-V2X to operate in the 4.9 GHz band. Other commenters provided similar views. In the intervening period since adoption of the 5.9 GHz NPRM, however, the Commission has adopted rule changes for the 4.9 GHz band to allow for non-public safety operation and leasing arrangements and has proposed allocating the 3.45–3.55 GHz band for flexible-use service. We also note that that commenters have mentioned a “clean sheet” approach when considering the best spectrum band in which to locate the proposed C-V2X operations. Others mention allowing ITS to use flexible use licensed or unlicensed spectrum in the way other technologies do. Commenters addressing this issue should provide specific information regarding spectrum bands that could support ITS operations, the types of applications or services they envision for that particular band and how C-V2X could coexist with existing spectrum users in that band(s). We also note that the commenters should consider the propagation characteristics of the spectrum they identify relative to the technology needs of ITS services (e.g. low latency, reliability, non-line of sight communications, processing capabilities, international trends, and relevant standards-setting factors). Are there other rule changes we could make to enable vehicular safety-related applications in other bands on a shared basis?

III. Incorporation by Reference

54. Sections 90.375, 90.379, and 95.3189 of the proposed rules provide that C-V2X Roadside Units (RSUs) and C-V2X On-Board Unit (OBU) transmitter types operating in the 5895–5925 MHz band must comply with the technical standard 3rd Generation Partnership Project Technical Specification Group Services and System Aspects (3GPP) Release 14. The OFR has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that, for a proposed rule, agencies must discuss in the preamble to the proposed rule the way in which materials that the agency incorporates by reference are reasonably available to interested parties, and how interested parties can obtain the materials. Additionally, the preamble to the proposed rule must summarize the material. 1 CFR 51.5(a).

55. In accordance with the OFR’s requirements, the discussion in section II.A. of this preamble summarizes the provisions of 3GPP Release 14. Interested persons may obtain a copy of 3GPP Release 14 through 3GPP’s website at the address provided in §§ 90.395 and 95.3189 the rule. A copy of the standard may also be inspected at the FCC’s main office.

IV. Initial Regulatory Flexibility Analysis

56. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Further Notice*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice* provided in the item.

A. Need for, and Objectives of, the Proposed Rules

57. In this *Further Notice*, we propose to resolve the timing, procedures, and technical parameters associated with the transition of the updated 5.9 GHz band plan. Specifically, the *Further Notice* proposes to allow full-power outdoor unlicensed operations across the 5.850–5.895 GHz band once ITS operations have exited this portion of the band and subject to any further necessary protections for federal operations in this spectrum. The draft also seeks to establish power and emissions limits and other rules related to outdoor unlicensed operations in the lower 45

megahertz of the band. The draft would address transitioning all ITS operations in the revised ITS band at 5.895–5.925 GHz to C-V2X-based technology, including the appropriate timeline for implementation, and the codification of C-V2X technical parameters for operation in the 5.895–5.925 GHz band. The *Further Notice* would also seek comment on whether the Commission should consider allocating additional spectrum for ITS applications in the future.

B. Legal Basis

58. The proposed action is taken authority found in sections 1, 4(i), 301, 302, 303, 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 302, 303, 309, 316, and 332, and section 1.411 of the Commission’s Rules, 47 CFR 1.411.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

59. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

60. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

61. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise

which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

62. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category. Of the 90,075 local governmental jurisdictions, there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000, and 12,040 special purpose governments—-independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

63. *Radio Frequency Equipment Manufacturers (RF Manufacturers)*. Neither the Commission nor the SBA has developed a small business size standard applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). There are several analogous SBA small entity categories applicable to RF Manufacturers—Fixed Microwave Services, Other Communications Equipment Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these small entity categories and the small business size standards under the SBA rules are detailed below.

64. *Fixed Microwave Services*. Microwave services include common carrier, private-operational fixed, and

broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. A review of the Commission’s Universal Licensing System in 2015, found approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

65. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. We note, however, that the microwave fixed licensee category includes some large entities.

66. *Other Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems

manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. U.S. Census Bureau data for 2012 show that 383 establishments operated in that year. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

67. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

68. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

69. *Automobile Manufacturing.* This U.S. industry comprises establishments primarily engaged in (1) manufacturing complete automobiles (*i.e.*, body and chassis or unibody) or (2) manufacturing automobile chassis only. The SBA has established a size standard for this industry, which is 1,500 employees or less. 2012 U.S. Census Bureau data indicate that 185 establishments operated in this industry that year. Of this number, 162 establishments had employment of fewer than 1,000 employees, and 11 establishments had employment of 1,000 to 2,499 employees. Therefore, the Commission estimates that the majority of manufacturers in this industry are small entities.

70. *Internet Service Providers (Non-Broadband).* Internet access service providers such as Dial-up internet service providers, VoIP service providers using client-supplied telecommunications connections and internet service providers using client-supplied telecommunications connections (*e.g.*, dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Consequently, under this size standard a majority of firms in this industry can be considered small.

71. *Internet Service Providers (Broadband).* Broadband internet service providers include wired (*e.g.*, cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard

the majority of firms in this industry can be considered small.

72. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but five cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

73. *Intelligent Transportation System (ITS).* The Commission’s own data—available in its Universal Licensing System—indicate that, as of October 26, 2020, there are 124 active ITS licenses in the Commission’s database that will be affected by our actions. An authorization to operate in the ITS service may be obtained by any territory, possession, state, city, county, town, or similar governmental entity, and any public safety or industrial/business entity meeting the pertinent eligibility requirements. Prior to operation, applicants are issued a non-exclusive, geographic area license: governmental entities are authorized based on that entity’s legal jurisdictional area of operations; and non-governmental entities are licensed based on each applicant’s area of operation (*i.e.*, by county, state, multi-state, or nationwide). 91 licensees are considered “public safety eligible” with the remaining 33 qualified under the Industrial/Business Pool requirements. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

74. The *Further Notice* proposes rules that will affect reporting and other compliance requirements.

75. The *Further Notice* proposes to resolve the timing, procedures, and technical parameters associated with the transition of the updated 5.9 GHz band plan. Specifically, the *Further Notice* proposes to allow full-power outdoor unlicensed operations across the 5.850–5.895 GHz band once ITS operations have exited this portion of the band and subject to any further necessary protections for federal operations in this spectrum. The *Further Notice* also seeks to establish power and emissions limits and other rules related to outdoor unlicensed operations in the lower 45 megahertz of the band. The *Further Notice* addresses transitioning all ITS operations in the revised ITS band at 5.895–5.925 GHz to C-V2X-based technology, including the appropriate timeline for implementation, and the codification of C-V2X technical parameters for operation in the 5.895–5.925 GHz band. The *Further Notice* also seeks comment on whether the Commission should consider allocating additional spectrum for ITS applications in the future.

76. This transition will require the Commission, licensees, and manufacturers to take certain actions, such as designing and operating unlicensed devices and C-V2X equipment per the Commission’s revised rules.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

77. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

78. The proposals that would require equipment modification or new equipment manufacturing would have an impact on equipment manufacturers, some of which may be small entities.

Though we believe that our proposed technical rules for U–NII devices and ITS equipment would provide appropriate rules for this band, we seek comment on alternatives that are based on the existing rules or some other regulatory scheme, with regard to, *e.g.*, power limits and OOB limits.

79. The regulatory burdens we have proposed are necessary in order to ensure that the public receives the benefits of innovative services and technologies in a prompt and efficient manner and apply equally to large and small entities, thus without differential impact. We seek comment on any alternatives, and whether the pros and cons of leaving these choices to the industry will assist in reaching the best outcomes. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

80. None.

List of Subjects

Communications equipment,
Incorporation by reference, Radio.
Federal Communications Commission.
Marlene Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 15, 90, and 95 as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 2. Amend § 15.407 by revising paragraphs (a)(3) and (b)(5) to read as follows:

§ 15.407 General technical requirements.

* * * * *

(a) * * *

(3) For the band 5.725–5.895 GHz:

(i) For the band 5.725–5.850 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W. In addition, the maximum power spectral density shall not exceed 30 dBm in any 500-kHz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi. However, fixed point-to-point U–NII devices operating in this band may employ transmitting antennas with directional gain greater than 6 dBi without any corresponding reduction in transmitter conducted power. Fixed, point-to-point operations exclude the use of point-to-multipoint systems, omnidirectional applications, and multiple collocated transmitters transmitting the same information. The operator of the U–NII device, or if the equipment is professionally installed, the installer, is responsible for ensuring that systems employing high gain directional antennas are used exclusively for fixed, point-to-point operations.

(ii) For an indoor access point operating in the 5.850–5.895 GHz band, the maximum power spectral density must not exceed 23 dBm e.i.r.p. in any 1-megahertz band. In addition, the maximum e.i.r.p. over the frequency band of operation must not exceed 36 dBm. Indoor access points operating on a channel that spans the 5.725–5.850 GHz and 5.850–5.895 GHz bands must not exceed an e.i.r.p. of 36 dBm.

(iii) For client devices operating under the control of an indoor access point in the 5.850–5.895 GHz band, the maximum power spectral density must not exceed 17 dBm e.i.r.p. in any 1-megahertz band, and the maximum e.i.r.p. over the frequency band of operation must not exceed 30 dBm. Client devices operating on a channel that spans the 5.725–5.850 GHz and 5.850–5.895 GHz bands must not exceed an e.i.r.p. of 30 dBm.

(iv) For a subordinate device operating under the control of an indoor access point in the 5.850–5.895 GHz

band, the maximum power spectral density must not exceed 23 dBm e.i.r.p. in any 1-megahertz band, and the maximum e.i.r.p. over the frequency band of operation must not exceed 36 dBm.

(v) For an outdoor access point operating in the 5.850–5.895 GHz band, the maximum power spectral density must not exceed 23 dBm e.i.r.p. in any 1-megahertz band. In addition, the maximum e.i.r.p. over the frequency band of operation must not exceed 36 dBm. Outdoor access points must limit their maximum e.i.r.p. at any elevation angle above 30 degrees as measured from the horizon to 21 dBm (125 mW) to protect fixed satellite services. Outdoor access points operating on a channel that spans the 5.725–5.850 GHz and 5.850–5.895 GHz bands must not exceed an e.i.r.p. of 36 dBm.

(vi) In the 5.850–5.895 GHz band, client devices must operate under the control of an indoor access point. In all cases, an exception exists for transmitting brief messages to an access point when attempting to join its network after detecting a signal that confirms that an access point is operating on a particular channel. Access points may connect to other access points.

(vii) For client devices operating under the control of an outdoor access point in the 5.850–5.895 GHz band, the maximum power spectral density e.i.r.p. must not exceed 17 dBm in any 1-megahertz band, and the maximum e.i.r.p. over the frequency band of operation must not exceed 30 dBm. Client devices operating on a channel that spans the 5.725–5.850 GHz and 5.850–5.895 GHz bands must not exceed an e.i.r.p. of 30 dBm.

(viii) Operation of outdoor U–NII devices in the 5.850–5.895 GHz band within the exclusion zones listed in the table below, to which NTIA may amend, modify, or revoke locations and associated parameters, is not permitted. The outdoor U–NII exclusion zones for each federal facility location are characterized by a center point (latitude/longitude) and radius (to define a circular area) to facilitate the regulator process of coordination.

TABLE 1 TO PARAGRAPH (a)(3)—EXCLUSION ZONES

Facility name	Latitude DD-MM-SS North	Longitude DD-MM-SS West	Exclusion zone radius (km)
Anclote, Florida	28–11–18	82–47–40	54
Cape Canaveral, Florida	28–28–54	80–34–35	53
Cape San Blas, Florida	29–40–31	85–20–48	55
Carabelle Field, Florida	29–50–38	84–39–46	54
Charleston, South Carolina	32–51–48	79–57–48	55

TABLE 1 TO PARAGRAPH (a)(3)—EXCLUSION ZONES—Continued

Facility name	Latitude DD-MM-SS North	Longitude DD-MM-SS West	Exclusion zone radius (km)
Edwards, California	34–56–43	117–54–50	51
Eglin, Florida	30–37–51	86–24–16	116
Fort Walton Beach, Florida	30–24–53	86–39–58	56
Kennedy Space Center, Florida	28–25–29	80–39–51	98
Key West, Florida	24–33–09	81–48–28	54
Kirtland AFB, New Mexico	34–59–51	106–28–54	15
Koikepark, Hawaii	22–07–35	159–40–06	49
MacDill, Florida	27–50–37	82–30–04	58
NV Test Training Range, Nevada	37–18–27	116–10–24	184
Patuxent River, Maryland	38–16–55	76–25–12	7
Pearl Harbor, Hawaii	21–21–17	157–57–51	55
Pillar Point, California	37–29–52	122–29–59	10
Poker Flat, Alaska	65–07–36	147–29–21	58
Port Canaveral, Florida	28–24–42	80–36–17	54
Port Hueneme, California	34–08–60	119–12–24	54
Point Mugu, California	34–07–17	119–9–01	81
Saddlebunch Keys, Florida	24–38–51	81–36–22	54
San Diego, California	32–43–00	117–11–00	54
San Nicolas Island, California	33–14–47	119–31–07	166
Tonopah Test Range, Nevada	37–44–00	116–43–00	48
Vandenberg, California	34–34–58	120–33–42	74
Venice, Florida	27–04–37	82–27–03	54
Wallops Island, Virginia	37–51–23	75–30–41	68
White Sands Missile Range, New Mexico	32–58–26	106–23–43	160
Yuma, Arizona	32–54–03	114–23–10	49

Note 1 to paragraph (a)(3): The Commission strongly recommends that parties employing U–NII devices to provide critical communications services should determine if there are any nearby Government radar systems that could affect their operation.

* * * * *

(b) * * *

(5) For transmitters operating solely in the 5.850–5.895 GHz band or operating on a channel that spans across 5.725–5.895 GHz:

(i) For an indoor access point or subordinate device, all emissions at or above 5.895 GHz shall not exceed an e.i.r.p. of 15 dBm/MHz and shall decrease linearly to an e.i.r.p. of –7 dBm/MHz at or above 5.925 GHz.

(ii) For a client device or an outdoor access point, all emissions at or above 5.895 GHz shall not exceed an e.i.r.p. of –5 dBm/MHz and shall decrease linearly to an e.i.r.p. of –27 dBm/MHz at or above 5.925 GHz.

(iii) All emissions below 5.725 GHz shall not exceed an e.i.r.p. of –27 dBm/MHz at 5.65 GHz increasing linearly to 10 dBm/MHz at 5.7 GHz, and from 5.7 GHz increasing linearly to a level of 15.6 dBm/MHz at 5.72 GHz, and from 5.72 GHz increasing linearly to a level of 27 dBm/MHz at 5.725 GHz.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 3. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Subpart A—General Information

■ 4. Amend § 90.7 by removing the definition of “Dedicated Short Range Communication Service (DSRCS),” adding a definition for “Cellular Vehicle to Everything Service (CV2X)” in alphabetical order, and revising the definitions of “On-Board unit (OBU),” “Roadside unit (RSU),” and “Roadway bed surface”.

The addition and revisions read as follows:

§ 90.7 Definitions.

* * * * *

Cellular Vehicle to Everything Service (C–V2X). The use of cellular radio techniques defined by the 3rd Generation Partnership Program (3GPP) to transfer data between roadside and mobile units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety, and other intelligent transportation service applications in a variety of environments. C–V2X systems may also transmit status and

instructional messages related to the units involved.

* * * * *

On-Board Unit (OBU). An On-Board Unit is a C–V2X transceiver that is normally mounted in or on a vehicle, or which in some instances may be a portable unit. An OBU can be operational while a vehicle or person is either mobile or stationary. The OBUs receive and transmit on one or more radio frequency (RF) channels. Except where specifically excluded, OBU operation is permitted wherever vehicle operation or human passage is permitted. The OBUs mounted in vehicles are licensed by rule under part 95 of this chapter and communicate with Roadside Units (RSUs) and other OBUs. Portable OBUs are also licensed by rule under part 95 of this chapter.

Roadside Unit (RSU). A Roadside Unit is a C–V2X transceiver that is mounted along a road or pedestrian passageway. An RSU may also be mounted on a vehicle or is hand carried, but it may only operate when the vehicle or hand-carried unit is stationary. Furthermore, an RSU operating under this part is restricted to the location where it is licensed to operate. However, portable or hand-held RSUs are permitted to operate where they do not interfere with a site-licensed operation. An RSU broadcasts data to or exchanges data with OBUs.

Roadway bed surface. For C-V2X, the road surface at ground level.

* * * * *

Subpart H—Policies Governing the Assignment of Frequencies

- 5. Amend § 90.175 by revising paragraph (j)(16) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(j) * * *

(16) Applications for C-V2X licenses (as well as registrations for Roadside Units) under subpart M of this part in the 5895–5925 GHz band.

* * * * *

- 6. Amend § 90.179 by revising paragraph (f) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(f) Above 800 MHz, shared use on a for-profit private carrier basis is permitted only by SMR, Private Carrier Paging, LMS, and C-V2X licensees. See subparts M, P, and S of this part.

* * * * *

Subpart I—General Technical Standards

- 7. In § 90.210, amend Table 1 by removing the entry for “5850–5925” and adding an entry for “5895–5925” in its place and revising footnote 4 to read as follows:

§ 90.210 Emission masks.

* * * * *

Applicable emission masks frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* * *	* * *	* * *
5895–5925 ⁴		
* * *	* * *	* * *

⁴ CV2X Service Roadside Units equipment in the 5895–5925 MHz band is governed under subpart M of this part.

* * * * *

- 8. In § 90.213(a), revise footnote 10 in Table 1 to read as follows:

§ 90.213 Frequency stability.

(a) * * *

¹⁰ Frequency stability for C-V2X Service equipment in the 5895–5925 MHz band is specified in subpart M of this part. For all other equipment, frequency stability is to be specified in the station authorization.

* * * * *

Subpart M—Intelligent Transportation Systems Radio Service

- 9. Revise § 90.350 to read as follows:

§ 90.350 Scope.

The Intelligent Transportation Systems (ITS) radio service is for the purpose of integrating radio-based technologies into the nation’s transportation infrastructure and to develop and implement the nation’s intelligent transportation systems. It includes the Location and Monitoring Service (LMS) and the Cellular Vehicle to Everything Service (C-V2X). Rules as to eligibility for licensing, frequencies available, and any special requirements for services in the Intelligent Transportation Systems radio service are set forth in this subpart.

- 10. Amend subpart M by revising the undesignated center heading above § 90.370 to read as follows:

* * * * *

Regulations Governing the Licensing and Use of Frequencies in the 5895–5925 MHz Band for Cellular Vehicle to Everything (C-V2X) Service

* * * * *

- 11. Amend § 90.370 by revising paragraph (a) to read as follows:

§ 90.370 Permitted frequencies.

(a) C-V2X Roadside Units (RSUs) are permitted to operate in the 5895–5925 MHz band.

* * * * *

- 12. Revise § 90.371 to read as follows:

§ 90.371 C-V2X.

(a) C-V2X Roadside Units (RSUs) operating in the band 5895–5925 MHz shall not receive protection from Government Radiolocation services in operation prior to the establishment of the RSU. Operation of RSU stations within the zones listed in the table below, to which NTIA may amend, modify, or revoke locations and associated parameters, must be coordinated through the National Telecommunications and Information Administration.

(b) C-V2X Roadside Units (RSUs) operating in the band 5895–5925 MHz shall not receive protection from Government Radiolocation services in operation prior to the establishment of the C-V2X station. Operation of C-V2X RSU stations within the radius centered on the locations listed in the table below, to which NTIA may amend, modify, or revoke locations and associated parameters, must be coordinated through the National Telecommunications and Information Administration.

- 13. Amend § 90.373 by revising the section heading and the introductory text to read as follows:

§ 90.373 Eligibility in C-V2X.

The following entities are eligible to hold an authorization to operate Roadside Units in C-V2X:

* * * * *

- 14. Revise § 90.375 to read as follows:

§ 90.375 License areas, communication zones, and registrations.

(a) Roadside Units (RSUs) in the 5895–5925 MHz band are licensed on the basis of non-exclusive geographic areas. Governmental applicants will be issued a geographic area license based on the geo-political area encompassing the legal jurisdiction of the entity. All other applicants will be issued a geographic area license for their proposed area of operation based on county(s), state(s) or nationwide.

(b) Applicants who are approved in accordance with FCC Form 601 will be granted non-exclusive licenses for the channel(s) corresponding to their intended operations (see § 90.370). Such licenses serve as a prerequisite of registering individual RSUs located within the licensed geographic area described in paragraph (a) of this section. Licensees must register each RSU in the Universal Licensing System (ULS) before operating such RSU. RSU registrations are subject, inter alia, to the requirements of § 1.923 of this chapter as applicable (antenna structure registration, environmental concerns, international coordination, and quiet zones). Additionally, RSUs at locations subject to NTIA coordination (see § 90.371(a)) may not begin operation until NTIA approval is received. Registrations are not effective until the Commission posts them on the ULS. It is the licensee’s responsibility to delete from the registration database any RSUs that have been discontinued.

(c) Licensees must operate each RSU in accordance with the Commission’s rules and the registration data posted on the ULS for such RSU. Licensees must register each RSU for the smallest communication zone needed for the intelligent transportation systems application using one of the following four communication zones:

TABLE 1 TO PARAGRAPH (c)—
COMMUNICATION ZONES

RSU class	Maximum output power (dBm) ¹	Communications zone (meters)
A	0	15
B	10	100
C	20	400

TABLE 1 TO PARAGRAPH (c)—
COMMUNICATION ZONES—Continued

RSU class	Maximum output power (dBm) ¹	Communications zone (meters)
D	28.8	1000

¹ As described in the ATIS transposed standards of the 3GPP (incorporated by reference, see § 90.395).

■ 15. Revise § 90.377 to read as follows:

§ 90.377 Maximum EIRP and antenna height.

(a) C-V2X Service licensees must transmit only the power (EIRP) needed to communicate with an On-Board Unit (OBU) within the communications zone and must take steps to limit the Roadside Unit (RSU) signal within the zone to the maximum extent practicable.

(b) C-V2X licensees must limit RSU output power to 20 dBm and equivalent isotropically radiated power (EIRP) to 33 dBm. The EIRP is measured as the maximum EIRP toward the horizon or horizontal, whichever is greater, of the gain associated with the main or center of the transmission beam.

(c) The radiation center of an RSU antenna shall not exceed 8 meters above the roadway bed surface, except that an RSU may employ an antenna with a height exceeding 8 meters but not exceeding 15 meters provided the EIRP specified in paragraphs (a) and (b) of this section is reduced by a factor of 20 log(Ht/8) in dB where Ht is the height of the radiation center of the antenna in meters above the roadway bed surface. The RSU antenna height must not exceed 15 meters above the roadway bed surface.

■ 16. Revise § 90.379 to read as follows:

§ 90.379 Technical standards for Roadside Units.

C-V2X Service RSUs operating in the 5895–5925 MHz band shall comply with the V2X sidelink service for this band as described in the ATIS transposed standards of the 3GPP specifications except where these rules and regulations take precedence (incorporated by reference, see § 90.395).

■ 17. Add § 90.381 to read as follows:

§ 90.381 C-V2X emissions limits.

C-V2X Roadside Units (RSUs) must comply with the following out-of-band emissions limits.

(a) Conducted limits measured at the antenna input must not exceed:

(1) –29 dBm/100 kHz at the band edge (The band is defined in § 90.370 of this part);

(2) –35 dBm/100 kHz ± 1 megahertz from the band edge;

(3) –43 dBm/100 kHz ± 10 megahertz from the band edge; and

(4) –53 dBm/100 kHz ± 20 megahertz from the band edge.

(b) Radiated limits: All C-V2X Service RSUs must limit radiated emissions to –25 dBm/100 kHz EIRP or less outside the band edges where the band is defined in § 90.370 of this part.

■ 18. Revise § 90.395 to read as follows:

§ 90.395 Incorporation by reference.

Certain material required in this section is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the address of the FCC's main office indicated in 47 CFR 0.401(a) and is available from the sources indicated in this section. It is also available for inspection 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 www.archives.gov/federal-register/cfr/ibrlocations.html.

(a) 3rd Generation Partnership Project (3GPP), 3GPP Mobile Competence Centre c/o ETSI, 650, route des Lucioles, 06921 Sophia Antipolis Cedex, France, info@3gpp.org <https://www.3gpp.org/3gpp-calendar/44-specifications/releases>.

(1) 3GPP TR 21.914 V14.0.0 (2018–05) 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; Release 14 Description; Summary of Rel-14 Work Items; into §§ 90.375(c), 90.379.

(2) [Reserved]

(b) [Reserved]

Subpart N—Operating Requirements

■ 19. Amend § 90.415 by revising paragraph (b) to read as follows:

* * * * *

(b) Render a communications common carrier service, except for stations in the Public Safety Pool providing communications standby facilities under § 90.20(a)(2)(xi) and stations licensed under this part in the SMR, private carrier paging, Industrial/Business Pool, 220–222 MHz, or C-V2X.

■ 20. Amend § 90.421 by adding paragraph (d) to read as follows:

§ 90.421 Operation of mobile station units not under the control of the licensee.

* * * * *

(d) C-V2X On-Board Units licensed by rule under part 95 of this chapter may communicate with any roadside unit authorized under this part or any licensed commercial mobile radio

service station as defined in part 20 of this chapter.

■ 21. Amend § 90.425 by revising paragraph (d)(10) to read as follows:

§ 90.425 Station identification.

* * * * *

(d) * * *

(10) It is a Roadside Unit (RSU) in a C-V2X system.

PART 95—PERSONAL RADIO SERVICES

■ 22. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 307.

Subpart L—C-V2X Service On-Board Units

■ 23. The heading for subpart L is revised to read as set forth above.

■ 24. Revise § 95.3101 to read as follows:

§ 95.3101 Scope.

This subpart contains rules that apply only to On-Board Units (OBUs) transmitting in the 5895–5925 MHz frequency band in the Cellular Vehicle to Everything Service (C-V2X) (see § 90.371 of this chapter).

■ 25. Amend § 95.3103 by removing the definition of “Dedicated Short-Range Communications Services (DSRCS)”, adding a definition for “Cellular Vehicle to Everything Service (CV2X)” in alphabetical order, and revising the definition of “On-Board Unit (OBU)”.

The additions and revision read as follows:

§ 95.3103 Definitions, OBUs.

Cellular Vehicle to Everything Service (C-V2X). A service providing for data transfer between various mobile and roadside transmitting units for the purposes of improving traffic flow, highway safety and performing other intelligent transportation functions. See § 90.7 of this chapter for a more detailed definition.

On-Board Units (OBUs). OBUs are low-power devices on vehicles that transfer data to roadside units or other OBUs in the Cellular Vehicle to Everything Service (C-V2X) (see §§ 90.370–90.383 of this chapter), to improve traffic flow and safety, and for other intelligent transportation system purposes. See § 90.7 of this chapter.

* * * * *

■ 26. Amend § 95.3161 by revising paragraph (a) to read as follows:

§ 95.3161 OBU transmitter certification.

(a) Each On-Board Unit (OBU) that operates or is intended to operate in C-V2X must be certified in accordance

with this subpart and subpart J of part 2 of this chapter.

* * * * *

■ 27. Revise § 95.3163 to read as follows:

§ 95.3163 OBU frequencies.

C–V2X Service OBUs are permitted to operate in the 5895–5925 MHz band.

■ 28. Revise § 95.3167 to read as follows:

§ 95.3167 OBU transmit power limit.

(a) The maximum equivalent isotropically radiated power (EIRP) for vehicular and portable C–V2X OBU transmitter types is limited to 33 dBm.

(b) The power limit in paragraph (a) of this section may be referenced to the antenna input, so that cable losses are taken into account.

(c) For purposes of this section, a portable unit is a transmitting device designed to be used so that the radiating structure(s) of the device is/are within 20 centimeters of the body of the user.

■ 29. Add § 95.3179 to read as follows:

§ 95.3179 Unwanted emissions limits.

C–V2X On Board Units must comply with the following out-of-band emissions limits.

Conducted limits measured at the antenna input shall not exceed:

(a) – 29 dBm/100 kHz at the band edge (The band is defined in section 95.3163 of this part);

(b) – 35 dBm/100 kHz $\pm$ 1 megahertz from the band edge;

(c) – 43 dBm/100 kHz $\pm$ 10 megahertz from the band edge; and

(d) – 53 dBm/100 kHz $\pm$ 20 megahertz from the band edge.

■ 30. Revise § 95.3189 to read as follows:

§ 95.3189 OBU technical standard.

(a) C–V2X Service OBU transmitter types operating in the 5895–5925 MHz band shall comply with the V2X sidelink service for this band as described in the ATIS transposed standards of the 3GPP specifications except where these rules and regulations take precedence.

(b) 3GPP TR 21.914 V14.0.0 (2018–05) 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; Release 14 Description; Summary of Rel-14 Work Items is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the address of the FCC's main office indicated in 47 CFR 0.401(a) and is available from 3rd Generation Partnership Project (3GPP), 3GPP

Mobile Competence Centre c/o ETSI, 650, route des Lucioles, 06921 Sophia Antipolis Cedex, France, info@3gpp.org, at <https://www.3gpp.org/3gpp-calendar/44-specifications/releases>. It is also available for inspection 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 www.archives.gov/federal-register/cfr/ibrlocations.html.

Appendix A to Part 95—[Amended]

■ 31. Amend the table in appendix A to part 95 by removing the entry of “95.1509—ASTM E221–03 DSRC Standard”.

[FR Doc. 2021–08801 Filed 4–30–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–178; RM–11905; DA 21–460; FR ID 23108]

Television Broadcasting Services New Orleans, Louisiana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) has before it a petition for rulemaking filed by The Greater New Orleans Educational Television Foundation (Petitioner), the licensee of noncommercial educational PBS member station WYES–TV, channel *11, New Orleans, Louisiana. The Petitioner requests the substitution of channel *28 for channel *11 at New Orleans, Louisiana in the DTV Table of Allotments.

DATES: Comments must be filed on or before June 2, 2021 and reply comments on or before June 17, 2021.

ADDRESSES: You may submit comments, identified by MB Docket No. 21–178, by any of the following methods:

- *Federal Communications Commission's Website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process,

see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Margaret L. Miller, Esq., Gray Miller Persh, LLP, 2233 Wisconsin Avenue NW, Washington DC 20007.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 21–178; RM–11905; DA 21–460, adopted and released on April 21, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

In support of its channel substitution request, the Petitioner states that WYES–TV is the only station licensed to New Orleans operating on a VHF channel, and moving to a UHF channel would improve viewers' access to WYES–TV's PBS and other public television programming by improving indoor reception and resolving VHF reception issues. Petitioner further states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, including allowing undesired signals and noise at relatively further distances, and the tendency of nearby electrical devices to emit noise in the VHF band that can cause interference to stations on VHF channels. In addition, the Petitioner submitted an analysis, using the Commission's *TVStudy* software analysis program, demonstrating that it will continue to serve all of the population located within the licensed channel *11 contour.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the internet by

accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622 paragraph (i), amend the Post-Transition Table of DTV Allotments under Louisiana by revising the entry for New Orleans to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community		Channel No.	
*	*	*	*
Louisiana			
*	*	*	*
New Orleans	15, 21, 26,	*28, 29, *	*31,
	36, 43, 50.		
*	*	*	*

[FR Doc. 2021-09030 Filed 4-30-21; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 86, No. 83

Monday, May 3, 2021

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0017]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection required by the Lacey Act for the importation of certain plants and plant products.

DATES: We will consider all comments that we receive on or before July 2, 2021.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Enter APHIS–2021–0017 in the Search field. Select the Documents tab, then select the comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0017, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at www.regulations.gov or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal

reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information concerning the Lacey Act declaration requirements for plants and plant products, contact Ms. Dorothy Wayson, National Policy Manager, Lacey Act Program, APHIS, PPQ, 4700 River Road, 4D–06.31, Riverdale, MD 20737–1231; (301) 851–2036. For more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Lacey Act Declaration Requirement; Plants and Plant Products. *OMB Control Number:* 0579–0349.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Lacey Act, as amended, makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported, or sold in violation of the laws of the United States, a State, an Indian Tribe, or any foreign law that protects plants. The Act also makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act.

In addition, section 3 of the Act makes it unlawful to import certain plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country in which the plant was harvested. For paper and paperboard products with recycled plant content, the importer is not required to specify the species or country of harvest with respect to the recycled plant product component but is required to provide the average percentage of recycled content. If the product also contains non-recycled plant materials, the basic declaration requirements still apply to that component of the product imported.

In addition to the declaration, there is a supplemental form that must be completed if additional space is needed to declare additional plants and plant

products. Also, records of the import declaration and supplemental form must be retained for at least 5 years.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.488 hours per response.

Respondents: Importers of certain plants and plant products.

Estimated annual number of respondents: 24,070.

Estimated annual number of responses per respondent: 41.

Estimated annual number of responses: 986,854.

Estimated total annual burden on respondents: 481,778 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of April 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–09033 Filed 4–30–21; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the Nevada 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 the Nevada Advisory Committee (Committee) will hold a meeting via web conference on Wednesday, June 2, 2021, from 12:00 p.m. to 1:30 p.m. Pacific Time. The purpose of the meeting is to debrief web hearings.

DATES: The meeting will be held on Wednesday, June 2, 2021, from 12:00 p.m. to 1:30 p.m. PT

Webex Information: Register online <https://civilrights.webex.com/meet/afortes>.

Audio: (800) 360-9505.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at afortes@usccr.gov or by phone at (202) 681-0857.

SUPPLEMENTARY INFORMATION: 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 Office within 30 days following the meeting. Written comments may be mailed to Ana Victoria Fortes at afortes@usccr.gov in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office (202) 681-0587.

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/FACA>

PublicViewCommitteeDetails?id=a10t0000001gzlJAAQ.

Please click on the "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. Debrief
- III. Public Comment
- V. Adjournment

Dated: April 28, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-09246 Filed 4-30-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[B-34-2021]

**Foreign-Trade Zone (FTZ) 33—
Pittsburgh, Pennsylvania; Notification
of Proposed Production Activity;
Swagelok Company (Finished Bar
Stock), Koppel, Pennsylvania**

Swagelok Company (Swagelok) submitted a notification of proposed production activity to the FTZ Board for its facility in Koppel, Pennsylvania. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 22, 2021.

The Swagelok facility is located within Subzone 33F. The facility is used for production of finished bar stock from unprocessed bar stock, including annealing, drawing, and cutting-to-size. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Swagelok from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Swagelok would be able to choose the duty rates during customs entry procedures that apply to: Forged non alloy steel bar; bars and rods of iron

or non alloy steel; carbon steel bar stock, forged rods, and cold finished steel bar; circular hot rolled stainless steel; hot formed or extruded hot rolled stainless steel; cold formed stainless steel bar; stainless steel bar stock, circular bars or rods; circular or hex brass bar stock; square copper alloy bar stock; nickel alloy bar stock; and, aluminum bar stock more than 10 mm in diameter (duty rate ranges from duty-free to 5.0%). Swagelok would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Unfinished forged non alloy steel bar; unfinished bars and rods of iron or non alloy steel; unfinished carbon steel bar stock, forged rods, and cold finished steel bar; unfinished circular hot rolled stainless steel; unfinished hot formed or extruded hot rolled stainless steel; unfinished cold formed stainless steel bar; unfinished stainless steel bar stock, circular bars or rods; unfinished circular or hex brass bar stock; unfinished square copper alloy bar stock; unfinished nickel alloy bar stock; and, unfinished aluminum bar stock more than 10 mm in diameter (duty rate ranges from duty-free to 5.0%). The request indicates that some components may be subject to an antidumping/countervailing duty (AD/CVD) order if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign (PF) status (19 CFR 146.41). The request also indicates that certain materials/components are subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in PF status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is June 14, 2021.

A copy of the notification will be available for public inspection in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Juanita Chen at juanita.chen@trade.gov or 202-482-1378.

Dated: April 27, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021-09229 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct

reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for June 2021

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in June 2021 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Cold-Rolled Steel Flat Products from Brazil, A-351-843 (1st Review)	Thomas Martin, (202) 482-3936.
Cold-Rolled Steel Flat Products from China, A-570-029 (1st Review)	Thomas Martin, (202) 482-3936.
Tissue Paper Products from China, A-570-894 (3rd Review)	Mary Kolberg, (202) 482-1785.
Magnesium Metal from China, A-570-896 (3rd Review)	Mary Kolberg, (202) 482-1785.
Corrosion-Resistant Steel Products from China, A-570-026 (1st Review)	Mary Kolberg, (202) 482-1785.
Cold-Rolled Steel Flat Products from India, A-533-865 (1st Review)	Thomas Martin, (202) 482-3936.
Corrosion-Resistant Steel Products from India, A-533-863 (1st Review)	Mary Kolberg, (202) 482-1785.
Corrosion-Resistant Steel Products from Italy, A-475-832 (1st Review)	Mary Kolberg, (202) 482-1785.
Cold-Rolled Steel Flat Products from Japan, A-588-873 (1st Review)	Thomas Martin, (202) 482-3936.
Cold-Rolled Steel Flat Products from Republic of Korea, A-580-881 (1st Review)	Thomas Martin, (202) 482-3936.
Corrosion-Resistant Steel Products from Republic of Korea, A-580-878 (1st Review)	Mary Kolberg, (202) 482-1785.
Corrosion-Resistant Steel Products from Taiwan, A-583-856 (1st Review)	Mary Kolberg, (202) 482-1785.
Cold-Rolled Steel Flat Products from United Kingdom, A-412-824 (1st Review)	Thomas Martin, (202) 482-3936.
Countervailing Duty Proceedings	
Cold-Rolled Steel Flat Products from Brazil, C-351-844 (1st Review)	Mary Kolberg, (202) 482-1785.
Corrosion-Resistant Steel Products from China, C-570-027 (1st Review)	Jacqueline Arrowsmith, (202) 482-5255.
Cold-Rolled Steel Flat Products from China, C-570-030 (1st Review)	Jacqueline Arrowsmith, (202) 482-5255.
Cold-Rolled Steel Flat Products from India, C-533-866 (1st Review)	Thomas Martin, (202) 482-3936.
Corrosion-Resistant Steel Products from India, C-533-864 (1st Review)	Thomas Martin, (202) 482-3936.
Corrosion-Resistant Steel Products from Italy, C-475-833 (1st Review)	Thomas Martin, (202) 482-3936.
Cold-Rolled Steel Flat Products from Republic of Korea, C-580-882 (1st Review)	Jacqueline Arrowsmith, (202) 482-5255.
Corrosion-Resistant Steel Products from Republic of Korea, C-580-879 (1st Review)	Mary Kolberg, (202) 482-1785.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in June 2021.

Commerce's procedures for the conduct of a Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in a Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a

member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹

This notice is not required by statute but is published as a service to the international trading community.

¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Dated: April 9, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021-09231 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of NAFTA Interim Panel Decision and Order in the matter of Large Residential Washers from Mexico:

Final Results of Antidumping Duty Administrative Review (Secretariat File Number: USA-MEX-2019-1904-04).

SUMMARY: On April 26, 2019, the Binational Panel issued its Interim Decision and Order in the matter of Large Residential Washers from Mexico. The Binational Panel affirmed in part and remanded in part the United States Department of Commerce's final determination in the antidumping 2016-2017 administrative review.

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: The Binational Panel ordered that the U.S. Department of Commerce reconsider its decision to reject and remove Electrolux's September 1, 2017, questionnaire responses from the record based on the applicable law, regulations, and facts of the record of this proceeding only, in accordance with the specific instructions as contained in Section IV.D of the Binational Panel's Interim Decision. The U.S. Department of Commerce is to inform the Binational Panel of Commerce's Redetermination on Remand within 90 days of the issuance of the Binational Panel's Interim Decision and Order. The deadline for submission of Commerce's Redetermination on Remand is July 26, 2021. Additionally, the Binational Panel ordered that the U.S. Department of Commerce's holdings with respect to the other issues addressed are affirmed.

Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established NAFTA *Rules of Procedure for Article 1904 Binational Panel Reviews* (Rules) and the NAFTA Panel Decision has been notified in accordance with Rule 70. For the complete Rules, please see https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/nafta-alena-tlcan/rules-reglas-reglas/article-articulo_1904.aspx?lang=eng.

Dated: April 27, 2021.

Paul E. Morris,
U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2021-09199 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 03-3A007]

Export Trade Certificate of Review

ACTION: Notice of Application to Amend the Export Trade Certificate of Review for Great Lakes Fruit Exporters Association, LLC ("GLFEA"), Application No. 03-3A007.

SUMMARY: The Office of Trade and Economic Analysis ("OTEA") of the International Trade Administration, Department of Commerce, has received an application for an amended Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) ("the Act") authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to ETCA@trade.gov. An original and five (5) copies, plus two (2) copies of the

nonconfidential version, should also be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary, for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 03-3A007."

A summary of the application follows.

Summary of the Application

Applicant: Great Lakes Fruit Exporters Association, LLC, 13750 S Sedona Parkway, Suite 3, Lansing, MI 48906.

Contact: Jeffrey S. Donahue, Attorney; Email: jdonahue@whiteschneider.com.

Application No.: 03-3A007.

Date Deemed Submitted: April 22, 2021.

GLFEA seeks to amend its Certificate as follows:

1. Add the following entities as new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

- Applewood Fresh Growers, LLC, Sparta, Michigan
- Michigan Fresh Marketing, LLC, Comstock Park, Michigan

2. Remove the following entities as Members of the Certificate:

- Jack Brown Produce, Inc., Sparta, Michigan
- All Fresh GPS, LLC, Comstock Park, Michigan

GLFEA's proposed amendments would result in the following list of Members under the Certificate:

Applewood Fresh Growers, LLC, Sparta, Michigan
BelleHarvest Sales, Inc., Belding, Michigan
Greenridge Fruit, Inc., Grand Rapids, Michigan
Michigan Fresh Marketing, LLC, Comstock Park, Michigan
North Bay Produce, Inc., Traverse City, Michigan
Riveridge Produce Marketing, Inc., Sparta, Michigan

Dated: April 28, 2021 .

Joseph Flynn,
Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2021-09249 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE**International Trade Administration****Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review**

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

SUPPLEMENTARY INFORMATION:**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below,

Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation

notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes.

Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may

withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.¹ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of May 2021,² interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

¹ See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

² Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period of review
Antidumping Duty Proceedings	
AUSTRIA: Carbon and Alloy Steel Cut-To-Length Plate, A-433-812	5/1/20-4/30/21
BELGIUM:	
Carbon and Alloy Steel Cut-To-Length Plate, A-423-812	5/1/20-4/30/21
Stainless Steel Plate in Coils, A-423-808	5/1/20-4/30/21
BRAZIL: Iron Construction Castings, A-351-503	5/1/20-4/30/21
CANADA:	
Large Diameter Welded Pipe, A-122-863	5/1/20-4/30/21
Polyethylene Terephthalate Resin, A-122-855	5/1/20-4/30/21
FRANCE: Carbon and Alloy Steel Cut-To-Length Plate, A-427-828	5/1/20-4/30/21
GERMANY: Carbon and Alloy Steel Cut-To-Length Plate, A-428-844	5/1/20-4/30/21
GREECE: Large Diameter Welded Pipe, A-484-803	5/1/20-4/30/21
INDIA:	
Certain Welded Carbon Steel Standard Pipes and Tubes, A-533-502	5/1/20-4/30/21
Polyethylene Terephthalate Resin, A-533-861	5/1/20-4/30/21
Silicomanganese, A-533-823	5/1/20-4/30/21
INDONESIA: Polyethylene Retail Carrier Bags, A-560-822	5/1/20-4/30/21
ITALY:	
Carbon and Alloy Steel Cut-To-Length Plate, A-475-834	5/1/20-4/30/21
Carbon and Alloy Steel Wire Rod, A-475-836	5/1/20-4/30/21
JAPAN:	
Carbon and Alloy Steel Cut-To-Length Plate, A-588-875	5/1/20-4/30/21
Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products, A-588-869	5/1/20-4/30/21
Gray Portland Cement and Cement Clinker, A-588-815	5/1/20-4/30/21
KAZAKHSTAN: Silicomanganese, A-834-807	5/1/20-4/30/21
OMAN: Polyethylene Terephthalate Resin, A-523-810	5/1/20-4/30/21
REPUBLIC OF KOREA:	
Carbon and Alloy Steel Cut-To-Length Plate, A-580-887	5/1/20-4/30/21
Carbon and Alloy Steel Wire Rod, A-580-891	5/1/20-4/30/21
Ferrovanadium, A-580-886	5/1/20-4/30/21
Large Diameter Welded Pipe, A-580-897	5/1/20-4/30/21
Polyester Staple Fiber, A-580-839	5/1/20-4/30/21
SOCIALIST REPUBLIC OF VIETNAM: Polyethylene Retail Carrier Bags, A-552-806	5/1/20-4/30/21
SOUTH AFRICA: Stainless Steel Plate in Coils, A-791-805	5/1/20-4/30/21
SPAIN: Carbon and Alloy Steel Wire Rod, A-469-816	5/1/20-4/30/21
TAIWAN:	
Carbon and Alloy Steel Cut-To-Length Plate, A-583-858	5/1/20-4/30/21
Certain Circular Welded Carbon Steel Pipes and Tubes, A-583-008	5/1/20-4/30/21
Polyester Staple Fiber, A-583-833	5/1/20-4/30/21
Polyethylene Retail Carrier Bags, A-583-843	5/1/20-4/30/21
Stainless Steel Plate in Coils, A-583-830	5/1/20-4/30/21
Stilbenic Optical Brightening Agents, A-583-848	5/1/20-4/30/21
THE PEOPLE'S REPUBLIC OF CHINA:	
1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP), A-570-045	5/1/20-4/30/21
Aluminum Extrusions, A-570-967	5/1/20-4/30/21
Alloy and Certain Carbon Steel Threaded Rod, ³ (A-570-104)	9/25/19-3/31/21
Carton-Closing Staples, A-570- 055	5/1/20-4/30/21
Cast Iron Soil Pipe, A-570- 079	5/1/20-4/30/21
Certain Steel Wheels, A-570- 082	5/1/20-4/30/21
Circular Welded Carbon Quality Steel Line Pipe, A-570-935	5/1/20-4/30/21
Citric Acid and Citrate Salt, A-570-937	5/1/20-4/30/21
Iron Construction Castings, A-570-502	5/1/20-4/30/21
Oil Country Tubular Goods, A-570-943	5/1/20-4/30/21
Polyethylene Terephthalate Resin, A-570-024	5/1/20-4/30/21
Pure Magnesium, A-570-832	5/1/20-4/30/21
Stilbenic Optical Brightening Agents, A-570-972	5/1/20-4/30/21
TURKEY:	
Carbon and Alloy Steel Wire Rod, A-489-831	5/1/20-4/30/21
Circular Welded Carbon Steel Pipes and Tubes, A-489-501	5/1/20-4/30/21
Large Diameter Welded Pipe, A-489-833	5/1/20-4/30/21
Light-Walled Rectangular Pipe and Tube, A-489-815	5/1/20-4/30/21
UNITED ARAB EMIRATES: Certain Steel Nails, A-520-804	5/1/20-4/30/21
THE UNITED KINGDOM: Carbon and Alloy Steel Wire Rod, A-412-826	5/1/20-4/30/21
VENEZUELA: Silicomanganese, A-307-820	5/1/20-4/30/21
Countervailing Duty Proceedings	
BRAZIL: Iron Construction Castings, C-351-504	1/1/20-12/31/20
INDIA: Polyethylene Terephthalate Resin, C-533-862	1/1/20-12/31/20
ITALY: Carbon and Alloy Steel Wire Rod, C-475-837	1/1/20-12/31/20
REPUBLIC OF KOREA:	
Carbon and Alloy Steel Cut-To-Length Plate, C-580-888	1/1/20-12/31/20
Large Diameter Welded Pipe, C-580-898	1/1/20-12/31/20
SOCIALIST REPUBLIC OF VIETNAM: Polyethylene Retail Carrier Bags, C-552-805	1/1/20-12/31/20
SOUTH AFRICA: Stainless Steel Plate in Coils, C-791-806	1/1/20-12/31/20

	Period of review
THE PEOPLE'S REPUBLIC OF CHINA:	
1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP), C-570-046	1/1/20–12/31/20
Aluminum Extrusions, C-570-968	1/1/20–12/31/20
Cast Iron Soil Pipe, C-570-080	1/1/20–12/31/20
Certain Steel Wheels, C-570-083	1/1/20–12/31/20
Citric Acid and Citrate Salt, C-570-938	1/1/20–12/31/20
Polyethylene Terephthalate Resin, C-570-025	1/1/20–12/31/20
TURKEY:	
Carbon and Alloy Steel Wire Rod, C-489-832	1/1/20–12/31/20
Large Diameter Welded Pipe, C-489-834	1/1/20–12/31/20

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68

FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.⁴

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.⁵ Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.⁶ In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review

⁴ See the Enforcement and Compliance website at <https://legacy.trade.gov/enforcement/>.

⁵ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

⁶ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.⁷ Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.⁸

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2021. If Commerce does not receive, by the last day of May 2021, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse,

⁷ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

⁸ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

³ In the opportunity notice that published on April 1, 2021, (86 FR 17137), the case name was incorrectly listed as carbon and alloy steel threaded rod. The correct case name is listed in this notice.

for consumption during the relevant provisional-measures “gap” period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 27, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021-09230 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of National Estuarine Research Reserve; Public Meeting; Request for Comments

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the ACE Basin National Estuarine Research Reserve.

DATES: NOAA will consider all written comments received by July 2, 2021. A virtual public meeting will be held on Tuesday, June 22, 2021 at 12:00 p.m. EDT.

ADDRESSES: You may submit written comments on the national estuarine research reserve NOAA intends to evaluate by emailing Pam Kylstra, Evaluator, NOAA Office for Coastal Management at Pam.Kylstra@noaa.gov. Timely comments received by the Office for Coastal Management are considered part of the public record and may be publicly accessible. Any personal information (e.g., name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments.

You may also provide public comments during the virtual public meeting, which is being held Tuesday, June 22, 2021 at 12:00pm EDT. To participate in the virtual public meeting, registration is required by Monday, June 21, 2021, at 5:00 p.m. EDT.

Registration: To register, visit <https://docs.google.com/forms/d/e/1FAIpQLSfo-mqgaGaiqqeWnuCy->

[eKXbTwur3UvNd6_3M3jfqroRm44w/viewform?usp=sf_link](https://viewform?usp=sf_link). If you have difficulty registering, contact Pam Kylstra by email at Pam.Kylstra@noaa.gov or phone (843) 740-1259. You may participate online or by phone. If you would like to provide comment during the public meeting, please select “yes” during the online registration. The line-up of speakers will be based on the date and time of registration. Once you register, you will receive a confirmation of your registration. One hour prior to the start of the meeting on June 22, 2021, you will be emailed a link to the public meeting and information about participating.

FOR FURTHER INFORMATION CONTACT: Pam Kylstra, Evaluator, NOAA Office for Coastal Management by email at Pam.Kylstra@noaa.gov or by phone at (843) 740-1259. Copies of the previous evaluation findings, reserve management plan, and reserve site profile may be viewed and downloaded on the internet at <http://coast.noaa.gov/czm/evaluations>. A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Pam.Kylstra.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state of South Carolina has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA’s Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021-09224 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee; Reopening of Application Window for Advisory Committee Nominations

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: Through this Notice, the National Telecommunications and Information Administration (NTIA) is reopening an application window for nominations to the Commerce Spectrum Management Advisory Committee (CSMAC). On March 17, 2021, NTIA published a Notice seeking nominations to the CSMAC with a deadline of April 16, 2021, for submissions. In reopening this application window, NTIA seeks to expand the pool of applicants and best ensure the composition of the committee reflects balanced points of view.

DATES: Applications must be postmarked or electronically transmitted to the address below on or before May 13, 2021.

ADDRESSES: Persons may submit applications to Antonio Richardson, Designated Federal Officer, by email (preferred) to arichardson@ntia.gov or by U.S. mail or commercial delivery service to Office of Spectrum Management, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Antonio Richardson at (202) 482-4156 or arichardson@ntia.gov.

SUPPLEMENTARY INFORMATION: The CSMAC was established and chartered by the Department of Commerce under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and pursuant to Section 105(b) of the National Telecommunications and Information Administration Organization Act, as amended, 47 U.S.C. 904(b). The committee will continue as provided in Executive Order 13889 effective September 27, 2019. The Department of Commerce re-chartered the CSMAC on October 1, 2019, for a two-year period. More information about the CSMAC may be found at <http://www.ntia.doc.gov/category/csmac>.

On March 17, 2021, NTIA published a Notice in the **Federal Register** seeking nominations for appointment to the

CSMAC. See Commerce Spectrum Management Advisory Committee; Call for nominations to serve on Advisory Committee, 86 FR 14613 (March 17, 2021), available at <https://www.ntia.gov/federal-register-notice/2021/csmac-membership-invitation>. The original application deadline was April 16, 2021.

Through this Notice, NTIA is reopening the application window for 10 days to expand the pool of applicants and best ensure the composition of the committee reflects balanced points of view (e.g., past professional or academic accomplishments, industry sector representation, and educational background). All other requirements for appointment to the CSMAC appear in the Supplementary Information section of the March 17, 2021, Notice.

Dated: April 28, 2021.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2021-09228 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-10-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Trademark Petitions

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), in accordance with the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0061 (Trademark Petitions). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before July 2, 2021.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- **Email:** InformationCollection@uspto.gov. Include “0651-0061 comment” in the subject line of the message.

- **Federal Rulemaking Portal:** <http://www.regulations.gov>.

- **Mail:** Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-8946; or by email to Catherine.Cain@uspto.gov with “0651-0061 comment” in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.*, which provides for the registration of trademarks, service marks, collective trademarks and collective service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO.

This information collection covers various trademark related communications to the USPTO, including letters of protest, requests to make special, responses to petition inquiry letters, petitions to make special, requests to restore a filing date, and requests for reinstatement. The information is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. Information relating to the registration of a trademark is made available to the public by the USPTO. However, the release of information in a letter of protest is controlled and may be available only upon request.

A letter of protest is a procedure whereby third parties who object to the registration of a mark in a pending application may bring to the attention of the USPTO evidence bearing on the registrability of the mark. A letter of protest must identify the application being protested and the proposed grounds for refusing registration and include relevant evidence to support the protest.

A request to make special may be submitted where an applicant requests that initial examination of an application be advanced out of its

regular order because the mark in the application was the subject of an inadvertently cancelled or expired previous registration.

A response to a petition inquiry letter is submitted by a petitioner who is responding to a notice of deficiency that the USPTO issued after receiving an incomplete petition to the Director. A petition may be considered incomplete if, for example, it does not include the fee required by 37 CFR 2.6 or if it includes an unverified assertion that is not supported by evidence.

The USPTO generally examines applications in the order in which they are received. A petition to make special is a request by the applicant to advance the initial examination of an application out of its regular order.

A request to restore a filing date is submitted by an applicant who previously filed an application that was denied a filing date. The request must include evidence showing that the applicant is entitled to the earlier filing date.

If an applicant has proof that an application was abandoned due to a USPTO error, an applicant may file a request to reinstate the application instead of a petition to revive. To support such a request, the applicant must include evidence of the USPTO error.

II. Method of Collection

Items in this information collection must be submitted via online electronic submissions through the Trademark Electronic Application System (TEAS). In limited circumstances, applicants may also be permitted to submit the information in paper form by mail or hand delivery.

III. Data

OMB Control Number: 0651-0061.

Form Numbers:

- PTO 2303 (Letter of Protest)
- PTO 2304 (Request to Make Special)
- PTO 2305 (Response to Petition to Director Inquiry Letter)
- PTO 2306 (Petition to Make Special)
- PTO 2307 (Request to Restore Filing Date)
- PTO 2308 (Request for Reinstatement)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Estimated Number of Respondents: 6,221 respondents per year.

Estimated Number of Responses: 6,221 responses per year.

Estimated Time per Response: The USPTO estimates that it takes the public

approximately 40 minutes (0.67 hours) to 90 minutes (1.25 hours), to complete a response, depending on the complexity of the situation. This

includes the time to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 6,953 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: \$2,781,200.

TABLE 1—TOTAL HOURLY BURDEN FOR PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents	Estimated annual responses	Estimated time for response (hours)	Estimated burden (hour/year)	Rate ¹ (\$/hour)	Estimated annual respondent cost burden
			(a)	(b)	(a) × (b) = (c)	(d)	(c) × (d) = (e)
1	Letter of Protest (TEAS) PTO/2303	3,683	3,683	1.25 (75 minutes)	4,604	\$400	\$1,841,600
2	Request to Make Special (TEAS) PTO/2304	175	175	0.67 (40 minutes)	117	400	46,800
3	Response to Petition to Director Inquiry Letter (TEAS) PTO/2305.	321	321	0.83 (50 minutes)	266	400	106,400
4	Petition to Make Special (TEAS) PTO/2306	523	523	0.67 (40 minutes)	350	400	140,000
5	Request to Restore Filing Date (TEAS) PTO/2307.	13	13	0.67 (40 minutes)	9	400	3,600
6	Request for Reinstatement (TEAS) PTO/2308 ...	263	263	0.83 (50 minutes)	218	400	87,200
Total .....	.....	4,978	4,978	.....	5,564	.....	2,225,600

¹ 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); <https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey>. The USPTO uses the mean rate for attorneys in private firms which is \$400 per hour.

TABLE 2—TOTAL HOURLY BURDEN FOR INDIVIDUALS OR HOUSEHOLDS RESPONDENTS

Item No.	Item	Estimated annual respondents	Estimated annual responses	Estimated time for response (hours)	Estimated burden (hour/year)	Rate ² (\$/hour)	Estimated annual respondent cost burden
			(a)	(b)	(a) × (b) = (c)	(d)	(c) × (d) = (e)
1	Letter of Protest (TEAS) PTO/2303	920	920	1.25 (75 minutes)	1150	\$400	\$460,000
2	Request to Make Special (TEAS) PTO/2304	44	44	0.67 (40 minutes)	29	400	11,600
3	Response to Petition to Director Inquiry Letter (TEAS) PTO/2305.	80	80	0.83 (50 minutes)	66	400	26,400
4	Petition to Make Special (TEAS) PTO/2306	131	131	0.67 (40 minutes)	88	400	35,200
5	Request to Restore Filing Date (TEAS) PTO/2307.	3	3	0.67 (40 minutes)	2	400	800
6	Request for Reinstatement (TEAS) PTO/2308 ...	65	65	0.83 (50 minutes)	54	\$400	\$21,600
Total .....	.....	1,243	1,243	.....	1,389	.....	555,600

² 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); <https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey>. The USPTO uses the mean rate for attorneys in private firms which is \$400 per hour.

Estimated Total Annual (Non-hour) Respondent Cost Burden: \$328,390.
This information collection has no

capital start-up, maintenance, or operating fees. However, this

information collection does have filing fees (\$328,350) and postage costs (\$40).

Filing Fees

TABLE 3—FILING FEES (NON-HOUR) COST BURDEN FOR TRADEMARK PETITIONS

Item No.	Item	Estimated annual responses	Estimated cost	Estimated non-hour cost burden
		(a)	(b)	(a) × (b) = (c)
1	Letter of Protest (TEAS)	4,603	\$50	\$230,150
4	Petition to Make Special (TEAS)	653	150	97,950
4	Petition to Make Special (Paper)	1	250	250
Total .....	.....	.....	.....	328,350

Postage Cost

Although the USPTO requires that the items in this information collection be submitted electronically, the items may, in limited situations, be submitted by mail through the United States Postal Service (USPS). The USPTO estimates that the average first-class postage cost

for a mailed submission will be \$8.05 and that approximately 5 submissions may be mailed to the USPTO, for a total postage cost of \$40 per year.

Respondent's Obligation: Required to obtain or retain benefits.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including

whether the information shall have practical utility;

(b) 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;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection 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.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personal identifying information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2021-09235 Filed 4-30-21; 8:45 am]

BILLING CODE 3510-16-P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, May 5, 2021; 10:00 a.m.

PLACE: This meeting will be conducted by remote means.

STATUS: Commission meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Briefing matter.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7479 (Office) or 240-863-8938 (cell).

Dated: April 28, 2021.

Alberta E. Mills,
Secretary.

[FR Doc. 2021-09304 Filed 4-29-21; 11:15 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD-2021-OS-0028]

Privacy Act of 1974; System of Records

AGENCY: Defense Media Activity (DMA), Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is modifying and reissuing a current system of records titled, "DoD Media Pool and Pentagon Correspondent Files," DPAD 12.0. This system of records was originally established by the Office of the Assistant Secretary of Defense (Public Affairs) to collect and maintain records on news media representatives nominated by their respective bureaus to be members of the DoD Media Pool and Pentagon correspondents who may conduct interviews with Pentagon executive-level personnel. This system of records notice (SORN) is being updated to incorporate the DoD standard routine uses and support additional information sharing of these records outside of the DoD. The routine uses are proposed to be updated to allow for disclosure to the Department of State to issue passports/visas to these individuals, and to foreign embassies to obtain a foreign entry visa for these individuals. The DoD is also modifying various other sections within the SORN to improve clarity or update information that has changed.

DATES: This system of records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before June 2, 2021. The Routine Uses are effective at the close of the comment period.

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

* *Federal Rulemaking Portal:* <https://www.regulations.gov>.

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public

viewing on the internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tanya Rose, Director, Information Management, Department of Defense, 1155 Defense Pentagon, Room 2E989, Washington, DC 20301.

SUPPLEMENTARY INFORMATION:

I. Background

The DoD Media Pool and Pentagon Correspondent Files system of records is used to issue Pentagon building and media press passes, arrange foreign clearances and visas, and to determine an individual's suitability/preparedness for deployment with the media pool. Subject to public comment, the DoD proposes to update this SORN to add standard DoD routine uses (routine uses A through I) and to allow for additional disclosures outside the DoD related to the purpose of this system of records. Specifically, the DoD proposes to add a new routine use (routine use J) to disclose information from this system of records to the Department of State to support issuance of media passports/visas. The DoD proposes to add another new routine use (routine use K) to support sharing of information with foreign embassies to allow members of the media to obtain foreign entry visas. In addition to updating the routine use section, the other modifications are (1) to the Authority for Maintenance of the System section to update citation(s) and add additional authorities; (2) to the Categories of Individuals Covered by the System section to clarify the individuals covered and Categories of Records to clarify how the records relate to the Category of Individuals; (3) to the Administrative, Technical, and Physical Safeguards to update the individual safeguards protecting the personal information; (4) to the Retention and Disposal section to reflect the approved disposition; (5) to the Record Access Procedures section to reflect the need for individuals to identify the appropriate DoD office or component to which their request should be directed; (6) to the Contesting Records Procedures section to update the appropriate citation for contesting records; and (7) to the System Manager and System Location sections to update the addresses and office names. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

The DoD notices for systems of records subject to the Privacy Act of

1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at <https://dpcl.d.defense.gov>.

II. Privacy Act

Under the Privacy Act, a “system of records” is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A-108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: April 27, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

DoD Media Pool and Pentagon Correspondent Files, DPAD 12.0.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Assistant Secretary of Defense (Public Affairs), Directorate for Strategy, Plans and Assessment, 1400 Defense Pentagon, Washington, DC 20301-1400.

SYSTEM MANAGER(S):

The system managers are as follows: For DoD Media Pool Files: Office of the Assistant Secretary of Defense (Public Affairs), Directorate for Strategy, Plans and Assessment, Room 2E977, 1400 Defense Pentagon, Washington, DC 20301-1400.

For Pentagon Correspondent Files: Office of the Assistant Secretary of Defense (Public Affairs), Deputy Director, Directorate for Public Affairs Operations, Room 2D961, 1400 Defense Pentagon, Washington, DC 20301-1400.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; DoD Directive 5122.05, Assistant Secretary of Defense for Public Affairs (ASD(PA)); and Executive Order 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

Media Pool Files are used to issue Pentagon building passes, media pool press passes, and orders; to collect and maintain records on news media

representatives nominated by their respective bureaus to be members of the DoD Media Pool. To arrange foreign country clearances and visas, and to determine individual's suitability/preparedness for deployment with the media pool. This information is used in the performance of official duties related to determining eligibility of selective press members to travel with DoD executive level personnel. Pentagon Correspondent Files are used by Pentagon executive level personnel to provide a brief summary of the news media representative's professional experience and background.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

News media representatives nominated by their respective bureaus to be members of the DoD Media Pool or travel with the Secretary. News media representatives who may conduct interviews with Pentagon executive level personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. DoD Media Pool Files consist of press accreditation and other questionnaires and forms soliciting the news media representative's name, age, nationality, Social Security Number (SSN), office and home addresses and phone numbers, passport information, medical information, and person to be notified in an emergency effecting individual

B. No fault (“hold harmless”) legal contracts between DoD and media organizations as well as no-fault legal contracts between DoD and individual media representatives.

C. Ground-rule agreements between DoD and individuals covering personal conduct before and during event. Certificates of background security clearance.

D. Pentagon Correspondent Files consist of photographs and biographies for news media representatives.

RECORD SOURCE CATEGORIES:

Individuals; completed accreditation and other questionnaires and forms; individuals' employers or bureaus.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others

performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the

recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

J. To appropriate foreign government authorities for administrative purposes to facilitate an individual's official travel to that country.

K. To the Department of State for news media representatives on official business with the DoD, who, in their official capacity, are applying for an official passport or to update their official passport.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper in secure files facilities in a locked drawer behind a locked door.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

News media representative name, SSN, bureau, or organization.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Cut off after death of individual press member. Destroy individual accreditation and clearances 10 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The DoD safeguards records in this system of records according to applicable rules, policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII) in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, the DoD established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. The DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including CAC authentication and password; SIPR token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and

privacy training for individuals who will have access; identification, marking, and safeguarding of PII; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network infrastructure; and electronic intrusion detection systems in DoD facilities.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should address written inquiries to the OSD/JS FOIA Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301-1155. Signed written requests should contain the name and number of this system of records notice along with the full name, SSN, and bureau or organization where employed. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate system managers(s). Signed written inquiries should contain the name and number of this system of records notice along with the full name, SSN, and bureau or organization where employed. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or

commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

February 22, 1993, 58 FR 10227; July 23, 2003, 68 FR 43500

[FR Doc. 2021-09211 Filed 4-30-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2021-SCC-0027]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Reaffirmation Agreement

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before June 2, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox. Comments may also be sent to ICDocketmgr@ed.gov.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202-377-4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed

information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Reaffirmation Agreement.

OMB Control Number: 1845–0133.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households; Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 12,110.

Total Estimated Number of Annual Burden Hours: 1,453.

Abstract: The Higher Education Act of 1965, as amended (HEA), established the Federal Family Education Loan (FFEL) Program, and the William D. Ford Federal Direct Loan (Direct Loan) Program under Title IV, Parts B and D respectively. The HEA provides for a maximum loan amount that a borrower can receive per year and in total. If a borrower receives more than the maximum amount, the borrower becomes ineligible for further Title IV aid (including Federal Pell Grants, Federal Supplemental Educational Opportunity Grants, Federal Work-Study, and Teacher Education Assistance for Higher Education (TEACH) Grants, Iraq and Afghanistan Service Grants) unless the borrower repays the excess amount or agrees to repay the excess amount according to the terms and conditions of the promissory note that the borrower signed. Agreeing to repay the excess amount according to the terms and conditions of the promissory note that the borrower signed is called “reaffirmation”, which is the subject of this collection.

Dated: April 28, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–09238 Filed 4–30–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Grant Exclusive License

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: The Department of Energy (DOE) hereby gives notice that DOE intends to grant an exclusive license to practice the invention described and claimed in U.S. Patent Application Number 16/895,188 titled “Colorimetric Detection of Actinides” and the resulting patent(s) to Innovy USA LLC, a company having its principal place of business at Chicago, IL. The patent application is owned by United States of America, as represented by DOE.

DATES: Written comments, objections, or nonexclusive license applications must be received at the address listed by May 19, 2021.

ADDRESSES: Comments, applications for nonexclusive licenses, or objections relating to the prospective exclusive license should be submitted to Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Room 6F–067, 1000 Independence Ave. SW, Washington, DC 20585. or emailed to: marianne.lynnch@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Marianne Lynch, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Room 6F–067, 1000 Independence Ave. SW, Washington, DC 20585; Email: marianne.lynnch@hq.doe.gov; and Phone: (202) 586–3815.

SUPPLEMENTARY INFORMATION: This notice, issued in accordance with 35 U.S.C. 209(c)(1), 37 CFR 407(a)(1)(i) and 35 U.S.C. 209(c), gives DOE the authority to grant exclusive or partially exclusive licenses in federally-owned inventions where a determination is made, among other things, that the desired practical application of the invention has not been achieved, or is not likely to be achieved expeditiously, under a nonexclusive license. The

statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written comments and objections. The prospective exclusive license complies with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Innovy USA LLC has applied for an exclusive license to practice the inventions embodied in the patent application and has plans for commercialization of the inventions.

Within 15 days of publication of this notice, any person may submit in writing to DOE’s General Counsel for Intellectual Property and Technology Transfer Office (contact information listed in the **ADDRESSES** section), either of the following, together with supporting documents: (i) A statement setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or (ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license would be exclusive, subject to a license and other rights retained by the United States, and subject to a negotiated royalty. DOE will review all timely written responses to this notice, and will grant the licenses if, after expiration of the 15-day notice period, and after consideration of any written responses to this notice, a determination is made in accordance with 35 U.S.C. 209(c) that the licenses are in the public interest.

Signing Authority

This document of the Department of Energy was signed on April 26, 2021, by Brian Lally, Assistant General Counsel for Technology Transfer and Intellectual Property, 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 April 28, 2021.

Treena V. Garrett,

*Federal Register Liaison Officer, U.S.
Department of Energy.*

[FR Doc. 2021-09220 Filed 4-30-21; 8:45 am]

BILLING CODE 6450-01-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 Numbers: RP21-153-000.

Applicants: Texas Eastern Transmission, LP.

Description: Report Filing: PCB Refund Report Informational Filing.
Filed Date: 4/20/21.

Accession Number: 20210420-5079.

Comments Due: 5 p.m. ET 5/3/21.

Docket Numbers: RP20-467-005.

Applicants: Cove Point LNG, LP.
Description: Compliance filing Cove Point—Settlement Compliance to be effective 5/1/2021.

Filed Date: 4/21/21.

Accession Number: 20210421-5011.

Comments Due: 5 p.m. ET 5/3/21.

Docket Numbers: RP21-742-000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing 4/21/21 to be effective 6/1/2021.

Filed Date: 4/21/21.

Accession Number: 20210421-5008.

Comments Due: 5 p.m. ET 5/3/21.

Docket Numbers: RP21-743-000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Housekeeping Filing April 2021 to be effective 5/1/2021.

Filed Date: 4/21/21.

Accession Number: 20210421-5009.

Comments Due: 5 p.m. ET 5/3/21.

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: April 21, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021-09252 Filed 4-30-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5362-021]

Kennebec Light and Power District; Notice of Application for Surrender of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for surrender of license.

b. *Project No:* P-5362-021.

c. *Date Filed:* March 31 and April 8, 2021.

d. *Applicant:* Kennebec Light and Power District.

e. *Name of Project:* Lower Mousam Hydroelectric Project.

f. *Location:* The project is located on the Mousam River in York County, Maine. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Todd Shea, General Manager, Kennebunk Light and Power District, 4 Factory Pasture Lane, Kennebunk, ME 04043, 207-985-3311 or tshea@klpd.org.

i. *FERC Contact:* Diana Shannon, (202) 502-6136, diana.shannon@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* May 21, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-5362-021. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to surrender its license which expires March 31, 2022. The applicant indicates that more reliable and cost-effective sources of electricity are available, and the project is no longer cost-effective to operate. The applicant proposes to decommission the project by removing all flashboards, disconnecting leads from generators, removing all generation and electrical equipment, as well as securing each project development with fencing. The dams would remain in place and no ground disturbing activities would occur.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 21, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021-09253 Filed 4-30-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19-2273-004.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Southwest Power Pool, Inc. Refund Report to be effective N/A.

Filed Date: 4/21/21.

Accession Number: 20210421-5000.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: ER21-1707-001.

Applicants: The Potomac Edison Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: Potomac submits Amendment to Pending Filing of Service Agreement No. 4452 to be effective 6/16/2021.

Filed Date: 4/20/21.

Accession Number: 20210420-5092.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: ER21-1719-000.

Applicants: Duke Energy Progress, LLC.

Description: Tariff Cancellation: DEP—EPCOR USA NC-Southport SA 237 Termination to be effective 6/30/2021.

Filed Date: 4/20/21.

Accession Number: 20210420-5078.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: ER21-1720-000.

Applicants: Entergy Arkansas, LLC.

Description: § 205(d) Rate Filing: EAL—MSS-4 Replacement Tariff to be effective 5/1/2021.

Filed Date: 4/20/21.

Accession Number: 20210420-5142.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: ER21-1721-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3785 Tip Top Solar, SPS and OG&E Shared Network Upgrade FCA to be effective 6/20/2021.

Filed Date: 4/21/21.

Accession Number: 20210421-5014.

Comments Due: 5 p.m. ET 5/12/21.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC21-3-000.

Applicants: BLCP Power Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of BLCP Power Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5141.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21-4-000.

Applicants: Chaiphaphum Wind Farm Company Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of Chaiphaphum Wind Farm Company Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5145.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21-5-000.

Applicants: EGCO Cogeneration Company Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of EGCO Cogeneration Company Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5149.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21-6-000.

Applicants: G-Power Source Company Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of G-Power Source Company Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5160.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21-7-000.

Applicants: Gulf Power Generation Company Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of Gulf Power Generation Company Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5161.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21-8-000.

Applicants: Gulf Yala Green Company Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of Gulf Yala Green Company Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5163.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21-9-000.

Applicants: Nam Theun 2 Power Company Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of Nam Theun 2 Power Company Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5167.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21-10-000.

Applicants: Natural Energy Development Company Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of Natural Energy Development Company Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5170.

Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21-11-000.

Applicants: Nong Khae Cogeneration Company Limited.

Description: Notice of Self-Certification of Foreign Utility Company Status of Nong Khae Cogeneration Company Limited.

Filed Date: 4/20/21.

Accession Number: 20210420-5172.

Comments Due: 5 p.m. ET 5/11/21.

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: April 21, 2021.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2021-09255 Filed 4-30-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21-1716-000]

BP Energy Retail 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 BP Energy Retail 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 May 11, 2021.

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://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, (866) 208-3676 or TTY, (202) 502-8659.

Dated: April 21, 2021.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2021-09257 Filed 4-30-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17-424-009.
Applicants: Footprint Power Salem Harbor Development.

Description: Notice of Non-Material Change in Status of Footprint Power Salem Harbor Development LP.

Filed Date: 4/21/21.

Accession Number: 20210421-5129.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: ER19-229-006.

Applicants: Allegheny Ridge Wind Farm, LLC.

Description: Compliance filing; Allegheny Ridge Wind Farm, LLC, Docket No. ER19-229 to be effective 12/31/2018.

Filed Date: 4/21/21.

Accession Number: 20210421-5053.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: ER21-254-001.

Applicants: Harmony Florida Solar, LLC.

Description: Report Filing: Harmony Florida Solar, LLC Refund Report of Sellers to be effective N/A.

Filed Date: 4/21/21.

Accession Number: 20210421-5063.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: ER21-255-001.

Applicants: Taylor Creek Solar, LLC.

Description: Report Filing: Taylor Creek Solar, LLC Refund Report of Sellers to be effective N/A.

Filed Date: 4/21/21.

Accession Number: 20210421-5073.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: ER21-1722-000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Second Revised Service Agreement 489 to be effective 3/23/2021.

Filed Date: 4/21/21.

Accession Number: 20210421-5084.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: ER21-1723-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ISA, Service Agreement No. 4870; Queue No. AB1-069 to be effective 5/25/2021.

Filed Date: 4/21/21.

Accession Number: 20210421-5090.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: ER21-1724-000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL & Seminole Removal of Delivery Point from NITSA to be effective 1/1/2021.

Filed Date: 4/21/21.

Accession Number: 20210421-5119.

Comments Due: 5 p.m. ET 5/12/21.

Docket Numbers: ER21-1725-000.

Applicants: Torofino Trading LLC.

Description: Notice of Cancellation of Market-Based Rate Tariff of Torofino Trading LLC.

Filed Date: 4/21/21.

Accession Number: 20210421-5131.

Comments Due: 5 p.m. ET 5/12/21.

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: April 21, 2021.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2021-09254 Filed 4-30-21; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2021-0304; FRL-10023-23-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Center for Biological Diversity v. Regan*, No. 3:20-cv-06020-WHA (N.D. Cal.). On August 27, 2020, Plaintiffs Center for Biological Diversity and Center for Environmental Health (collectively, Plaintiffs) filed a complaint in the United States District Court for the Northern District of California, San Francisco Division. On January 22, 2021, Plaintiffs filed an amended complaint. Plaintiffs alleged that the Environmental Protection Agency (EPA or the Agency) failed to perform certain non-discretionary duties in accordance with the Act to timely respond to numerous state implementation plan (SIP) and control techniques guideline (CTG) submissions from the State of California and State of Colorado and to timely issue a federal implementation plan (FIP) to address specific CAA requirements for one particular area within California. The proposed consent decree would establish deadlines for EPA to act on certain submissions or, as an alternative for one area in California, to issue a FIP.

DATES: Written comments on the proposed consent decree must be received by June 2, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0304, online at [https://](https://www.regulations.gov)

www.regulations.gov (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Additional Information about Commenting on the Proposed Consent Decree" heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT: Elizabeth Pettit, Air and Radiation Law Office (7313K), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone (202) 566-2879; email address pettit.elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2021-0304) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the

system, key in the appropriate docket identification number then select "search."

II. Additional Information about the Proposed Consent Decree

The proposed consent decree would establish deadlines for EPA to take action pursuant to CAA section 110(k) on certain SIP submissions by the State of California and State of Colorado, or, as an alternative for one area in California, to issue a FIP. First, on November 15, 2016, the State of California made a SIP submission to EPA intended as a revision to the Mendocino County Air Quality Management District portion of the California SIP. EPA issued a limited disapproval and limited approval of the permitting rule, Rule 1-220, New Source Review Standards, on July 3, 2017 (82 FR 30770). The proposed consent decree would require EPA to correct deficiencies from the limited disapproval by taking action to approve a SIP submission, promulgate a FIP, or issue a combination of a partial SIP approval and partial FIP by December 15, 2021.

Second, on August 9, 2017, October 25, 2017, and May 23, 2018, California made three SIP submissions or revisions for the Eastern Kern (Kern County), California nonattainment area for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The proposed consent decree would require EPA to take action on certain elements of the three submissions by December 15, 2021, February 18, 2022, and December 15, 2022.

Third, on May 31, 2017 and May 8, 2019, Colorado made SIP submissions for the Denver Metro/North Front Range, Colorado nonattainment area for the 2008 ozone NAAQS. The proposed consent decree would require EPA to take action on certain elements of the submissions by February 15, 2023.

Fourth, on December 7, 2018, California made a SIP submission for the Nevada County (Western part), California nonattainment area portion of the California SIP for the 2008 ozone NAAQS. The proposed consent decree would require EPA to take action on certain elements of the submission by March 31, 2022.

Fifth, on April 27, 2017 and May 5, 2017, California made SIP submissions for the Riverside County (Coachella Valley planning area), California nonattainment area portion of the California SIP for the 2008 ozone NAAQS. The proposed consent decree would require EPA to take action on certain elements of the submissions by September 30, 2022.

Additionally, during the pendency of this litigation, in the ordinary course of its administrative action, EPA has taken final action on some of the SIP submissions originally at issue in the litigation.¹

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0304, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in

the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,
Associate General Counsel.

[FR Doc. 2021-09244 Filed 4-30-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10023-17-Region 10]

Modification of NPDES General Permit for Offshore Seafood Processors in Alaska (AKG524000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final modification of NPDES general permit.

SUMMARY: The Director, Water Division, Environmental Protection Agency (EPA) Region 10, is modifying a National Pollutant Discharge Elimination System (NPDES) General Permit for offshore seafood processors operating in federal waters off the coast of Alaska. The permit, which became effective on July 17, 2019, authorizes discharges of seafood processing waste from vessels that: discharge at least 3 nautical miles (NM) or greater from the Alaska shore; and, which engage in the processing of fresh, frozen, canned, smoked, salted or pickled seafood, the processing of mince, or the processing of meal, paste

and other secondary by-products. On March 30, 2020, the Freezer Longline Coalition (FLC) requested that EPA modify the permit to allow for a currently-prohibited seasonal discharge (between June 10 and December 31, the fleet's "B Season") within 1 NM of wintering critical habitat (Unit 5) for the spectacled eider. EPA has decided to modify the permit to allow for seasonal discharge (between June 10 and December 31) within 1 NM of wintering critical habitat (Unit 5) for the spectacled eider (Part III.B.7 of the modified general permit). All other conditions of the permit remain unchanged. Between March 1 and March 31, 2021, EPA accepted comments on the proposed modification. Only the conditions subject to modification were reopened for public comment. EPA received a single comment letter from the FLC. The comments were non-significant and supported the proposed modification; therefore, EPA is not required to prepare a Response to Comments document.

DATES: The issuance date of the modified General Permit is May 3, 2021. The modified General Permit will become effective June 2, 2021.

ADDRESSES: Permit documents may be found on the EPA Region 10 website at: <https://www.epa.gov/npdes-permits/npdes-general-permit-offshore-seafood-processors-alaska>.

FOR FURTHER INFORMATION CONTACT: Copies of the modified General Permit and Fact Sheet are also available upon request. Requests may be made to Audrey Washington at (206) 553-0523 or to Sally Goodman at (206) 553-0782. Requests may also be electronically mailed to: washington.audrey@epa.gov or goodman.sally@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

There are currently 73 vessel operators authorized to discharge under the permit. In October 2019, FLC reported to EPA that within the past two fishing seasons, sea ice in the Bering Sea had not reached as far south, formed later in the year, and persisted for a shorter duration, and that as a result, a large percentage of the Pacific cod population in the Bering Sea have migrated further north than previously found/harvested, including areas near and within spectacled eider wintering habitat. While FLC raised the issue of Pacific cod migrating into more northern reaches of the Bering Sea as a primary motivation in their permit modification request, the permit modification allowing seasonal discharge within 1 NM of Unit 5 applies

¹ See, for example, 86 FR 11125 (February 24, 2021).

to all vessels covered under EPA's General Permit, which include both hook and line ("longline") and trawl catcher processors, and is not be conditioned upon targeted species. The At-Sea Processors Association, which represents trawl catcher processor vessels, has indicated that up to 12 pelagic trawlers could potentially target pollock within 1 NM of Unit 5.

EPA conducted new analyses to identify impacts to spectacled eiders and their critical habitat that could result from the modification, revised the previously concurred-upon Biological Evaluation (BE), and on July 9, 2020, requested formal consultation with USFWS under 50 CFR part 402. New analyses conducted in the BE led EPA to change its previous determination from *not likely* to adversely affect the federally threatened spectacled eider or its critical habitat to *likely* to adversely affect the species or critical habitat. USFWS concurred on the EPA's determination that the Permit actions are likely to adversely affect species listed under the Endangered Species Act or designated critical habitat. The Biological Opinion, received on March 8, 2021, includes mitigations to minimize take and impact on species and habitat, which are also included in the Permit. They are: permittees must create a Best Management Practices Plan; discharges are not authorized in certain protected areas and habitats; vessels must be moving while discharging; permittees must conduct daily sea surface monitoring; and, EPA will use the information gathered from visual monitoring in evaluation during the next permit cycle.

II. Other Legal Requirements

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

Daniel D. Opalski,

Director, Water Division, Region 10.

[FR Doc. 2021-09193 Filed 4-30-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2021-0314; FRL-10023-24-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Center for Biological Diversity, et al. v. Regan*, No. 3:20-cv-05436-EMC (N.D. Cal.). On August 6, 2020, Plaintiffs the Center for Biological Diversity, the Center for Environmental Health, and the Sierra Club (collectively, Plaintiffs) filed a complaint in the United States District Court for the Northern District of California, San Francisco Division. On October 29, 2020, Plaintiffs filed an amended complaint. Plaintiffs alleged that the Environmental Protection Agency (EPA or the Agency) failed to perform certain non-discretionary duties in accordance with the Act to: make timely findings that certain states failed to timely submit required plan submissions for areas designated as nonattainment for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS); timely respond to a state implementation plan (SIP) submittal from the State of Illinois for the Alton Township 2010 SO₂ NAAQS nonattainment area; and make timely determinations whether certain areas designated as nonattainment for the 2010 SO₂ NAAQS attained the standard by the attainment date. The proposed consent decree would establish deadlines for EPA to undertake certain actions.

DATES: Written comments on the proposed consent decree must be received by June 2, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0314, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Additional Information about Commenting on the Proposed Consent Decree" heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via [https://](https://www.regulations.gov)

www.regulations.gov, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT:

Emily Seidman, Air and Radiation Law Office (7426Y), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone (202) 564-0906; email address seidman.emily@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2021-0314) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search."

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would establish deadlines for EPA to take action pursuant to the CAA. First, the proposed consent decree would establish a deadline for EPA to take action pursuant to CAA section 110(k) on a SIP submission by the State of Illinois for Alton Township, for the Alton Township portion of the Metropolitan St. Louis Interstate Air Quality Control Region nonattainment area for the 2010 SO₂ NAAQS. The proposed consent decree would require EPA to take action on the SIP submission by no later than March 1, 2022.

Second, the proposed consent decree would establish deadlines for EPA to take action pursuant to CAA section 179(c)(1) to determine whether the following nonattainment areas for the

2010 SO₂ NAAQS attained the standard by the attainment date: Hayden (parts of Gila County and Pinal County, Arizona; Miami (part of Gila County), Arizona; Muscatine (part of Muscatine County), Iowa; St. Bernard Parish, Louisiana; Detroit (part of Wayne County), Michigan; Jackson County (part), Missouri; Sullivan County (part), Tennessee; and Rhinelander (part of Oneida County), Wisconsin. The proposed consent decree would require EPA to make a determination for the areas in Arizona, Michigan and Wisconsin by January 31, 2022 and make a determination for the areas in Iowa, Louisiana, Missouri and Tennessee by March 31, 2022.

While the amended complaint also identified Southwest Indiana (parts of Daviess County and Pike County), Indiana as an area for which EPA was required to make a determination of whether the area attained the 2010 SO₂ NAAQS by the attainment date, on February 22, 2021, EPA signed a final rule redesignating the Southwest Indiana nonattainment area to attainment for the 2010 SO₂ NAAQS. *Final Rule*, 86 FR 12107–12108 (March 2, 2021), mooted the claim as to Southwest Indiana.

Third, while the amended complaint included claims regarding EPA's failure to make a finding of failure to submit a nonattainment SIP for certain nonattainment areas for the 2010 SO₂ NAAQS pursuant to CAA section 110(k)(1)(B), on October 8, 2020, the EPA Principal Deputy Assistant Administrator for the Office of Air and Radiation signed findings of failure to submit SIPs required for attainment of the 2010 SO₂ NAAQS for the areas identified in the amended complaint, and the findings were published in the **Federal Register** on November 3, 2020, *Final Rule*, 85 FR 69504, 69506–69508 (November 3, 2020), mooted those claims.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2021–

0314, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2021–09245 Filed 4–30–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R03–CBP–2021–0235; FRL–10022–50 Region 3]

Proposed Information Collection Request; Comment Request; Chesapeake Bay Program Citizen Stewardship Index, Diversity Profile, and Local Leadership Surveys

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "Chesapeake Bay Program Citizen Stewardship Index, Diversity Profile, and Local Leadership Surveys" (EPA ICR No. 2679.01, OMB Control No. 2003–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described in this document. This is a request for approval of a new collection. 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 July 2, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–R03–CBP–2021–0235, online using www.regulations.gov (our preferred method), by email to bisland.carin@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:

Tuana Phillips, U.S. Environmental Protection Agency Region III—Chesapeake Bay Program Office, mail code: 3CB10, Annapolis City Marina, Suite 109, 410 Severn Ave., Annapolis, MD 21403; telephone number: (410)-267-5704; fax number: 1-410-267-5777; email address: phillips.tuana@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 U.S. Environmental Protection Agency's (EPA) Chesapeake Bay Program (the Program) is interested in tracking its progress at attaining its goals under the 2014 Chesapeake Bay Watershed Agreement (the Agreement). To do this, the Program plans to implement three surveys: The Citizen Stewardship Survey, the Diversity

Profile Survey, and the Local Leadership Survey.

EPA has specified the target audience and the implementation approach for each to maximize the data that can be obtained. The Citizen Stewardship Survey will be implemented as a multi-mode survey that includes phone, web, and mail components and will target residents living the Chesapeake Bay area, stratified by jurisdiction (states and the District of Columbia). The Diversity Profile Survey will be implemented among people who work on partnership efforts within the Bay area as a web-based survey. The Local Leadership Survey will be implemented among state and local elected officials involved in policy making in the Bay area also as a web-based survey.

The Program will be using the data from these three surveys to track it progress under the Stewardship goal of the 2014 Agreement. The Stewardship goal includes three outcomes: (1) Citizen stewardship, (2) local leadership, and (3) diversity. Three surveys under this ICR each address one of the outcomes and contributes to EPA's Government Performance and Results Act (GPRA) goals (EPA Goal 1, A Cleaner, Healthier Environment; Objective 1.2: Provide for Clean and Safe Water).

Each of the surveys under this ICR were funded and implemented by other partners in the Chesapeake Bay area in prior years. The Program determined that the best approach for continued implementation of these surveys would be for the EPA assume the responsibility for implementing these surveys; thus, EPA is seeking approval for implementing these surveys under this ICR.

Collecting these data and publishing them for public review will allow the public to track how well the Agreement is working to preserve and protect the Chesapeake Bay region from the standpoint of the Stewardship goal outlined in the Agreement. Overall, the Agreement contains 10 goals and their associated outcomes; data for the other nine goals are collected through other means. Combining the data for Stewardship goal outcomes from these surveys with the data for the other nine goals will provide the public will have a comprehensive picture of the progress being made to preserve and protect Chesapeake Bay watershed.

Form Numbers: None.

Respondents/affected entities:

Stewardship survey: members of the general public; Local Leaders survey: individuals in local government leadership roles; Diversity Profile survey: individuals working at

organizations to conserve/restore the Chesapeake Bay watershed.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 6,430 (total).

Frequency of response: once.

Total estimated burden: 2,298 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$0 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in Estimates: This is a new collection.

Dated: April 22, 2021.

Michelle Price-Fay,

Acting Director, Chesapeake Bay Program Office.

[FR Doc. 2021-09247 Filed 4-30-21; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1046; FRS 24227]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees." The Commission 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 comments and recommendations for the proposed information collection should be submitted on or before June 2, 2021.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business

concerns with fewer than 25 employees.”

OMB Control Number: 3060–1046.

Title: Part 64, Modernization of Payphone Compensation Rules, et al., WC Docket No. 17–141, et al.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and

Responses: 260 respondents; 1,748 responses.

Estimated Time Per Response: 0.50 hours–122 hours.

Frequency of Response: On occasion, one-time, and quarterly reporting requirements; third party disclosure requirements; and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154 and 276.

Total Annual Burden: 27,064 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality:

The Commission is not requesting respondents to submit confidential information. Respondents may request confidential treatment of their information that they believe to be confidential pursuant to 47 CFR 0.459 of the Commission’s rules.

Needs and Uses: Section 276 of the Communications Act, as amended (the Act), requires that the Federal Communications Commission (Commission or FCC) establish rules ensuring that payphone service providers or PSPs are “fairly compensated” for each and every completed payphone-originated call. The Commission’s Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. A 2003 Report and Order (FCC 03–235) established detailed rules (Payphone Compensation Rules) ensuring that payphone service providers or PSPs are “fairly compensated” for each and every completed payphone-originated call pursuant to section 276 of the Communications Act, as amended (the Act), which the Commission revised in a 2018 Report and Order (FCC 18–21). The Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. The Payphone Compensation Rules: (1) Place liability to compensate PSPs for payphone-originated calls on

the facilities-based long distance carriers or switch-based resellers (SBRs) from whose switches such calls are completed; (2) define these responsible carriers as “Completing Carriers” and require them to develop their own system of tracking calls to completion; (3) require Completing Carriers to file with PSPs a quarterly report and also submit an attestation by a company official, including but not limited to the chief financial officer (CFO), that the payment amount for that quarter is accurate and is based on 100% of all completed calls; (4) require quarterly reporting obligations for other facilities-based long distance carriers in the call path, if any, and define these carriers as “Intermediate Carriers;” and (5) give parties flexibility to agree to alternative compensation arrangements (ACA) so that small Completing Carriers may avoid the expense of instituting a tracking system. The revisions adopted in the 2018 Report and Order significantly decreased the paperwork burden on carriers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–09194 Filed 4–30–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC System Resolution Advisory Committee; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (FACA), and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC System Resolution Advisory Committee (Committee) is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on a broad range of issues regarding the resolution of systemically important financial companies (covered companies) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Committee will continue to provide advice and recommendations on the effects on financial stability and economic conditions of a covered company’s

failure and how they arise, the effects on markets and stakeholders of the activities of a covered company, market understanding of the structures and tools available to the FDIC to facilitate an orderly resolution of a covered company, the application of such tools to nonbank financial entities, international coordination of planning and preparation for the resolution of internationally active covered companies, and harmonization of resolution regimes across international boundaries. The structure and responsibilities of the Committee are unchanged from when it was originally established in November 2011. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Debra A. Decker, Committee Management Officer of the FDIC, at (202) 898-8748.

Authority: 5 U.S.C. appendix.

Dated: April 22, 2021.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021-08804 Filed 4-30-21; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, May 6, 2021 at 10:00 a.m.

PLACE: Virtual Meeting.

Note: Because of the COVID-19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the commission's website, www.fec.gov, and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2021-05: Tally Up, LLC

Proposed Amendment to Directive 17
OIG FY 2022 Appropriations Language
Draft Legislative Recommendations
2021

Management and Administrative
Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021-09384 Filed 4-29-21; 4:15 pm]

BILLING CODE 6715-01-P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") requests that the Office of Management and Budget ("OMB") extend for an additional three years the current Paperwork Reduction Act ("PRA") clearance pertaining to the Commission's administrative activities, consisting of: (a) Responding to applications to the Commission pursuant to the Commission's Rules of Practice (Parts 1 and 4); (b) the FTC's consumer reporting systems; and (c) the FTC's program evaluation activities. That clearance expires on May 31, 2021. **DATES:** Comments must be filed by June 2, 2021.

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 Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Kenny Wright, Attorney, Office of the General Counsel, (202) 326-2907, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title of Collection: FTC Administrative Activities.

OMB Control Number: 3084-0169.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Abstract: The FTC collects information to carry out its administrative responsibilities pursuant to its Rules of Practice. Any person, partnership, or corporation may request advice from the Commission or FTC staff regarding a course of action the requester contemplates. The Commission's rules require requesters to provide the information necessary to facilitate resolution of the requests,

including information on the question to be resolved, the identity of the companies or persons involved, and other material facts. See FTC Rule 1.2, 16 CFR 1.2. In addition, the FTC's ethics regulations require former employees who are seeking ethical clearance to participate in FTC matters to submit screening affidavits to facilitate resolution of their requests. See FTC Rule 4.1(b), 16 CFR 4.1(b). These requirements prevent the improper use of confidential nonpublic information acquired while working at the FTC. The Commission's Rules of Practice also authorize outside parties to request employee testimony, through compulsory process or otherwise, and to request documentary material through compulsory process in cases or matters to which the agency is not a party. See FTC Rule 4.11(e), 16 CFR 4.11(e). These rules require persons seeking testimony or material from the Commission to submit a statement in support of the request setting forth the party's interest in the case or matter, the relevance of the desired testimony or material, and a discussion of whether it is reasonably available from other sources.

The FTC also allows consumers to report fraud, identity theft, National Do Not Call Registry violations, and other violations of law through telephone hotlines and three online consumer report forms. Consumers may call a hotline phone number or log on to the FTC's website to report violations using the applicable reporting forms. The provision of this information is voluntary. The FTC also conducts customer satisfaction surveys regarding the support that the Commission's Consumer Response Center provides to consumers to obtain information about the overall effectiveness of the call center and online complaint intake forms.

The FTC also conducts evaluations of its competition advocacy program and the effectiveness of its merger divestiture orders. The FTC's Competition Advocacy Program draws on the Commission's expertise in competition and consumer protection matters to encourage federal and state legislatures, courts, and other state and federal agencies to consider the effects of proposed actions on consumers and competition. Statutory authority for the advocacy program is found in part in sections 6(a) and (f) of the FTC Act, 15 U.S.C. 46(a) and (f). In addition, following an order of divestiture in a merger matter, the FTC's Bureau of Competition's Compliance Division conducts brief calls with acquirers of divested assets to assess the effectiveness of these divestitures.

Estimated Annual Burden Hours:
452,318 hours.

Estimated Annual Labor Costs:
\$26,890.

Estimated Annual Non-Labor Costs:
\$0.

Request for Comment: On January 11, 2021, the Commission sought comment on the information collection requirements associated with the FTC's Administrative Activities. 86 FR 1971 (Jan. 11, 2021). No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the Rule's information collection requirements.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential" as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021-09225 Filed 4-30-21; 8:45 am]

BILLING CODE 6750-01-P

GENERAL SERVICES ADMINISTRATION

[Notice—MA—2020—14; Docket No. 2020—0002; Sequence No. 40]

Mail Management—Deployment of the Simplified Mail Accountability and Reporting Tool (SMART) and Temporary Waiver of Federal Management Regulation (FMR) Sections 102–192.85–105 Reporting Requirements

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

ACTION: Availability of GSA Bulletin FMR G–07.

SUMMARY: GSA has issued FMR Bulletin G–07, which announces GSA's decision to deploy the SMART and resume Federal Agency mail program data collections when the SMART is fully deployed. Additionally, FMR Bulletin G–07 temporarily waives the annual mail management reporting requirement for large Federal agencies.

DATES: *Applicability Date:* This notice is effective upon signature and retroactively applies to relevant reporting requirements for FY 2017, 2018, 2019, and 2020.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael DeMale, Office of Asset and Transportation Management, GSA, at 202–805–8167, or email federal.mail@gsa.gov. Please cite Notice of FMR Bulletin G–07.

SUPPLEMENTARY INFORMATION:

Background: Federal agencies must comply with FMR part 102–192, authorized by 44 U.S.C. 2901–2906, when developing and administering Federal agency mail programs. GSA is announcing the deployment of the SMART for collecting large Federal agency mail program data as required by FMR 102—sections 192.85–105. This FMR Bulletin is available at <https://www.gsa.gov/policy-regulations/regulations/federal-management-regulation/federal-management-regulation-fmr-related-files#MailManagement>. Annual large agency mail management reporting requirements are temporarily waived until the SMART is deployed.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2021-09140 Filed 4-30-21; 8:45 am]

BILLING CODE 6820-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project “The AHRQ Safety Program for Methicillin-Resistant *Staphylococcus aureus* (MRSA) Prevention.”

DATES: Comments on this notice must be received by July 2, 2021.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at doris.lefkowitz@AHRQ.hhs.gov.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT:

Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

The AHRQ Safety Program for Methicillin-Resistant *Staphylococcus aureus* (MRSA) Prevention

As part of the HHS HAI National Action Plan (NAP), AHRQ has supported the implementation and adoption of the Comprehensive Unit-based Safety Program (CUSP) to reduce Central-Line Associated Bloodstream Infections (CLABSI) and Catheter-Associated Urinary Tract Infections (CAUTI), and subsequently applied CUSP to other clinical challenges, including reducing surgical site infections and improving care for mechanically ventilated patients. As part of the National Action Plan for Combating Antibiotic-Resistant Bacteria (CARB NAP), the HHS HAI National Action Plan, and Healthy People 2030 goals, AHRQ will now apply the principles and concepts that have been learned from these HAI reduction efforts to the prevention of MRSA invasive infections.

Healthcare-associated infections, or HAIs, are a highly significant cause of

illness and death for patients in the U.S. At any given time, HAIs affect one out of every 31 hospital inpatients. More than a million of these infections occur across our health care system every year. This leads to significant patient harm and loss of life, and costs billions of dollars each year in medical and non-medical costs. In addition, the 3 million Americans currently residing in U.S. nursing homes experience a staggering 2–3 million HAIs each year.

Particular concern has arisen related to the persistent prevalence of methicillin-resistant *Staphylococcus aureus* (MRSA). This bacterium affects both communities and healthcare facilities, but the majority of morbidity and mortality occurs in critically and chronically ill patients. While MRSA was rare in the US through the 1970s, its prevalence in US health care facilities began rising in the 1980s and had continued to do so. In 2000, MRSA was responsible for 133,510 hospitalizations in children and adults. This number more than doubled by 2005, with 278,203 hospitalizations along with 56,248 septic events and 6,639 deaths being attributed to MRSA. MRSA has become a major form of hospital associated *Staphylococcus aureus* infection.

For various patient safety initiatives, AHRQ has promoted the implementation and adoption of the Comprehensive Unit-based Safety Program (CUSP) approach which combines clinical and cultural (*i.e.*, technical and adaptive) intervention components to facilitate the implementation of technical bundles to improve patient safety. For MRSA prevention, it is likely that a combination of technical approaches is indicated, including decolonization along with classic infection control practices such as hand hygiene, environmental cleaning, general HAI prevention, and contact precautions/isolation. Implementation of these technical approaches would benefit greatly from the cultural and behavioral interventions incorporated in CUSP. AHRQ expects that this approach, which includes a focus on teamwork, communication, and patient engagement, will enhance the effectiveness of interventions to reduce MRSA infection that will be implemented and evaluated as part of this project.

This project will assist hospital units and long-term care facilities in adopting and implementing technical approaches to reduce MRSA infections. It will be implemented in four cohorts:

- At least 400 ICUs
- at least 400 non-ICUs

- at least 300 hospital surgical services
- at least 300 long-term care facilities.

The goals of this project are to (1) develop and implement a program to prevent MRSA invasive infection in intensive care units (ICUs), non-ICUs, inpatient surgery, and long-term care facilities, (2) assess the adoption of CUSP for MRSA Prevention, and (3) evaluate the effectiveness of the intervention in the participating units. AHRQ is requesting a 3-year clearance to perform the data collection activities needed to assess the adoption of the program and evaluate its effectiveness in the participating units and facilities.

The project is being conducted by AHRQ through its contractor, Johns Hopkins University (JHU) and JHU's subcontractor, NORC at the University of Chicago. The project is being undertaken pursuant to AHRQ's mission to enhance the quality, appropriateness, and effectiveness of health services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical and health systems practices, including the prevention of diseases and other health conditions (42 U.S.C. 299).

Method of Collection

The evaluation will utilize a pre-post design, using quarterly data collected over a 12-month baseline period and an 18-month implementation period for a total of 4 baseline data points and 6 implementation data points. In addition to a pre-post-intervention analysis, we plan to make use of the multiple baseline observations to conduct an interrupted time-series analysis for each of the four healthcare settings (ICU, non-ICU, surgical services, and long-term care).

The primary data collection includes the following:

(1) *Unit or Facility-level clinical outcome change data:* During each quarter of the program for ICU, non-ICU and surgical settings, each participating unit will be asked to submit clinical measures related to MRSA prevention through a secure online portal; long-term care settings will submit this information on a monthly basis. Units from all settings will also provide retrospective data for the 12 months prior to the start of the intervention period. These data will be used to evaluate the effectiveness of the AHRQ Safety Program for MRSA Prevention program.

(2) *Survey of Patient Safety Culture:* The NORC/JHU team will administer AHRQ Surveys of Patient Safety Culture to all eligible AHRQ Safety Program for

MRSA Prevention staff at the participating units or facilities at the beginning and end of the intervention. We will administer the Hospital Survey of Patient Safety Culture (HSOPS) in the ICU, non-ICU, and surgical cohorts, and the Nursing Home Survey on Patient Safety Culture (NHSOPS) in the long term care cohort. These surveys ask questions about patient safety issues, medical errors, and event reporting in the respective setting. NORC/JHU will request that all staff on the unit or facility that is implementing the AHRQ Safety Program for MRSA Prevention complete the survey. As unit and facility size vary, we estimate the average number of respondents to be 25 for each unit.

(3) *Gap Analysis:* The NORC/JHU team will administer the Gap Analysis during the first month of the intervention to an Infection Preventionist and one of the unit's team leaders (most likely a nurse). Information on current practices in MRSA prevention on the unit will be collected.

(4) *Implementation Assessments—Team Checkup Tool:* The implementation assessments will be conducted to monitor the program's progress and determine what the participating sites have learned through participating in the program. The Team Checkup Tool will be requested monthly, and we anticipate participation from approximately 1 staff (most commonly a nurse) per unit. The program will use the Team Checkup Tool to monitor key actions of staff members. The Tool asks about use of safety guidelines, tools, and resources throughout three different phases: Assessment (1), Planning, Training, and Implementation (2), and Sustainment (3).

This data collection effort will be part of a comprehensive evaluation strategy to assess the adoption of the Comprehensive Unit-Based Safety Program (CUSP) for MRSA Prevention in ICUs, non-ICUs, surgical services, and long-term care settings; and measure the effectiveness of the interventions in the participating facilities or units. The evaluation has four main goals:

1. *Program participation:* Assess the ability of sites to successfully encourage full participation of unit/facility staff in educational activities.

2. *Implementation and adoption:* Assess the implementation and adoption of CUSP for MRSA prevention.

3. *Program effectiveness:* Measure the effectiveness of the CUSP for MRSA prevention bundle.

4. *Causal pathways*: Describe the characteristics of teams that are associated with successful implementation and improvement outcomes.

Estimated Annual Respondent Burden

Exhibit 1 shows the total estimated annualized burden hours for the data collection efforts. All data collection

activities are expected to occur within the three-year clearance period. The total estimated annualized burden is 13,151 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents +	Number of responses per respondent	Hours per response	Total burden hours
Survey of Patient Safety Culture				
HSOPS (25 respondents per unit, pre- and post-intervention for ICU (400), non-ICU (400), and surgical (300) cohorts, 1,100 units total)	9,167	2	0.25	4,584
NHSOPS (25 respondents per facility, one response per pre- and post-intervention for LTC cohort, 300 facilities total)	2,500	2	0.25	1,250
Infrastructure Assessment				
Gap Analysis (1 assessment per unit or facility, pre and post-intervention for all four cohorts, 1,400 sites total)	467	2	1	934
Implementation Assessments				
Team Checkup Tool (1 checklist conducted monthly during the 18 months of intervention for ICU, non-ICU, and Surgical cohorts, 1,100 units total) ..	367	18	0.17	1,123
Team Checkup Tool (1 checklist conducted monthly per facility during the 18 month intervention period for LTC cohort, 300 facilities total)	100	18	0.17	306
Electronic Health Record (EHR) Extracts				
Initial datapull—(once at baseline for ICU and non-ICU cohorts, 800 units total)	267	1	9	2,403
Initial datapull—(once at baseline for Surgical cohort, 300 settings total)	100	1	0.5	50
Initial datapull—(once at baseline for LTC cohort, 300 facilities total)	100	1	5	500
Quarterly data—(quarterly during 18 months of intervention for ICU, non-ICU, and Surgical cohorts, 1,100 units total)	367	6	0.5	1,101
Monthly data—(monthly per facility during 18 months of intervention for LTC cohort, 300 facilities total)	100	18	0.5	900
Total	13,535	.....	.....	13,151

+ The number of respondents per data collection effort is calculated by multiplying the number of respondents per unit by the total number of units. The result is divided by three to capture an annualized number.

Exhibit 2 shows the estimated annualized cost burden based on the

respondents' time to complete the data collection activities. The total

annualized cost burden is estimated to be \$596,597.83.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Survey of Patient Safety Culture				
HSOPS (Attachment N) (25 respondents per unit, pre- and post-intervention for ICU (400), non-ICU (400), and surgical (300) cohorts, 1,100 units total)	9,167	4,584	*\$51.53	\$236,187.76
NHSOPS (Attachment O) (25 respondents per facility, one response per pre- and post-intervention for LTC cohort, 300 facilities total)	2,500	1,250	*51.53	64,412.50
Infrastructure Assessment				
Gap Analysis (Attachments B–D) (1 assessment per unit or facility, pre and post-intervention for all four cohorts, 1,400 sites total)	467	934	*51.53	48,129.02
Implementation Assessments				
Team Checkup Tool (Attachments H and I) (1 checklist conducted monthly during 3 months of ramp-up and 15 months of intervention periods for ICU, non-ICU, and Surgical cohorts, 1,100 units total)	367	1,123	*51.53	57,868.19

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Team Checkup Tool (Attachment J) (<i>1 checklist conducted monthly per facility during 18 months of intervention for LTC cohort, 300 facilities total</i>)	100	306	*51.53	15,768.18
Electronic Health Record (EHR) Extracts				
Initial data pull (Attachment P)—(once at baseline for ICU and non-ICU cohorts, 800 units total)	267	2,403	— 35.17	84,513.51
Initial data pull (Attachment Q)—(once at baseline for Surgical cohort, 300 settings total)	100	50	— 35.17	1,758.50
Initial data pull (Attachment R)—(once at baseline for LTC cohort, 300 facilities total)	100	500	— 35.17	17,585.00
Quarterly data (Attachments P and Q)—(quarterly during 18 months of intervention for ICU, non-ICU, and Surgical cohorts, 1,100 units total)	367	1,101	— 35.17	38,722.17
Monthly data (Attachment R)—(monthly per facility during 18 months of intervention for LTC cohort, 100 facilities total)	100	900	— 35.17	31,653.00
Total	13,535	13,151	.....	596,597.83

* This is an average of the average hourly wage rate for physician, nurse, nurse practitioner, physician's assistant, and nurse's aide from the May 2019 National Occupational Employment and Wage Estimates, United States, U.S. Bureau of Labor Statistics (https://www.bls.gov/oes/current/oes_nat.htm#00-0000).

— This is an average of the average hourly wage rate for nurse and IT specialist from the May 2019 National Occupational Employment and Wage Estimates, United States, U.S. Bureau of Labor Statistics (https://www.bls.gov/oes/current/oes_nat.htm#00-0000).

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 27, 2021.

Marquita Cullom,
Associate Director.

[FR Doc. 2021-09138 Filed 4-30-21; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Agency for Healthcare Research and Quality****Agency Information Collection Activities: Proposed Collection; Comment Request**

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the renewal of the information collection project "Medical Office Survey on Patient Safety Culture Database."

DATES: Comments on this notice must be received by July 2, 2021

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at doris.lefkowitz@AHRQ.hhs.gov.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project**Medical Office Survey on Patient Safety Culture Database**

In 1999, the Institute of Medicine called for health care organizations to develop a "culture of safety" such that their workforce and processes focus on improving the reliability and safety of care for patients (IOM, 1999; *To Err is Human: Building a Safer Health System*). To respond to the need for tools to assess patient safety culture in health care, AHRQ developed and pilot tested the Medical Office Survey on Patient Safety Culture with OMB approval (OMB NO.0935-0131; Approved July 5, 2007).

The survey is designed to enable medical offices to assess provider and staff perspectives about patient safety issues, medical error, and error reporting. The survey includes 38 items that measure 10 composites of patient safety culture. In addition to the composite items, 14 items measure staff perceptions how often medical offices have problems exchanging information with other settings as well as other patient safety and quality issues. AHRQ made the survey publicly available along with a Survey User's Guide and other toolkit materials in December 2008 on the AHRQ website.

The AHRQ Medical Office SOPS Database consists of data from the AHRQ Medical Office Survey on Patient Safety Culture and may include reportable, non-required supplemental items. Medical offices in the U.S. can voluntarily submit data from the survey to AHRQ, through its contractor, Westat.

The Medical Office SOPS Database (OMB NO. 0935–0196, last approved on September 10, 2018) was developed by AHRQ in 2011 in response to requests from medical offices interested in tracking their own survey results. Those organizations submitting data receive a feedback report, as well as a report of the aggregated, de-identified findings of the other medical offices submitting data. These reports are used to assist medical office staff in their efforts to improve patient safety culture in their organizations.

Rationale for the information collection. The Medical Office SOPS and the Medical Office SOPS Database support AHRQ's goals of promoting improvements in the quality and safety of health care in medical office settings. The survey, toolkit materials, and database results are all made publicly available on AHRQ's website. Technical assistance is provided by AHRQ through its contractor at no charge to medical offices, to facilitate the use of these materials for medical office patient safety and quality improvement.

Request for information collection approval. AHRQ requests that OMB reapprove, under the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ's collection of information for the AHRQ Medical Office SOPS Database; OMB NO. 0935–0196, last approved on September 10, 2018.

This database:

- (1) Presents results from medical offices that voluntarily submit their data,
- (2) Provides data to medical offices to facilitate internal assessment and learning in the patient safety improvement process, and
- (3) Provides supplemental information to help medical offices identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on

healthcare and on systems for the delivery of such care, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of healthcare services; quality measurement and improvement; and database development. 42 U.S.C. 299a(a)(1), (2), and (8).

Method of Collection

To achieve the goal of this project the following activities and data collections will be implemented:

(1) **Eligibility and Registration Form**—The medical office point-of-contact (POC) completes a number of data submission steps and forms, beginning with the completion of an online Eligibility and Registration Form. The purpose of this form is to collect basic demographic information about the medical office and initiate the registration process.

(2) **Data Use Agreement**—The purpose of the data use agreement, completed by the medical office POC, is to state how data submitted by medical offices will be used and provides privacy assurances.

(3) **Medical Office Site Information Form**—The purpose of the site information form also completed by the medical office POC, is to collect background characteristics of the medical office. This information will be used to analyze data collected with Medical Office SOPS survey.

(4) **Data Files Submission**—POCs upload their data file(s), using the medical office data file specifications, to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted. The number of submissions to the database is likely to vary each year because medical offices do not administer the survey and submit data every year. Data submission is typically handled by one POC who is either an office manager or a survey vendor who contracts with a medical office to collect their data. POCs submit data on behalf of 20

medical offices, on average, because many medical offices are part of a health system that includes many medical office sites, or the POC is a vendor that is submitting data for multiple medical offices.

Survey data from the AHRQ Medical Office Survey on Patient Safety Culture are used to produce three types of products:

- (1) A Medical Office SOPS Database Report that is made publicly available on the AHRQ website; and
- (2) Individual Medical Office Survey Feedback Reports that are customized for each medical office that submits data to the database; and
- (3) Research data sets of individual-level and medical office-level de-identified data to enable researchers to conduct analyses. All data released in a data set are de-identified at the individual-level and the medical office-level.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. An estimated 85 POCs, each representing an average of 20 individual medical offices each, will complete the database submission steps and forms. Each POC will submit the following:

- Eligibility and registration form (completion is estimated to take about 3 minutes).
- Data Use Agreement (completion is estimated to take about 3 minutes).
- Medical Office Information Form (completion is estimated to take about 5 minutes).
- Survey data submission will take an average of one hour.

The total burden is estimated to be 341.5 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be \$17,854 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility/Registration Form	85	1	3/60	4.25
Data Use Agreement	85	1	3/60	4.25
Medical Office Information Form	85	35	5/60	248
Data Files Submission	85	1	1	85
Total	NA	NA	NA	341.5

EXHIBIT 2—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate *	Total cost burden
Registration Form	85	4.25	\$52.28	\$222
Data Use Agreement	85	4.25	52.28	222
Medical Office Information Form	85	248	52.28	12,965
Data Files Submission	85	85	52.28	4,444
Total	NA	341.5	NA	17,854

* Mean hourly wage rate of \$52.28 for Medical and Health Services Managers (SOC code 11–9111) was obtained from the May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 621100—Offices of Physicians located at https://www.bls.gov/oes/current/naics4_621100.htm.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 27, 2021.

Marquita Cullom,
Associate Director.

[FR Doc. 2021–09139 Filed 4–30–21; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Agency for Healthcare Research and Quality****Patient Safety Organizations: Voluntary Relinquishment for the Sigma PSO, LLC**

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule

(Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be “delisted” by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ accepted a notification of proposed voluntary relinquishment from the Sigma PSO, LLC, PSO number P0190, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on April 1, 2021.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: <http://www.pso.ahrq.gov/listed>.

FOR FURTHER INFORMATION CONTACT:

Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: psa@ahrq.hhs.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for

the aggregation and analysis of patient safety events.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be “delisted” if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

AHRQ has accepted a notification of proposed voluntary relinquishment from the Sigma PSO, LLC to voluntarily relinquish its status as a PSO. Accordingly, the Sigma PSO, LLC, P0190, was delisted effective at 12:00 Midnight ET (2400) on April 1, 2021.

Sigma PSO, LLC has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at <http://www.pso.ahrq.gov>.

Dated: April 27, 2021.

Marquita Cullom,
Associate Director.

[FR Doc. 2021-09180 Filed 4-30-21; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC, announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on June 23, 2021, from 10:30 a.m. to 1:00 p.m., EDT. Written comments must be received on or before June 16, 2021.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C-34, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1-866-659-0537; and the passcode is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C-24, Cincinnati, Ohio 45226, Telephone: (513) 533-6800, Toll Free 1 (800) CDC-INFO, Email: ocas@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to

implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The Advisory Board's charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2020, and will terminate on March 22, 2022.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Considered: The agenda will include discussions on: Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; and plans for the August 2021 Advisory Board meeting. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021-09007 Filed 4-30-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis (ACET)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Council for the Elimination of Tuberculosis Meeting (ACET). This meeting is open to the public and limited to 1,000 audio and web conference lines. Time will be available for public comment.

DATES: The meeting will be held on June 15, 2021, from 10:00 a.m. to 3:45 p.m., EDT, and June 16, 2021, from 10:00 a.m. to 12:00 p.m., EDT.

The public is welcome to submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed below. In the subject line, please note ATTN: Staci for ACET Public Comment. The public comment should include your name, affiliation, and email address.

Comments must be received on or before June 14, 2021.

ADDRESSES: The web conference access is: <https://cdc.zoomgov.com/j/1612817912?pwd=dFRoNDJvWjh3Q0NtTDJfWnJya2xjZz09>
Passcode: 8ed4G7=S
Webinar ID: 161 281 7912

The teleconference access is noted as follows:

Telephone number: 1-669-254-5252; and the passcode is 53466615.

FOR FURTHER INFORMATION CONTACT: Staci Morris, Committee Management Specialist, CDC, 1600 Clifton Road NE, Mailstop US8-6, Atlanta, Georgia 30329-4027; Telephone: (404) 718-7479; Email: nchhstppolicy@cdc.gov. (In the subject line, please note ATTN: Staci for ACET Public Comment.)

SUPPLEMENTARY INFORMATION:

Purpose: This Council advises and makes recommendations to the

Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Considered: The agenda will include discussions on (1) 2020 TB provisional surveillance data; (2) Tuberculosis Trials Consortium Update; (3) COVID impact on TB programs; (4) Perceptions of non-U.S.-born persons on the link between country of birth and TB risk; (5) Using Big Data to Understand Latent Tuberculosis Care in the United States; and (6) Bacillus Calmette-Guerin Vaccine Guidance Development. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been

delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021-09006 Filed 4-30-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-9130-N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January Through March 2021

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from January through March 2021, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice:

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786-1864
II Regulation Documents Published in the Federal Register	Terri Plumb	(410) 786-4481
III CMS Rulings	Tiffany Lafferty	(410) 786-7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786-7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786-6877
VI Collections of Information	William Parham	(410) 786-4669
VII Medicare-Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786-2749
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786-2749
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786-7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786-7205
XI National Oncologic Positron Emission Tomography Registry Sites	David Dolan, MBA	(410) 786-3365
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	David Dolan, MBA	(410) 786-3365
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	David Dolan, MBA	(410) 786-3365
All Other Information	Annette Brewer	(410) 786-6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National

Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as

regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers

for these specific services and offers more flexibility and “real time” accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at <http://www.cms.gov/manuals>.

The Director of the Office of Strategic Operations and Regulatory Affairs of the

Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the **Federal Register Liaison**, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 16, 2021.

Trenesha Fultz-Mimms,
*Federal Register Liaison, Department of
Health and Human Services.*

BILLING CODE 4120-01-P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: April 24, 2020 (85 FR 23030), August 12, 2020 (85 FR 48691), November 4, 2020 (85 FR 70168) and March 17, 2021 (86 FR 14629). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (January through March 2021)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: <http://cms.gov/manuals>.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at <http://www.gpo.gov/libraries/>

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government

publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits, use (CMS-Pub. 100-04) Transmittal No. 10564.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For-Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For-Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
	Medicare General Information (CMS-Pub. 100-01)
	None
	Medicare Benefit Policy (CMS-Pub. 100-02)
10568	Implementation of Changes in the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) and Payment for Dialysis Furnished for Acute Kidney Injury (AKI) in ESRD Facilities for Calendar Year (CY) 2021
	Medicare National Coverage Determination (CMS-Pub. 100-03)
	None
	Medicare Claims Processing (CMS-Pub. 100-04)
10550	Instructions for Retrieving the 2021 Pricing and Healthcare Common
10551	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
10557	January 2021 Update of the Ambulatory Surgical Center (ASC) Payment System
10559	Modernization of the Electronic Files Transfer (EFT) Associated with the National Coordination of Benefits Agreement (COBA) Consolidated Claims Crossover Process Coordination of Benefits Agreement (COBA) Detailed Error Report

10624	or After January 1, 2021 International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)—July 2021
10631	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - April 2021 Update
10634	User CR: VIPS Medicare System (VMS) - Update Interactive Correspondence Online Reporting (ICOR) Mail Date Calculation
10635	Claims Processing Instructions for National Coverage Determination (NCD) 20.4 Implantable Cardiac Defibrillators (ICDs)
10638	Modernization of the Electronic Files Transfer (EFT) Associated with the National Coordination of Benefits Agreement (COBA) Crossover Process
10639	Update to the Manual for Telephone Services, Physician Assistant (PA) Supervision, and Medical Record Documentation for Part B Services
10641	Updates to Chapter 4 of Publication (Pub.) 100-08
10646	Primary Care First (PCF) and Serious Illness Patient (SIP) Models: Part 3; IURs and Edits for Non-Sequential Claims
10650	Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update
10651	July 2021 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder
10655	Mobile Personal Identity Verification (PIV) Station Installation
10656	Quarterly Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
10657	Combined Common Edits/Enhancements Modules (CEEM) Code Set Update
10658	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for July 2021
10660	The Intravenous Immune Globulin (IVIG) Demonstration: Demonstration is ending on December 31, 2023
10663	Revisions to Medicare Administrative Contractor (MAC) Standardized Monthly Status Report (MSR) Narrative Template
10665	Updates to Medicare Benefit Policy Manual and Medicare Claims Processing Manual for Opipoid Treatment Programs (Manual Updates Only)
10666	Annual 2021 Update of the Hospital Outpatient Prospective Payment System (OPPS)
10667	April 2021 Integrated Outpatient Code Editor (IOCE) Specifications Version 22.1
Medicare Secondary Payer (CMS-Pub. 100-05)	
	None
Medicare Financial Management (CMS-Pub. 100-06)	
10548	The Fiscal Intermediary Shared System (FISS) Submission of Copybook Files to the Provider and Statistical Reimbursement (PS&R) System
10561	Notice of New Interest Rate for Medicare Overpayments and Underpayments -2nd Qtr Notification for FY 2021
Medicare State Operations Manual (CMS-Pub. 100-07)	
	None
Medicare Program Integrity (CMS-Pub. 100-08)	
10553	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10560	Second Update to Policies on the Enrollment of Opioid Treatment Programs (OITPs)
10567	Opioid Treatment Programs Update to Chapter 12 (The Comprehensive Error Rate Testing (CERT) Program) of Publication (Pub.) 100-08 The Comprehensive Error Rate Testing (CERT) Program MAC Communication with the CERT Program

10562	Notification Process Coordination of Benefits Agreement (COBA) Eligibility File Claims Recovery Process Crossover Process
10563	April 2021 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
10564	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
10565	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) - April 2021
10569	Updates to Skilled Nursing Facility (SNF) Patient Driven Payment Model (PDPM) Claims Patient Readmitted Within 30 Days After Discharge Total and Noncovered Charges
10571	Fiscal Year (FY) 2021 Inpatient Prospective Payment System (IPPS) and Long Term Care Hospital (LTCH) PPS Changes
10572	April 2021 Update to the Fiscal Year (FY) 2021 Inpatient Prospective Payment System (IPPS)
10574	Shared System Support Hours for Application Programming Interfaces (APIs)
10575	Calendar Year (CY) 2021 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
10579	Special Provisions for Radiology Additional Documentation Requests
10582	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
10592	Fiscal Intermediary Shared System (FISS) - Eliminate Multiple Common Working File (CWF) Replies Received in the Same Cycle
10593	Modernization of the Electronic Files Transfer (EFT) Processes Associated with Medicare Integrated Systems Testing (MIST) Contractor Testing and Fiscal Intermediary Shared System (FISS) Alpha Testing with the Coordination of Benefits and Recovery (COB and R) System on Behalf of the Benefits Coordination and Recovery Center (BCRC)
10596	Correction to Period Sequence Edits on Home Health Claims
10597	Submission of Condition Codes to the Inpatient Prospective Payment System (IPPS) Prior to Report Services Provided as Part of an Expanded Access Approval or Emergency Use Authorization
10599	Health Insurance Portability and Accountability Act (HIPAA) Electronic Data Interchange (EDI) Front End Updates for July 2021
10601	Modifications to the National Coordination of Benefits Agreement (COBA) Claims Crossover Process
10611	Completion of Removal/Moving of Instructions from Chapter 15 of Publication (Pub.) 100-08 to Chapter 10 of Pub. 100-08
10613	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
10614	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
10615	Clinical Laboratory Fee Schedule - Medicare Travel Allowance Fees for Collection of Specimens
10616	User Change Request (CR): Multi-Carrier System (MCS) - Correct Coding Initiative (CCI) Related Procedure Codes
10618	Common Working File (CWF) Edits for Medicare Telehealth Services and Manual Update
10621	Updated Billing Requirements for Home Infusion Therapy (HIT) Services on

	None	Medicare Prescription Drug Benefit (CMS-Pub. 100-18)
	None	
		Demonstrations (CMS-Pub. 100-19)
10555	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions	
10556	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions	
		One Time Notification (CMS-Pub. 100-20)
10549	Shared System Enhancement 2018: Rewrite Fiscal Intermediary Shared System (FIS) module FSSB6001, Common Working File (CWF) Unsolicited Response Function	
10551	Send Electronic Funds Transfer (EFT) Information from Provider Enrollment Chain and Ownership System (PECOS) to Multi-Carrier System (MCS) Phase 2	
10552	Modification to Existing Common Working File (CWF) Edits for Osteoporosis Drug Codes Billable on Home Health Claims	
10566	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)—April 2021	
10576	Changes to the End Stage Renal Disease (ESRD) PRICER to Accept the New Outpatient Provider Specific File Supplemental Wage Index Fields, the Network Reduction Calculation and New Value Code for Time on Machine	
10587	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions	
10595	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions	
10603	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions	
10634	User CR: VIPS Medicare System (VMS) - Update Interactive Correspondence Online Reporting (ICOR) Mail Date Calculation	
10655	Mobile Personal Identity Verification (PIV) Station Installation	
10663	Revisions to Medicare Administrative Contractor (MAC) Standardized Monthly Status Report (MSR) Narrative Template	
10670	Modification to Existing Common Working File (CWF) Edits for Osteoporosis Drug Codes Billable on Home Health Claims	
10673	Send Electronic Funds Transfer (EFT) Information from Provider Enrollment Chain and Ownership System (PECOS) to Multi-Carrier System (MCS) Phase 2	
10694	Create a New Media Preference Indicator Custom Format and New eMedicare Correspondence Preference Indicator	
10712	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions	
		Medicare Quality Reporting Incentive Programs (CMS-Pub. 100-22)
	None	
		State Payment of Medicare Premiums (CMS-Pub. 100-24)
	None	
		Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)
	None	

Addendum II: Regulation Documents Published in the Federal Register (January through March 2021)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal**

	Overview of the CERT Process Providing Sample Information to the CERT Review Contractor Providing Feedback Information to the CERT Review Contractor Disputing a CERT Decision Handling Overpayments and Underpayments Resulting from the CERT Findings Handling Appeals Resulting from CERT-Initiated Denials CERT Appeal Results
10570	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10581	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10585	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10591	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10608	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10609	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10612	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10619	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10642	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10649	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10653	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10664	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10675	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10676	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
10680	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10699	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10700	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10701	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
	Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)
	None
	Medicare Quality Improvement Organization (CMS-Pub. 100-10)
	None
	Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)
	None
	Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)
	None
	Medicare Managed Care (CMS-Pub. 100-16)
	None
	Medicare Business Partners Systems Security (CMS-Pub. 100-17)

Register, contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at <http://www.gpoaccess.gov/fr/index.html>. The following website <http://www.archives.gov/federal-register/> provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: <https://www.cms.gov/files/document/regs1q21qpu.pdf>

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (January through March 2021)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings>. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (January through March 2021)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice,

we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Claims Processing Instructions for National Coverage Determination (NCD) 20.4 Implantable Cardiac Defibrillators (ICDs)	NCD 20.4	10635	03/23/2021	02/15/2018

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (January through March 2021)
(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (January through March 2021)

All approval numbers are available to the public at [Reginfo.gov](http://reginfo.gov). Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities (January through March 2021)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: <http://www.cms.gov/MedicareApprovedFacilities/CASF/list.asp#TopOfPage> For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
Mercy Health West 3300 Mercy West Boulevard Cincinnati, OH 45211	360234	02/12/2021	OH
Sentara Williamsburg Regional Medical Center 100 Sentara Circle Williamsburg, VA 23188	1780694372	01/11/2021	VA
Kootenai Hospital District dba Kootenai Health 2300 Kootenai Health Way Coeur d' Alene, ID 83814	1992798409	01/19/2021	ID
Scripps Memorial Hospital Encinitas 354 Santa Fe Drive P O Box 230817 Encinitas, CA 92024	050503	01/26/2021	CA
Bellevue Hospital 462 First Avenue New York, NY 10016	1487812624	02/09/2021	NY
Prime Healthcare Services-Monroe LLC 4011 S Monroe Medical Park Boulevard Bloomington, IN 47403 Other information: dba Monroe Hospital	150183	03/02/2021	IN
Orlando Health South Lake Hospital 1900 Don Wickham Drive Clermont FL 34711	1336221019	03/02/2021	FL
Orlando Health Dr. P. Phillips Hospital 9400 Turkey Lane Orlando, FL 32819	1184709057	03/02/2021	FL
Affinity Hospital LLC d/b/a Grandview Medical Center 3690 Grandview Parkway Birmingham, AL 35243	010104	03/02/2021	AL
Memorial Hermann Katy 23900 Katy Freeway Katy, TX 77494	1932152337	03/16/2021	TX
Legacy Salmon Creek Medical Center 2211 NE 139th Street Vancouver, WA 98686	500150	03/16/2021	WA
Emanate Health Medical Center 210 W. San Bernardino Road Covina, CA 91723	050382	03/16/2021	CA
Legacy Good Samaritan Medical Center 1015 NW 22nd Avenue Portland, OR 97211	380017	03/16/2021	OR
The following facilities have editorial changes (in bold).			
FROM: J D Archbold Memorial Hospital TO: John D. Archbold Memorial 915 Gordon Avenue Thomasville, GA 31792-6614	110038	06/22/2006	GA

Facility	Provider Number	Effective Date	State
FROM: Memorial Hospital TO: UPMC Memorial 1701 Innovation Drive York PA 17408	39-0101	01/11/2012	PA
FROM: Orange Regional Medical Center TO: Garnet Health Medical Center 707 East Main Street Middletown, NY 10940	330126	05/02/2011	NY

Addendum VIII:**American College of Cardiology's National Cardiovascular Data Registry Sites (January through March 2021)**

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (January through March 2021)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at <http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27>. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X:**List of Special One-Time Notices Regarding National Coverage Provisions (January through March 2021)**

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
The following facilities have editorial changes (in bold).				
Barnes-Jewish Hospital 1 Barnes Jewish Plaza Saint Louis, MO 63110 Albuquerque, NM 87102 Other information: Joint Commission ID # 8387 Previous Re-certification Dates: 03/06/2007; 02/13/2009; 08/19/2011; 08/30/2013; 10/02/2015; 11/10/2017	260032	03/26/2007	10/22/2020	NM
The Johns Hopkins Hospital 600 N. Wolfe Street Baltimore, MD 21287 Other information: DNV-GL # 492949-2020-VAD Previous Re-certification Dates: 2018-11-14; 2014-10-21; 2016-11-22	210009	12/11/2007	10/24/2020	MD
Penn State Milton S. Hershey Medical Center 500 University Drive Hershey, PA 17033 Other information: Joint Commission ID # 6075 Previous Re-certification Dates: 04/01/2008; 03/24/2010; 03/16/2012; 04/08/2014; 06/07/2016; 05/22/2018	390256	04/01/2008	09/11/2020	PA
University of Texas Medical Branch 301 University Boulevard Galveston, TX 77555-0518 Other information: Joint Commission ID # 9058 Previous Re-certification Dates: 01/31/2012; 01/28/2014; 02/23/2016; 01/30/2018	450018	01/31/2012	10/08/2020	TX

available at <http://www.cms.gov>. For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (January through March 2021)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography (PET)** scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at <http://www.cms.gov/Medicare/ApprovedFacilities/NOPR/list.asp#TopOfPage>. For questions or additional information, contact David Dolan, MBA (410-786-3365).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (January through March 2021)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at

<http://www.cms.gov/Medicare/ApprovedFacilities/VAD/list.asp#TopOfPage>. For questions or additional information, contact David Dolan, MBA, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
UPMC Presbyterian Shadyside 200 Lothrop Street Pittsburgh, PA 15213 Other information: Joint Commission ID # 390164 Previous Re-certification Dates: 06/10/2008; 05/21/2010; 04/12/2012; 03/25/2014; 04/13/2016; 03/20/2018	6169	06/10/2008	12/09/2020	PA
Hillcrest Medical Center 1120 S Ulica Tulsa, OK 74104 Other information: DNV GL Certificate # 457367- 2020-VAD Previous Re-certification Dates: 12/4/2017	370001	12/04/2017	11/25/2020	OK
University of Minnesota Medical Center, Fairview 2450 Riverside Avenue Minneapolis, MN 55454 Other information: Joint Commission ID # 2908 Previous Re-certification Dates: 03/26/2009; 08/26/2011; 10/10/2013; 11/03/2015; 12/05/2017	240080	03/26/2009	09/11/2020	MN
Chippendale Hospital, a campus of CJW Medical Center 7101 Jahnke Road Richmond, VA 23225 Other information: Joint Commission ID # 519792-2020-VAD Previous Re-certification Dates: 12/19/2017	490112	12/19/2017	12/21/2020	VA
University of Michigan Health System 1500 E Medical Center Drive, SPC 5474 Ann Arbor, MI 48109 Other information: Joint Commission ID # 7457	230046	03/27/2008	12/03/2020	MI
Previous Re-certification Dates: 03/27/2008; 03/18/2010; 03/07/2012; 02/04/2014; 03/15/2016; 04/24/2018 FROM: Allegheny General Hospital; TO: West Penn Allegheny Health System, Inc. 320 East North Avenue Pittsburgh, PA 15212 Other information: Joint Commission ID # 6158 Previous Re-certification Dates: 03/07/2008; 04/02/2010; 03/13/2012; 02/11/2014; 03/15/2016; 03/30/2018	390050	03/07/2008	01/09/2021	PA
University of California, Davis Medical Center 2315 Stockton Boulevard Sacramento, CA 95817 Other information: Joint Commission ID # 10055 Previous Re-certification Dates: 10/06/2015; 02/06/2018	050599	10/06/2016	12/10/2020	CA
Carolinas Medical Center 1000 Blythe Boulevard Charlotte, NC 28232 Other information: Joint Commission ID # 6480 Previous Re-certification Dates: 05/11/2010; 05/11/2012; 04/22/2014; 04/12/2016; 04/24/2018	340113	05/11/2010	12/17/2020	NC
MedStar Washington Hospital Center 110 Irving St, NW Washington, DC 20010 Other information: Joint Commission ID # 6308 Previous Re-certification Dates:	090011	04/22/2008	12/17/2020	DC

**Addendum XIII: Lung Volume Reduction Surgery (LVRS)
(January through March 2021)**

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery.

Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no updates to the listing of facilities for lung volume reduction surgery published in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilities/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

**Addendum XIV: Medicare-Approved Bariatric Surgery Facilities
(January through March 2021)**

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSOE) (program standards and requirements in effect on February 15, 2006).

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
04/22/2008; 04/06/2010; 03/23/2012; 03/04/2014; 05/03/2016; 05/22/2018 Scripps Memorial Hospital La Jolla 9888 Genesee Avenue La Jolla, CA 92037 Other information: Joint Commission ID # 9880 Previous Re-certification Dates: 11/14/2012; 09/09/2014; 10/18/2016	050324	11/14/2012	12/16/2020	CA
Newark Beth Israel Medical Center 201 Lyons Avenue Newark, NJ 07112 Other information: Joint Commission ID #: 5965 Previous Re-certification Dates: 02/06/2009; 09/20/2011; 10/01/2013; 12/15/2015; 02/06/2018	310002	02/06/2009	11/26/2020	NJ
MultiCare Tacoma General Hospital 315 Martin Luther King Jr. Way Tacoma, WA 98338 Other information: Joint Commission ID # 568395-2021-VAD Previous Re-certification Dates: 11/03/2010; 11/14/2012; 11/18/2014; 12/06/2016	500129	11/03/2010	02/09/2021	WA
Saint Luke's Hospital of Kansas City 4401 Wornall Road Kansas City, MO 64111 Other information: Joint Commission ID # 8351 Previous Re-certification Dates: 2010-06-16; 2012-06-06; 2014-05-06; 2016-06-21; 2018-05-09	260138	06/16/2010	02/06/2021	MO

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMB in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilities/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (January through March 2021)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilities/PETDT/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

[FR Doc. 2021-09081 Filed 4-30-21; 8:45 am]

BILLING CODE 4120-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10450 and CMS-10249]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 2, 2021.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development,

Attention: Document Identifier/OMB Control Number: CMS-P-0015A, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of the following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10450 Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey for Merit-based Incentive Payment Systems (MIPS)

CMS-10249 Administrative Requirements for Section 6071 of the Deficit Reduction Act

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes 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 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved Information Collection; *Title of Information Collection:* Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey for Merit-based Incentive Payment Systems (MIPS); *Use:* CMS is submitting updates to one information collection request associated with the CAHPS for MIPS survey. The CAHPS for MIPS survey is

used in the Quality Payment Program (QPP) to collect data on fee-for-service Medicare beneficiaries' experiences of care with eligible clinicians participating in MIPS and is designed to gather only the necessary data that CMS needs for assessing physician quality performance, and related public reporting on physician performance, and should complement other data collection efforts. The survey consists of the core Agency for Healthcare Research and Quality (AHRQ) CAHPS Clinician & Group Survey, version 3.0, plus additional survey questions to meet CMS's information and program needs. The survey information is used for quality reporting, the Care Compare website, and annual statistical experience reports describing MIPS data for all MIPS eligible clinicians.

This 2021 information collection request addresses changes to the CAHPS for MIPS Survey associated with the CY 2021 Physician Fee Schedule (PFS) final rule. In order to address the increased use of telehealth care due to the Public Health Emergency (PHE) for COVID-19, an additional question is added to the CAHPS for MIPS survey to integrate one telehealth item to assess the patient-reported usage of telehealth services. In addition, the cover page of the CAHPS for MIPS Survey is revised to include a reference to care in telehealth settings. The CAHPS for MIPS survey results in burden to three different types of entities: Groups and virtual groups, vendors, and beneficiaries associated with administering the survey. Virtual groups are subject to the same requirements as groups; therefore, we will refer only to groups as an inclusive term for both unless otherwise noted. The estimated time to administer the 2021 CAHPS for MIPS survey has increased from 12.9 minutes to 13.1 minutes; however, there was an overall decrease in burden as the number of respondents decreased. *Form Number:* CMS-10450 (OMB control number: 0938-1222); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions and Individuals and Households; *Number of Respondents:* 30,249; *Total Annual Responses:* 30,249; *Total Annual Hours:* 6,902 (For policy questions regarding this collection contact Alesia Hovatter at 410-786-6861.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Administrative Requirements for Section 6071 of the Deficit Reduction Act; *Use:* State Operational Protocols should provide enough information such that: The CMS

Project Officer and other federal officials may use it to understand the operation of the demonstration, prepare for potential site visits without needing additional information, or both; the State Project Director can use it as the manual for program implementation; and external stakeholders may use it to understand the operation of the demonstration. The financial information collection is used in our financial statements and shared with the auditors who validate CMS' financial position. The Money Follows the Person Rebalancing Demonstration (MFP) Finders File, MFP Program Participation Data file, and MFP Services File are used by the national evaluation contractor to assess program outcomes while we use the information to monitor program implementation. The MFP Quality of Life data is used by the national evaluation contractor to assess program outcomes. The evaluation is used to determine how participants' quality of life changes after transitioning to the community. The semi-annual progress report is used by the national evaluation contractor and CMS to monitor program implementation at the grantee level. The revisions aim to reduce the reporting burden by presenting a substantially revised and shortened version of the semi-annual progress report. The budget workbook has also been revised to combine two earlier reporting forms. *Form Number:* CMS-10249 (OMB control number: 0938-1053); *Frequency:* Yearly, quarterly, and semi-annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 42; *Total Annual Responses:* 336; *Total Annual Hours:* 2,604. (For policy questions regarding this collection contact Todd Wilson at 410-786-3409.)

Dated: April 28, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021-09256 Filed 4-30-21; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1763-N]

Medicare Program; Meeting Announcement for the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the public meeting dates for the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (the Panel) on Wednesday, July 28, 2021 and Thursday, July 29, 2021. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on issues related to clinical diagnostic laboratory tests.

DATES:

Meeting dates: The virtual meeting of the Panel is scheduled for Wednesday, July 28, 2021 from 9 a.m. to 5 p.m., Eastern Daylight Time (E.D.T.) and Thursday, July 29, 2021, from 9 a.m. to 5 p.m., E.D.T. The Panel is also expected to virtually participate in the Clinical Laboratory Fee Schedule (CLFS) Annual Public Meeting for Calendar Year (CY) 2022 on June 24, 2021 in order to gather information and ask questions to presenters. Notice of the CLFS Annual Public Meeting for CY 2022 is published elsewhere in this issue of the **Federal Register**.

Deadline date for registration: All stand-by speakers for the Panel meeting must register electronically to our CDLT Panel dedicated email box, CDLTPanel@cms.hhs.gov by June 30, 2021. Registration is not required for non-speakers. The public may view this meeting via webinar, or listen-only via teleconference.

ADDRESSES: Due to the current COVID-19 public health emergency, the Panel meeting will be held *virtually* and *will not* occur at the campus of the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Webinar and Teleconference Meeting Information: Teleconference dial-in instructions, and related webinar details will be posted on the meeting agenda, which will be available on the CMS website approximately 2 weeks prior to the meeting at <https://www.cms.gov/>

Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html. A preliminary agenda is described in section II of this notice.

FOR FURTHER INFORMATION CONTACT:

Rasheeda Arthur, Ph.D., (410) 786-3434, email CDLTPanel@cms.hhs.gov. Press inquiries are handled through the CMS Press Office at (202) 690-6145. For additional information on the Panel, please refer to the CMS website at <https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (the Panel) is authorized by section 1834A(f)(1) of the Social Security Act (the Act) (42 U.S.C. 1395m-1), as established by section 216(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113-93), enacted on April 1, 2014. The Panel is subject to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels.

Section 1834A(f)(1) of the Act directs the Secretary of the Department of Health and Human Services (the Secretary) to consult with an expert outside advisory panel established by the Secretary, composed of an appropriate selection of individuals with expertise in issues related to clinical diagnostic laboratory tests, which may include the development, validation, performance, and application of such tests. Such individuals may include molecular pathologists, researchers, and individuals with expertise in laboratory science or health economics.

The Panel will provide input and recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS), on the following:

- The establishment of payment rates under section 1834A of the Act for new clinical diagnostic laboratory tests, including whether to use “crosswalking” or “gapfilling” processes to determine payment for a specific new test.
- The factors used in determining coverage and payment processes for new clinical diagnostic laboratory tests.
- Other aspects of the new payment system under section 1834A of the Act.

A notice announcing the establishment of the Panel and soliciting

nominations for members was published in the October 27, 2014 **Federal Register** (79 FR 63919 through 63920). In the August 7, 2015 **Federal Register** (80 FR 47491), we announced membership appointments to the Panel along with the first public meeting date for the Panel, which was held on August 26, 2015. Subsequent meetings of the Panel and membership appointments were also announced in the **Federal Register**.

II. Agenda

The Agenda for the July 28 and July 29, 2021 Panel meeting will provide for discussion and comment on the following topics as designated in the Panel's charter:

- Calendar Year (CY) 2022 Clinical Laboratory Fee Schedule (CLFS) new and reconsidered test codes, which will be posted on the CMS website at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Laboratory_Public_Meetings.html.

- Other CY 2022 CLFS issues designated in the Panel's charter and further described on our Agenda.

A detailed Agenda will be posted approximately 2 weeks before the meeting, on the CMS website at <https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>. The Panel will make recommendations to the Secretary and the Administrator of CMS regarding crosswalking and gapfilling for new and reconsidered laboratory tests discussed during the CLFS Annual Public Meeting for CY 2022. The Panel will also provide input on other CY 2022 CLFS issues that are designated in the Panel's charter and specified on the meeting agenda.

III. Meeting Participation

This meeting is open to the public. Stand-by speakers may participate in the meeting via teleconference and webinar. A stand-by speaker is an individual who will speak on behalf of a company or organization if the Panel has any questions during the meeting about technical information described in the public comments or presentation previously submitted or presented by the organization or company at the recent Clinical Laboratory Fee Schedule (CLFS) Annual Public Meeting for Calendar Year (CY) 2022 on June 24, 2021. The public may also view or listen-only to the meeting via teleconference and webinar.

IV. Registration Instructions for Stand-by Speakers

Beginning Monday, May 3, 2021 and ending Wednesday, June 30, 2021 at 5:00 p.m. E.D.T., registration to serve as a stand-by speaker may be completed by sending an email to the following resource box CDLTPanel@cms.hhs.gov. The subject of the email should state "Stand-by Speaker Registration for CDLT Panel Meeting." In the email, all of the following information must be submitted when registering:

- Stand-by Speaker name.
- Organization or company name.
- Email addresses that will be used by the speaker in order to connect to the virtual meeting.
- New or Reconsidered Code(s) for which the company or organization you are representing submitted a comment or presentation.

Registration details may not be revised once they are submitted. If registration details require changes, a new registration entry must be submitted by the date specified in the **DATES** section of this notice. In addition, registration information must reflect individual-level content and not reflect an organization entry. Also, each individual may only register one person at a time. That is, one individual may not register multiple individuals at the same time.

After registering, a confirmation email will be sent upon receipt of the registration. The email will provide information to the speaker in preparation for the meeting. Registration is only required for stand-by speakers and must be submitted by the deadline specified in the **DATES** section of this notice. We note that no registration is required for participants who plan to view the Panel meeting via webinar or listen via teleconference.

VI. Panel Recommendations and Discussions

The Panel's recommendations will be posted approximately 2 weeks after the meeting on the CMS website at <https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>.

VIII. Special Accommodations

Individuals viewing or listening to the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should send an email to the resource box (CDLTPanel@cms.hhs.gov). The deadline for submitting this request is listed in the **DATES** section of this notice.

IX. Copies of the Charter

The Secretary's Charter for the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests is available on the CMS website at <http://cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html> or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

X. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Acting Administrator of the Centers for Medicare & Medicaid Services (CMS), Elizabeth Richter, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 28, 2021.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2021-09261 Filed 4-30-21; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1741-N]

Medicare Program; Public Meeting on June 24, 2021 Regarding New and Reconsidered Clinical Diagnostic Laboratory Test Codes for the Clinical Laboratory Fee Schedule for Calendar Year 2022

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to receive comments and recommendations (including data on which recommendations are based) on the appropriate basis for establishing payment amounts for new or substantially revised Healthcare Common Procedure Coding System codes being considered for Medicare

payment under the Clinical Laboratory Fee Schedule (CLFS) for calendar year (CY) 2022. This meeting also provides a forum for those who submitted certain reconsideration requests regarding final determinations made last year on new test codes and for the public to provide comment on the requests.

DATES:

CLFS Annual Public Meeting Date: The virtual meeting is scheduled for Thursday, June 24, 2021 from 9 a.m. to 5 p.m., E.D.T.

Deadline for Submission of Presentations and Written Comments: All presenters for the CLFS Annual Public Meeting must register and submit their presentations electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov*, by June 3, 2021 at 5 p.m., E.D.T. All written comments (non-presenter comments) must also be submitted electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov*, by June 3, 2021, at 5 p.m., E.D.T. Any presentations or written comments received after that date and time will not be included in the meeting and will not be reviewed.

Deadline for Submitting Requests for Special Accommodations: Requests for special accommodations must be received no later than June 3, 2021 at 5 p.m. E.D.T.

Publication of Proposed Determinations: We intend to publish our proposed determinations for new test codes and our preliminary determinations for reconsidered codes (as described later in section II “Format” of this notice) for CY 2022 by early September 2021.

Deadline for Submission of Written Comments Related to Proposed Determinations: Comments in response to the preliminary determinations will be due by early October 2021.

ADDRESSES: Due to the current COVID-19 public health emergency, the CLFS Annual Public Meeting will be held virtually and will not occur at the campus of the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Where to Submit Written Comments: Interested parties should submit all written comments on presentations and preliminary determinations electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov* (the specific date for the publication of these determinations and the deadline for submitting comments regarding these determinations will be published on the CMS website).

FOR FURTHER INFORMATION CONTACT:

Rasheeda Arthur, Ph.D., (410) 786-3434. Submit all inquiries to the CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov*, with the subject entitled “CLFS Annual Public Meeting Inquiry.”

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106-554) required the Secretary of the Department of Health and Human Services (the Secretary) to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM). The procedures and Clinical Laboratory Fee Schedule (CLFS) public meeting announced in this notice for new tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to establish by regulation procedures for determining the basis for, and amount of, payment for any clinical diagnostic laboratory test (CDLT) for which a new or substantially revised Healthcare Common Procedure Coding System (HCPCS) code is assigned on or after January 1, 2005. A code is considered to be substantially revised if there is a substantive change to the definition of the test or procedure to which the code applies (for example, a new analyte or a new methodology for measuring an existing analyte-specific test). (See section 1833(h)(8)(E)(ii) of the Act and 42 CFR 414.502).

Section 1833(h)(8)(B) of the Act sets forth the process for determining the basis for, and the amount of, payment for new tests. Pertinent to this notice, sections 1833(h)(8)(B)(i) and (ii) of the Act require the Secretary to make available to the public a list that includes any such test for which establishment of a payment amount is being considered for a year and, on the same day that the list is made available, cause to have published in the **Federal Register** notice of a meeting to receive

comments and recommendations (including data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for the tests on such list. This list of codes for which the establishment of a payment amount under the CLFS is being considered for Calendar Year (CY) 2022 will be posted on the Centers for Medicare & Medicaid Services (CMS) website concurrent with the publication of this notice and may be updated prior to the CLFS Annual Public Meeting. The CLFS Annual Public Meeting list of codes can be found on the CMS website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/>. Section 1833(h)(8)(B)(iii) of the Act requires that we convene the public meeting not less than 30 days after publication of the notice in the **Federal Register**. The CLFS requirements regarding public consultation are codified at 42 CFR 414.506.

Two bases of payment are used to establish payment amounts for new CDLTs. The first basis, called “crosswalking,” is used when a new CDLT is determined to be comparable to an existing test, multiple existing test codes, or a portion of an existing test code. New CDLTs that were assigned new or substantially revised codes prior to January 1, 2018, are subject to provisions set forth under § 414.508(a). For a new CDLT that is assigned a new or significantly revised code on or after January 1, 2018, CMS assigns to the new CDLT code the payment amount established under § 414.507 of the comparable existing CDLT. Payment for the new CDLT code is made at the payment amount established under § 414.507. (See § 414.508(b)(1)).

The second basis, called “gapfilling,” is used when no comparable existing CDLT is available. When using this method, instructions are provided to each Medicare Administrative Contractor (MAC) to determine a payment amount for its Part B geographic area for use in the first year. In the first year, for a new CDLT that is assigned a new or substantially revised code on or after January 1, 2018, the MAC-specific amounts are established using the following sources of information, if available: (1) Charges for the test and routine discounts to charges; (2) resources required to perform the test; (3) payment amounts determined by other payers; (4) charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant; and

(5) other criteria CMS determines appropriate. In the second year, the test code is paid at the median of the MAC-specific amounts. (See § 414.508(b)(2)).

Under section 1833(h)(8)(B)(iv) of the Act and § 414.506(d)(1) CMS, taking into account the comments and recommendations (and accompanying data) received at the CLFS Annual Public Meeting, develops and makes available to the public a list of proposed determinations with respect to the appropriate basis for establishing a payment amount for each code, an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on the proposed determinations. Under section 1833(h)(8)(B)(v) of the Act and § 414.506(d)(2), taking into account the comments received on the proposed determinations during the public comment period, CMS then develops and makes available to the public a list of final determinations of payment amounts for tests along with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

Section 216(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) added section 1834A to the Act. The statute requires extensive revisions to the Medicare payment, coding, and coverage requirements for CDLTs. Pertinent to this notice, section 1834A(c)(3) of the Act requires the Secretary to consider recommendations from the expert outside advisory panel established under section 1834A(f)(1) of the Act when determining payment using crosswalking or gapfilling processes. In addition, section 1834A(c)(4) of the Act requires the Secretary to make available to the public an explanation of the payment rates for the new test codes, including an explanation of how the gapfilling criteria and panel recommendations are applied. These requirements are codified in § 414.506(d) and (e).

After the final determinations have been posted on the CMS website, the public may request reconsideration of the basis and amount of payment for a new CDLT as set forth in § 414.509. Pertinent to this notice, those requesting that we reconsider the basis for payment or the payment amount as set forth in § 414.509(a) and (b), may present their reconsideration requests at the following year's CLFS Annual Public Meeting provided the requestor made the request to present at the CLFS Annual Public Meeting in the written reconsideration request. For purposes of this notice, we refer to these codes as

the “reconsidered codes.” The public may comment on the reconsideration requests. (See the CY 2008 Physician Fee Schedule final rule with comment period published in the **Federal Register** on November 27, 2007 (72 FR 66275 through 66280) for more information on these procedures).

II. Format

We are following our usual process, including an annual public meeting to determine the appropriate basis and payment amount for new and reconsidered codes under the CLFS for CY 2022. However, due to the COVID–19 public health emergency, the public meeting will be conducted virtually and will not occur on-site at the CMS Central Building.

This meeting is still open to the public. Registration is only required for those interested in presenting public comments during the meeting. During the virtual meeting, registered persons from the public may discuss and make recommendations for specific new and reconsidered codes for the CY 2022 CLFS.

The Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (Advisory Panel on CDLTs) will participate in this CLFS Annual Public Meeting by gathering information and asking questions to presenters, and will hold its next public meeting, virtually on July 28 and 29, 2021. The public meeting for the Advisory Panel on CDLTs will focus on the discussion of and recommendations for test codes presented during the June 24, 2021 CLFS Annual Public Meeting. The Panel meeting also will address any other CY 2022 CLFS issues that are designated in the Panel's charter and specified on the meeting agenda. The announcement for the next meeting of the Advisory Panel on CDLTs is included in a separate notice published elsewhere in this issue of the **Federal Register**.

Due to time constraints, presentations must be brief, lasting no longer than 10 minutes. Written presentations must be electronically submitted to CMS on or before June 3, 2021. Presentation slots will be assigned based upon chronological order of receipt of presentation materials. In the event there is not enough time for presentations by everyone who is interested in presenting, we will only accept written presentations from those who submitted written presentations within the submission window and were unable to present due to time constraints. Presentations should be sent via email to our CLFS dedicated email box, CLFS_Annual_Public_Meeting@cms.hhs.gov. In addition,

individuals may also submit requests after the CLFS Annual Public Meeting to obtain electronic versions of the presentations. Requests for electronic copies of the presentations after the public meeting should be sent via email to our CLFS dedicated email box, noted above.

Presenters should submit all presentations using a standard PowerPoint template that is available on the CMS website, at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Laboratory_Public_Meetings.html, under the “Meeting Notice and Agenda” heading.

For reconsidered and new codes, presenters should address all of the following five items:

- (1) Reconsidered or new code(s) with the most current code descriptor.
- (2) Test purpose and method with a brief comment on how the new test is different from other similar analyte or methodologies found in tests already on the CLFS.
- (3) Test costs.
- (4) Charges.
- (5) Recommendation with rationale for one of the two bases (crosswalking or gapfilling) for determining payment for reconsidered and new tests.

Additionally, presenters should provide the data on which their recommendations are based. Presentations regarding reconsidered and new test codes that do not address the above five items for presenters may be considered incomplete and may not be considered by CMS when making a determination. However, we may request missing information following the meeting to prevent a recommendation from being considered incomplete.

Taking into account the comments and recommendations (and accompanying data) received at the CLFS Annual Public Meeting, we intend to post our proposed determinations with respect to the appropriate basis for establishing a payment amount for each new test code and our preliminary determinations with respect to the reconsidered codes along with an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on these determinations on our website by early September 2021. This website can be accessed at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/>. Interested parties may submit written comments on the preliminary determinations for new and

reconsidered codes by early October 2021, electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov* (the specific date for the publication of the determinations on the CMS website, as well as the deadline for submitting comments regarding the determinations, will be published on the CMS website). Final determinations for new test codes to be included for payment on the CLFS for CY 2022 and reconsidered codes will be posted on our website in November 2021, along with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions received from the public. The final determinations with respect to reconsidered codes are not subject to further reconsideration. With respect to the final determinations for new test codes, the public may request reconsideration of the basis and amount of payment as set forth in § 414.509.

III. Registration Instructions

The Division of Ambulatory Services in the CMS Center for Medicare is coordinating the CLFS Annual Public Meeting registration. Beginning May 3, 2021 and ending June 3, 2021, registration may be completed by presenters only. Individuals who intend to view and/or listen to the meeting do not need to register. Presenter registration may be completed by sending an email to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov*. The subject of the email should state "Presenter Registration for CY 2021 CLFS Annual Laboratory Meeting." All of the following information must be submitted when registering:

- Speaker name.
- Organization or company name.
- Telephone numbers.
- Email address that will be used by the presenter in order to connect to the virtual meeting.
- New or Reconsidered Code (s) for which presentation is being submitted.
- Presentation.

Registration details may not be revised once they are submitted. If registration details require changes, a new registration entry must be submitted by the date specified in the **DATES** section of this notice. Additionally, registration information must reflect individual-level content and not reflect an organization entry. Also, each individual may only register one person at a time. That is, one individual may not register multiple individuals at the same time.

After registering, a confirmation email will be sent upon receipt of the

registration. The email will provide information to the presenter in preparation for the meeting. Registration is only required for individuals giving a presentation during the meeting. Presenters must register by the deadline specified in the **DATES** section of this notice.

If you are not presenting during the CLFS Annual Public Meeting, you may view the meeting via webinar or listen-only by teleconference. If you would like to listen to or view the meeting, teleconference dial-in and webinar information will appear on the final CLFS Annual Public Meeting agenda, which will be posted on the CMS website when available at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/>.

IV. Special Accommodations

Individuals viewing or listening to the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should send an email to the resource box (*CDLT_Annual_Public_Meeting@cms.hhs.gov*). The deadline for submitting this request is listed in the **DATES** section of this notice.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Acting Administrator of the Centers for Medicare & Medicaid Services (CMS), Elizabeth Richter, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 28, 2021.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2021-09260 Filed 4-30-21; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2021-Z-0025]

Withdrawal of Notice Regarding the Food and Drug Administration Drug Review Timeline Transparency; Revocation of Statement of Policy

AGENCY: Food and Drug Administration (FDA), Department of Health and Human Services (HHS).

ACTION: Notice; withdrawal; statement of policy; revocation.

SUMMARY: The Department of Health and Human Services (Department or HHS) and the Food and Drug Administration (FDA or Agency) are issuing this notice to withdraw the notice published in the **Federal Register** of January 15, 2021, announcing a Statement of Policy indicating that FDA will publish certain information regarding the timeline for its review of drug product applications. The Department and FDA are withdrawing the notice and revoking the Statement of Policy because, among other things, the notice did not account for all relevant considerations related to information that is already publicly available about FDA's review of drug applications.

DATES: The notice is withdrawn and the Statement of Policy is revoked as of May 3, 2021.

FOR FURTHER INFORMATION CONTACT:

Jennifer Forde, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6228, Silver Spring, MD 20993-0002, 301-348-3035.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 2021 (86 FR 4083), HHS published a notice entitled "FDA Drug Review Timeline Transparency; Statement of Policy" (Statement of Policy). The Statement of Policy described the Department's review of application timelines and directed FDA to publish annually on its website, for each approved new drug application (NDA) and abbreviated new drug application (ANDA) approved after the date of the **Federal Register** notice: "(a) the date on which FDA 'filed,' in the case of an NDA, or 'received,' in the case of an ANDA, such application; (b) the date on which FDA approved the NDA or ANDA; (c) the total days elapsed between the dates in (a) and (b); and (d) the total days in excess of 180-days the date of (c)." We did not find any evidence that HHS consulted with, otherwise involved, or even notified

FDA before issuing the notice. Section 1003(d) (21 U.S.C. 393(d)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) provides that the Secretary “shall be responsible for executing” the FD&C Act “through the [FDA] Commissioner.” Here, the notice in directing FDA to report on whether the Agency’s action on drug applications met statutory timelines is clearly an action “executing” the FD&C Act.

Upon further consideration, the Department and FDA have determined that the Statement of Policy did not account for all relevant considerations related to the timing of FDA’s review of drug applications. The Statement of Policy did not accurately account for the time that the review period for drug applications starts. Although the table of drug approvals presented in the Statement of Policy (86 FR 4083 at 4083–4084) references the drug application submission date as the beginning of a 180-day review period, the review period does not actually start until a drug application is “filed” or “received” by FDA (see section 505(c)(1) and (j)(5)(A) of the FD&C Act (21 U.S.C. 355(c)(1) and (j)(5)(A))). Under FDA’s regulations, an NDA is not filed until FDA has made a threshold determination that the NDA is sufficiently complete to permit a substantive review. For NDAs, FDA will determine whether the application may be filed within 60 days (see § 314.101(a)(1) (21 CFR 314.101(a)(1))). If the application is filed, the regulation states that the “date of filing will be the date 60 days after the date FDA received the NDA. The date of filing begins the 180-day period described in section 505(c) of the Federal Food, Drug, and Cosmetic Act” (§ 314.101(a)(2)). An ANDA is not received until FDA has made a threshold determination that the ANDA is substantially complete (§ 314.101(b)(1)). If the ANDA is received, the date of receipt is then considered to be the date of submission (§ 314.101(b)(2)).

Moreover, the 180-day review period can be extended by mutual agreement between FDA and an applicant (see section 505(c)(1) and (j)(5)(A) of the FD&C Act; § 314.100(c)). For instance, an applicant that receives a complete response letter from FDA may choose to respond to the complete response letter (rather than requesting an opportunity for a hearing), thus agreeing to extend the 180-day review period (see 21 CFR 314.110(b)–(c) and 314.101(f)). We also note that since the enactment of the Prescription Drug User Fee Act of 1992 (PDUFA), there has been a mutual understanding between industry and the Agency that the review cycle for an

application or supplement subject to user fees may be adjusted (either shortened or lengthened) in accordance with the user fee performance goals (see “Applications for Approval to Market a New Drug; Complete Response Letter; Amendments to Unapproved Applications,” 73 FR 39588 at 39593 (July 10, 2008)). A similar understanding exists between industry and the Agency with respect to the review of generic drug applications under the Generic Drug User Fee Amendments (GDUFA).

Further, the Department and FDA have determined that the Statement of Policy did not take into account all of the relevant considerations related to the timeframe for FDA’s review of drug applications. For instance, the Statement of Policy did not fully consider PDUFA and GDUFA. The sixth reauthorization of PDUFA and the second reauthorization of GDUFA reference performance goals transmitted by the Secretary of HHS to Congress in commitment letters,¹ which represent the result of FDA’s discussions with the regulated industry and public stakeholders. The performance goals and other commitments specified in these letters apply to aspects of the drug review programs that are important for facilitating timely access to safe and effective medicines for patients. The commitment letters include goals for the timeline of the review of drug applications, and FDA regularly meets or exceeds these goals.

FDA’s approval of drugs benefits American consumers, who have access to one of the safest and most advanced pharmaceutical systems in the world. Under PDUFA, FDA has significantly reduced the time it takes to evaluate new drugs and biologics without compromising its rigorous standards for a demonstration of safety, efficacy, and quality of new drugs and biologics before approval.² The efficiency gains under PDUFA have revolutionized the drug review process in the United States and enabled FDA to ensure more timely access to innovative and important new therapies for patients.³ FDA also understands that high drug prices have a direct impact on patients. The processes under GDUFA continue to help reduce review times and approval times, boosting competition and helping to ensure that safe, effective, high-

quality generic drug products are available to the American public.⁴

Transparency and accountability will not be sacrificed in the absence of the Statement of Policy since such information is already publicly available. PDUFA and GDUFA require the HHS Secretary to submit annual performance reports to Congress for each fiscal year during which fees are collected (see sections 736B(a) and 744C(a) of the FD&C Act (21 U.S.C. 379h–2(a) and 379j–43(a))). Annual performance reports document FDA performance in meeting goals in the commitment letters agreed to by the HHS Secretary, including goals for the timeline of the review of drug applications. These reports are required to be publicly available and posted on FDA’s website (sections 736B(e) and 744C(e) of the FD&C Act), and they are available at <https://www.fda.gov/about-fda/user-fee-performance-reports/pdufa-performance-reports> (PDUFA) and <https://www.fda.gov/about-fda/user-fee-performance-reports/gdufa-performance-reports> (GDUFA). In addition, as part of FDARA and its GDUFA II commitments (see section 807 of FDARA and section VI(C)(1) and (2) of the GDUFA Reauthorization Performance Goals and Program Enhancements for Fiscal Years 2018–2022, available at <https://www.fda.gov/media/101052/download>), FDA publishes monthly metrics on its website that include the number of applications approved and tentatively approved and quarterly metrics that include the mean and median approval and tentative approval times, available at <https://www.fda.gov/industry/generic-drug-user-fee-amendments/enhanced-accountability-reporting>. Thus, the review timeline information the Statement of Policy sought to have FDA provide publicly would be redundant with information that is already publicly available.

Therefore, the **Federal Register** notice announcing the Statement of Policy published on January 15, 2021, is withdrawn and the Statement of Policy is revoked.

¹ See sections 101(b) and 301(b) of FDA Reauthorization Act of 2017, Public Law 115–52 (FDARA).

² See FDA’s Annual PDUFA Performance Reports available at: <https://www.fda.gov/about-fda/user-fee-performance-reports/pdufa-performance-reports>.

³ Id.

⁴ See FDA’s Annual GDUFA Performance Reports available at: <https://www.fda.gov/about-fda/user-fee-performance-reports/gdufa-performance-reports>.

Dated: April 23, 2021.

Janet Woodcock,

Acting Commissioner of Food and Drugs.

Dated: April 27, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021-09134 Filed 4-30-21; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI) Developing the National Public Health Strategy for the Prevention and Control of Vector-Borne Diseases in Humans; Correction

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Office of the Assistant Secretary for Health published a document in the *Federal Register* of April 27, 2021, requesting comments be sent via www.regulations.gov with a docket number of HHS-OASH-2021-0001. The referenced docket number was incorrect and also inadvertently omitted two additional questions on page 22215.

FOR FURTHER INFORMATION CONTACT: Dr. Kristen Honey, Chief Data Scientist, Senior Advisor, Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201, vectorbornedisease@hhs.gov, (202) 853-7680.

SUPPLEMENTARY INFORMATION:

Correction

In the *Federal Register* of April 27, 2021, in FR Doc. 2021-08167, on page 22214, in the third column, correct the **ADDRESSES** caption to read:

ADDRESSES: Public comments should be submitted online at <http://www.regulations.gov>. All submissions must be submitted to the Docket named HHS-OASH-2021-0012 to "Request for Information (RFI) from Non-Federal Stakeholders: Developing the National Public Health Strategy for the Prevention and Control of Vector-Borne Diseases in Humans." Comments submitted electronically, including attachments, will be posted to the docket unchanged and available for view by the public. Evidence and information supporting your comment can be submitted as attachments. Please provide your contact information or

organization name on the web-based form for possible follow up from HHS. There is a 5,000 character limit on comments and maximum number (10) of attached files and maximum size (10 MB) of each attached file.

In the *Federal Register* of April 27, 2021, in FR Doc. 2021-08167, on page 22215, in the second column, after question number "4," should be two additional questions to read as follows:

5. How can insights from climate change be incorporated into the development of a national strategy?

6. How should low-income and vulnerable populations be addressed in the national strategy?

Kristen Honey,

Chief Data Scientist, Senior Advisor, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.

[FR Doc. 2021-09241 Filed 4-30-21; 8:45 am]

BILLING CODE 4150-28-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

Date: June 24, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209-A, Bethesda, MD 20892-7924, (301) 827-7912, copeka@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung

Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 28, 2021.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-09236 Filed 4-30-21; 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: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: June 2-4, 2021.

Time: 9:00 a.m. to 7:00 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: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 451-0996, ybi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA RM20-022: Faculty Institutional Recruitment for Sustainable Transformation (FIRST) Program.

Date: June 2-3, 2021.

Time: 9:30 a.m. to 7:00 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: Elia K Ortenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7816, Bethesda, MD 20892, (301) 827-7189, femiaee@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review

Group; Pathophysiology of Eye Disease—1 Study Section.

Date: June 3–4, 2021.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827-7083, sultanaa@mail.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: June 3–4, 2021.

Time: 9:00 a.m. to 8:00 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: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301-435-2889, rileyann@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.

Date: June 3–4, 2021.

Time: 9:00 a.m. to 7:30 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: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301-537-9986, macarthurlh@csr.nih.gov.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: June 3–4, 2021.

Time: 9:00 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: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892-9606, 301-443-1606, charlesvi@mail.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Development—1 Study Section.

Date: June 3–4, 2021.

Time: 10:00 a.m. to 8:00 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: Zubaida Saifudeen, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, zubaida.saifudeen@nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Interventions to Prevent and Treat Addictions Study Section.

Date: June 7–8, 2021.

Time: 9:30 a.m. to 8:00 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: Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, (301) 523-0646, mintzermz@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.

Date: June 8–9, 2021.

Time: 10:00 a.m. to 8:00 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: Zubaida Saifudeen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301.827.3029, zubaida.saifudeen@nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Human Studies of Diabetes and Obesity Study Section.

Date: June 10–11, 2021.

Time: 10:00 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: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301-435-1044, chenhui@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-09237 Filed 4-30-21; 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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: June 2–3, 2021.

Time: 11:00 a.m. to 9:00 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: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435-1178, fujij@csr.nih.gov.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: June 3–4, 2021.

Time: 10:00 a.m. to 6:30 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: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 408-9850, morrowcs@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR20-243: Digital Healthcare Interventions to Address the Secondary Health Effects Related to Social, Behavioral, and Economic Impact of COVID-19.

Date: June 4, 2021.

Time: 10:00 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: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 827-6480, weikts@mail.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: June 7–8, 2021.

Time: 8:00 a.m. to 8:00 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: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435-2392, masoodk@csr.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Probes and Contrast Agents Study Section.

Date: June 10–11, 2021.

Time: 9:00 a.m. to 8:00 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: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435-8363, wrightds@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: June 10–11, 2021.

Time: 10:00 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: Brian H Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-7490, brianscott@mail.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: June 10–11, 2021.

Time: 11:00 a.m. to 5:30 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: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, jessica.smith6@nih.gov.

Name of Committee: Healthcare Delivery and Methodologies, Integrated Review Group; Health Promotion in Communities Study Section.

Date: June 14–15, 2021.

Time: 9:00 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: Helena Eryam Dagadu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, (301) 435-1266, dagaduhe@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: April 27, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-09110 Filed 4-30-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities which Meet Minimum Standards to Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT:

Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240-276-2600 (voice); Anastasia.Donovan@samhsa.hhs.gov (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as

it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list>.

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of

certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved to Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved to Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780-784-1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved to Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215-2802, 800-445-6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800-442-0438, (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ, 85254, 602-457-5411/623-748-5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800-235-4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519-679-1630, (Formerly: Gamma-Dynacare Medical Laboratories) ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662-236-2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713-856-8288/800-800-2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908-526-2400/800-437-4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919-572-6900/800-833-3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866-827-8042/800-233-6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913-888-3927/800-873-8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-5295/800-950-5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651-636-7466/800-832-3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612-725-2088

Testing for Veterans Affairs (VA) Employees Only, Pacific Toxicology

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory) Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888-635-5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610-631-4600/877-642-2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800-255-2159

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235, 301-677-7085, Testing for Department of Defense (DoD) Employees Only

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,
Policy Analyst.

[FR Doc. 2021-09214 Filed 4-30-21; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4507-DR; Docket ID FEMA-2021-0001]

Ohio; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA-4507-DR), dated March 31, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 31, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Ohio (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09142 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4499-DR; Docket ID FEMA-2021-0001]

Oregon; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA-4499-DR), dated March 28, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 28, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Oregon (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09136 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4505-DR; Docket ID FEMA-2021-0001]

Rhode Island; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Rhode Island (FEMA-4505-DR), dated March 30, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Rhode Island is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 30, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Rhode Island (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09144 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4537-DR; Docket ID FEMA-2021-0001]

American Samoa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the territory of American Samoa (FEMA-

4537–DR), dated April 17, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the territory of American Samoa is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 17, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the territory of American Samoa (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09182 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4481–DR; Docket ID FEMA–2021–0001]

Washington; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

State of Washington (FEMA–4481–DR), dated March 22, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Washington is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 22, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Washington (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09113 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4530–DR; Docket ID FEMA–2021–0001]

Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4530–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Oklahoma (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09185 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4519–DR; Docket ID FEMA–2021–0001]

Oregon; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Oregon (FEMA–4519–DR), dated April 3, 2020, and related determinations.

DATES: This change occurred on March 26, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Dolph A. Diemont as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09164 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4592–DR; Docket ID FEMA–2021–0001]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

Commonwealth of Kentucky (FEMA–4592–DR), dated March 31, 2021, and related determinations.

DATES: This amendment was issued April 8, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 31, 2021.

Taylor County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09178 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4517–DR; Docket ID FEMA–2021–0001]

West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–4517–DR), dated April 3, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 3, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of West Virginia (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09162 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4511–DR; Docket ID FEMA–2021–0001]

Commonwealth of the Northern Mariana Islands; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of the Northern Mariana

Islands (FEMA–4511–DR), dated April 1, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 1, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the Commonwealth of the Northern Mariana Islands (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09152 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4531–DR; Docket ID FEMA–2021–0001]

Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–4531–DR), dated April 7, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 7, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Minnesota (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09191 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4504–DR; Docket ID FEMA–2021–0001]

Kansas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–4504–DR), dated March 29, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Kansas (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09146 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4491–DR; Docket ID FEMA–2021–0001]

Maryland; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maryland (FEMA–4491–DR), dated March 26, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maryland is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 26, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Maryland (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09123 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4492–DR; Docket ID FEMA–2021–0001]

South Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4492–DR), dated March 27, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 27, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of South Carolina (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09125 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4512–DR; Docket ID FEMA–2021–0001]

Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4512–DR), dated April 2, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 2, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the Commonwealth of Virginia (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09154 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4514-DR; Docket ID FEMA-2021-0001]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA-4514-DR), dated April 2, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 2, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Tennessee (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09159 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4562-DR; Docket ID FEMA-2021-0001]

Oregon; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Oregon (FEMA-4562-DR), dated September 15, 2020, and related determinations.

DATES: This change occurred on March 26, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Dolph A. Diemont as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09173 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4511-DR; Docket ID FEMA-2021-0001]

Commonwealth of the Northern Mariana Islands; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA-4511-DR), dated April 1, 2020, and related determinations.

DATES: This amendment was issued March 22, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 22, 2021, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Robert J. Fenton, Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the emergency conditions in the Commonwealth of the Northern Mariana Islands resulting from the Coronavirus Disease 2019 (COVID-19) pandemic beginning on January 20, 2020,

and continuing, are of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

Therefore, I amend the declaration of April 1, 2020, to authorize a waiver of the non-Federal cost share for Other Needs Assistance—Lost Wages Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09153 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4485–DR; Docket ID FEMA–2021–0001]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4485–DR), dated March 25, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely

affected by the event declared a major disaster by the President in his declaration of March 25, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Texas (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09117 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4506–DR; Docket ID FEMA–2021–0001]

Pennsylvania; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4506–DR), dated March 30, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include Individual

Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 30, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the Commonwealth of Pennsylvania (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09137 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4484–DR; Docket ID FEMA–2021–0001]

Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4484–DR), dated March 24, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 24, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Louisiana (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09116 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4486-DR; Docket ID FEMA-2021-0001]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA-4486-DR), dated March 25, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 25, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Florida (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09118 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4487-DR; Docket ID FEMA-2021-0001]

North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA-4487-DR), dated March 25, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 25, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of North Carolina (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09119 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4557-DR; Docket ID FEMA-2021-0001]

Iowa; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Iowa (FEMA-4557-DR), dated August 17, 2020, and related determinations.

DATES: This change occurred on March 31, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David Gervino, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of DuWayne Tewes as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,
Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09186 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4587-DR; Docket ID FEMA-2021-0001]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA-4587-DR), dated February 24, 2021, and related determinations.

DATES: The declaration was issued February 24, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 24, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in the State of Oklahoma resulting from severe winter storms during the period of February 8 to February 20, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas; assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program and Hazard Mitigation throughout the state; and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Adam D. Burpee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Canadian, Carter, Cherokee, Comanche, Cotton, Hughes, Jefferson, Le Flore, McIntosh, Oklahoma, Okmulgee, Osage, Pittsburg, Stephens, Tulsa, and Wagoner Counties for Individual Assistance.

All 77 counties within the State of Oklahoma for emergency protective measures

(Category B), including direct federal assistance.

All areas within the State of Oklahoma are eligible for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09174 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4525-DR; Docket ID FEMA-2021-0001]

Utah; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Utah (FEMA-4525-DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Utah is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Utah (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09190 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4494-DR; Docket ID FEMA-2021-0001]

Michigan; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Michigan (FEMA-4494-DR), dated March 27, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Michigan is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely

affected by the event declared a major disaster by the President in his declaration of March 27, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Michigan (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09127 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4524-DR; Docket ID FEMA-2021-0001]

Arizona; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arizona (FEMA-4524-DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arizona is hereby amended to include Individual Assistance limited to

COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Arizona (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09189 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4523-DR; Docket ID FEMA-2021-0001]

Nevada; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nevada (FEMA-4523-DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of Nevada is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Nevada (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09184 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4508–DR; Docket ID FEMA–2021–0001]

Montana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Montana (FEMA–4508–DR), dated March 31, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Montana is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 31, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Montana (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09157 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4516–DR; Docket ID FEMA–2021–0001]

New Hampshire; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4516–DR), dated April 3, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Hampshire is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 3, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of New Hampshire (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09161 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4528–DR; Docket ID FEMA–2021–0001]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4528–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Mississippi (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09170 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4591–DR; Docket ID FEMA–2021–0001]

Poarch Band of Creek Indians; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

Poarch Band of Creek Indians (FEMA–4591–DR), dated March 28, 2021, and related determinations.

DATES: This amendment was issued March 28, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the President’s Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID–19 and to Increase Reimbursement and Other Assistance Provided to States, dated January 21, 2021 and the President’s Memorandum on Maximizing Assistance from the Federal Emergency Management Agency, dated February 2, 2021 FEMA is amending the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the “Stafford Act”) for all of the COVID–19 emergency and major disaster declarations. FEMA is amending this declaration as follows:

Federal funds for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program (Section 403) are authorized at 100 percent of total eligible costs for work performed from January 20, 2020 through September 30, 2021.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09176 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4489–DR; Docket ID FEMA–2021–0001]

Illinois; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–4489–DR), dated March 26, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 26, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Illinois (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09121 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4497–DR; Docket ID FEMA–2021–0001]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4497–DR), dated March 28, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 28, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the Commonwealth of Kentucky (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals

and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09145 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4533–DR; Docket ID FEMA–2021–0001]

Alaska; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska (FEMA–4533–DR), dated April 9, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 9, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Alaska (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09169 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4493–DR; Docket ID FEMA–2021–0001]

Puerto Rico; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4493–DR), dated March 27, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 27, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the Commonwealth of Puerto Rico (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09126 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4592–DR; Docket ID FEMA–2021–0001]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4592–DR), dated March 31, 2021, and related determinations.

DATES: The declaration was issued March 31, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 31, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe winter storms, landslides, and mudslides during the period of February 8 to February 19, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the state. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Bath, Boyd, Boyle, Breathitt, Carter, Casey, Clark, Clay, Clinton, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Jackson, Johnson, Laurel, Lawrence, Lee, Leslie, Lewis, Lincoln, Madison, Magoffin, Marion, Martin, McCreary, Menifee, Mercer, Montgomery, Morgan, Nelson, Nicholas, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Wayne, Whitley, and Wolfe Counties for Public Assistance.

All areas within the Commonwealth of Kentucky are eligible for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09177 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4503–DR; Docket ID FEMA–2021–0001]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–4503–DR), dated

March 29, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Alabama (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09149 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4480–DR; Docket ID FEMA–2021–0001]

New York; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4480–DR), dated

March 20, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 20, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of New York (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals

and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09112 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4490–DR; Docket ID FEMA–2021–0001]

Missouri; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–4490–DR), dated March 26, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 26, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Missouri (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09122 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4496–DR; Docket ID FEMA–2021–0001]

Massachusetts; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Massachusetts (FEMA–4496–DR), dated March 27, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Massachusetts is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 27, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the Commonwealth of Massachusetts (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09147 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4488–DR; Docket ID FEMA–2021–0001]

New Jersey; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–4488–DR), dated March 25, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 25, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of New Jersey (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09120 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4513–DR; Docket ID FEMA–2021–0001]

Virgin Islands; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the territory of the U.S. Virgin Islands (FEMA–4513–DR), dated April 2, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the territory of the U.S. Virgin Islands is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 2, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the territory of the U.S. Virgin Islands (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09158 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4509–DR; Docket ID FEMA–2021–0001]

North Dakota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–4509–DR), dated April 1, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Dakota is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 1, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of North Dakota (already designated for Individual Assistance, limited to the Crisis Counseling

Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09150 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4515–DR; Docket ID FEMA–2021–0001]

Indiana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–4515–DR), dated April 3, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 3, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs

Assistance for all areas in the State of Indiana (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09160 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4526–DR; Docket ID FEMA–2021–0001]

Delaware; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Delaware (FEMA–4526–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Delaware is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Delaware (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09168 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4591–DR; Docket ID FEMA–2021–0001]

Poarch Band of Creek Indians; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Poarch Band of Creek Indians (FEMA–4591–DR), dated March 28, 2021, and related determinations.

DATES: The declaration was issued March 28, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 28, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the emergency conditions associated with the Poarch Band of Creek Indians resulting from the Coronavirus Disease 2019 (COVID-19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the Poarch Band of Creek Indians.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program for the Poarch Band of Creek Indians. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Poarch Band of Creek Indians have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program for the Poarch Band of Creek Indians.

Emergency protective measures (Category B) not authorized under other federal statutes, including direct federal assistance, under the Public Assistance program for the Poarch Band of Creek Indians.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09175 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4532-DR; Docket ID FEMA-2021-0001]

Vermont; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA-4532-DR), dated April 8, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 8, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Vermont (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09192 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4500-DR; Docket ID FEMA-2021-0001]

Connecticut; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA-4500-DR), dated March 28, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Connecticut is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 28, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Connecticut (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049,

Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentialy Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09141 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4482–DR; Docket ID FEMA–2021–0001]

California; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4482–DR), dated March 22, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 22, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of California (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentialy Declared Disaster Areas; 97.049, Presidentialy Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentialy Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09114 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4520–DR; Docket ID FEMA–2021–0001]

Wisconsin; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–4520–DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Wisconsin (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentialy Declared Disaster Areas; 97.049, Presidentialy Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentialy Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09165 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4502–DR; Docket ID FEMA–2021–0001]

District of Columbia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the District of Columbia (FEMA–4502–DR), dated March 29, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the District of Columbia is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the District of Columbia (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09148 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4518–DR; Docket ID FEMA–2021–0001]

Arkansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–4518–DR), dated

April 3, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 3, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Arkansas (already designated for Individual Assistance, limited to the Crisis Counseling

Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09163 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4498–DR; Docket ID FEMA–2021–0001]

Colorado; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4498–DR), dated March 28, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Colorado is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 28, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs

Assistance for all areas in the State of Colorado (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09143 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4561–DR; Docket ID FEMA–2021–0001]

Sac & Fox Tribe of the Mississippi in Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for Sac & Fox Tribe of the Mississippi in Iowa (FEMA–4561–DR), dated September 10, 2020, and related determinations.

DATES: This change occurred on March 31, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David Gervino, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of DuWayne Tewes as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09172 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4527–DR; Docket ID FEMA–2021–0001]

South Dakota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–4527–DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Dakota is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of South Dakota (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09187 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4495–DR; Docket ID FEMA–2021–0001]

Guam; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the territory of Guam (FEMA–4495–DR), dated March 27, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the territory of Guam is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely

affected by the event declared a major disaster by the President in his declaration of March 27, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the territory of Guam (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09155 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4501–DR; Docket ID FEMA–2021–0001]

Georgia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4501–DR), dated March 29, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include Individual Assistance limited to

COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Georgia (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09156 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4510–DR; Docket ID FEMA–2021–0001]

Hawaii; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Hawaii (FEMA–4510–DR), dated April 1, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of Hawaii is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 1, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Hawaii (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09151 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4483–DR; Docket ID FEMA–2021–0001]

Iowa; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–4483–DR), dated March 23, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 23, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Iowa (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09115 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4521–DR; Docket ID FEMA–2021–0001]

Nebraska; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–4521–DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Nebraska (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09166 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4522–DR; Docket ID FEMA–2021–0001]

Maine; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–4522–DR), dated April 4, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 4, 2020.

Individual Assistance limited to COVID–19 Funeral Assistance under Other Needs Assistance for all areas in the State of Maine (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09167 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4495–DR; Docket ID FEMA–2021–0001]

Guam; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the territory of Guam (FEMA–4495–DR), dated March 27, 2020, and related determinations.

DATES: This amendment was issued March 22, 2021.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 22, 2021, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Robert J. Fenton, Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the emergency conditions in the territory of Guam resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

Therefore, I amend the declaration of March 27, 2020, to authorize a waiver of the non-Federal cost share for Other Needs Assistance—Lost Wages Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09135 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4535-DR; Docket ID FEMA-2021-0001]

Wyoming; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wyoming (FEMA-4535-DR), dated April 11, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wyoming is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 11, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Wyoming (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09171 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4534-DR; Docket ID FEMA-2021-0001]

Idaho; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Idaho (FEMA-4534-DR), dated April 9, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Idaho is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 9, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of Idaho (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-09188 Filed 4-30-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4529-DR; Docket ID FEMA-2021-0001]

New Mexico; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA-4529-DR), dated April 5, 2020, and related determinations.

DATES: This amendment was issued March 11, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 5, 2020.

Individual Assistance limited to COVID-19 Funeral Assistance under Other Needs Assistance for all areas in the State of New Mexico (already designated for Individual Assistance, limited to the Crisis Counseling Program and emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049,

Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentialy Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 7.039, Hazard Mitigation Grant.)

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–09181 Filed 4–30–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Public Collection of Information: Exercise Information System

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0057, abstracted below that we will submit to the Office of Management and Budget (OMB) for an extension in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden for the TSA Exercise Information System (EXIS). EXIS is a web portal designed to serve stakeholders in the transportation industry in regard to security training exercises. EXIS provides stakeholders with transportation security exercise scenarios and objectives, best practices and lessons learned, and a repository of the user's own historical exercise data for use in future exercises. It also allows stakeholders to design and evaluate their own security exercises based on the unique needs of their specific transportation mode or method of operation. Using and inputting information into EXIS is completely voluntary.

DATES: Send your comments by July 2, 2021.

ADDRESSES: Comments may be emailed to TSAPRA@dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone 571–227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be made available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0057; Exercise Information System. EXIS is an internet-accessible knowledge-management system developed by TSA to serve its relevant stakeholders (such as members of the transportation industry, port authorities, Federal agencies, and State, local, territorial, and tribal governments). EXIS integrates security-related training and exercise components constituting Sensitive Security Information (SSI).¹ It gives stakeholders valuable security exercise scenarios and objectives, best practices and lessons learned, and a repository of the users' own historical exercise data for use in future exercises. Transportation industry stakeholders can choose scenarios and objectives based on their vulnerabilities, mode of transportation, and the size of their operation.

TSA will collect five types of information through EXIS. The collection is voluntary. While EXIS users are not required to provide all

information requested, if users choose to withhold information, they may not receive the benefits of EXIS associated with that information collection.

1. User registration information.

Because EXIS includes SSI information, TSA must collect information upon registration to ensure only those members of the transportation community with a relevant interest in conducting security training exercises, and with an appropriate level of need to access security training information, are provided access to EXIS.

TSA collects: The User's Name, Agency/Organization Name and Type, Job Title, Supervisor or other Sponsor's Name, Professional Phone Number, Professional Email Address, Employment Verification Contact Name, Employment Verification Contact Information, and the Reason for Needing an EXIS account. In addition, the following optional registration information can be added by the user: Professional (business), Country, City, State, Zip Code, Mobile Phone Number, Alternate Email, and Preferred Transportation Sector.

2. Desired nature and scope of the exercise. TSA collects this information to generate an EXIS training exercise appropriate for the particular user. Users are asked to submit their desired transportation mode, exercise properties, objectives, scenario events, and participating agencies/attendees.

3. Corrective actions/lessons learned/best practices. TSA collects this information to document and share the users' ideas and methods for improving transportation security with other transportation stakeholders in the wider EXIS user base. The TSA Intermodal Security Training and Exercise Program office may send lessons learned and best practices to subject matter experts within TSA for review. Once the information is reviewed, any company or user identifying information is removed and the content is published to the site for all users to access.

4. Evaluation feedback. TSA collects this information for the purpose of evaluating the usefulness of EXIS in facilitating security training exercises for the users. TSA can then modify EXIS to better suit its users' needs.

5. After-Action Reports (AARs). The EXIS automatically summarizes information from items (2) and (3) mentioned above in order to create formal AARs for users. These AARs include an exercise overview, goals and objectives, scenario event synopsis, analysis of critical issues, exercise design characteristics, conclusions, and the executive summary. The AAR is the output of the exercise process.

¹ SSI is information which, if publicly released, would be detrimental to transportation security, and is defined at 49 U.S.C. 114(r) and 49 CFR part 1520.

Stakeholders use the report to identify strengths or areas in which they can assign resources to mitigate risk and enhance the security posture within their organization.

Based on industry population estimates and growth rates, and interest generated amongst the transportation modes during the years following EXIS' release to the public, TSA estimates that there will be approximately 11,500 full access and limited access users in Year 1; 14,350 users in Year 2; and 18,250 users in Year 3, for an average annual respondents estimate of 14,700. TSA estimates a proportion of full access users and limited access users will spend approximately 3.5 hours per EXIS user inputting the information described above. TSA estimates limited access users will also spend approximately 0.25 hours completing a survey. Given this information, the annual hourly burden for EXIS's collection of information is 7,090.63 hours.

Dated: April 28, 2021.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2021-09234 Filed 4-30-21; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Flight Crew Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0028, abstracted below, that we will submit to OMB for extension in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves requesting information from flight and cabin crew members of air carriers to verify employment status to confirm eligibility to participate in voluntary advanced self-defense training provided by TSA. Each crew member will also be required to complete an electronic Injury Waiver Form. Additionally, each participant is asked to complete an anonymous course

evaluation at the conclusion of the training.

DATES: Send your comments by July 2, 2021.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

- (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652-0028, Flight Crew Self-Defense Training—Registration and Evaluation. TSA is seeking an extension of the ICR, currently approved under OMB control number 1652-0028, to continue compliance with a statutory mandate. Under 49 U.S.C. 44918(b), TSA is required to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation.

TSA must collect specific information to provide the program to eligible participants, as well as assess training quality. This information includes limited biographical information from flight and cabin crew members to

confirm their eligibility to participate in this training. TSA uses the information to confirm the eligibility of the participant by contacting the participant's employer.

TSA collects the following information at the time of registration online: name of the crew member, airline affiliation, position, crew member airline identification (ID) number, crew member contact information (home mailing address, home telephone number and/or email address), and the city and state of the TSA Law Enforcement/Federal Air Marshals Service field office where the course will be taken. Upon attending class, crew members are asked to show ID to verify their identity against registration records and to sign the class attendance roster.

In addition, TSA asks each crew member to complete an Injury Waiver Form during the registration process, or before the training is conducted. The Injury Waiver Form requests the employee's airline, airline ID number, signature, and date, and is intended to limit any liability to TSA or its facilities should a crew member become injured during the training.

TSA also asks trainees to complete a voluntary evaluation of the training upon completion of the course. Participants may assess the training quality and provide anonymous and voluntary comments by clicking on the electronic feedback link located on the registration site.

The estimated number of annual respondents is 3,500 and estimated annual burden is 350 hours. TSA estimates the online registration requires five (5) minutes and the injury waiver and class roster sign-in process requires one (1) minute per crew member. This amounts to 350 hours [(3,500 crew members × 6 minutes)]. Although using the course feedback tab is strictly voluntary, TSA estimates ten (10) minutes per crew member for those who complete the evaluation, and 10 crew members will complete the evaluation each year for a total of 1.67 hours (10 crew members × 10 minutes). TSA estimates the total annual hours for this information collection to be 361.67 (350 + 1.67).

Dated: April 28, 2021.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2021-09227 Filed 4-30-21; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR-7040-N-07]****60-Day Notice of Proposed Information Collection: Restrictions on Assistance to Noncitizens; OMB Control No.: 2577-0295****AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.**ACTION:** Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 2, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410-5000; telephone 202-402-5564 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT:

Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202-402-3374, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339. Copies of available documents submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Restrictions on Assistance to Noncitizens.

OMB Approval Number: 2577-0295.

Type of Request: Extension without change of a currently approved collection.

Form Number: HUD-9886, HUD-9886-ARA, HUD-9886-CAM, HUD-9886-CHI, HUD-9886-CRE, HUD-9886-FRE, HUD-9886-HMO, HUD-9886-KOR, HUD-9886-RUS, HUD-9886-SPA, HUD-9886-VIE.

Description of the need for the information and proposed use: HUD is prohibited from making financial assistance available to other than citizens or persons of eligible immigration status. This is a request for an extension of the current approval for HUD to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance.

Respondents (i.e. affected public): Individuals or households, State, or Local Government.

Reporting Burden:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
New tenant admissions in Public & Indian Housing and Section 8 Programs**	4,055	213	863, 715.00	0.16	138,194.40	\$30.00	\$4,145,832.00
Annual recertification of tenants' eligible immigration status in Public & Indian Housing and Section 8 Programs** ..	4,055	7	28,385.00	0.08	2,270.80	30.00	68,124.00
Totals	4,055	.....	892,100	.....	140,465.20	.....	4,213,956.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those

who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Dated: April 23, 2021.

Laura Miller-Pittman,
Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2021-09216 Filed 4-30-21; 8:45 am]

BILLING CODE 4210-67-P

INTER-AMERICAN FOUNDATION**Sunshine Act Meetings**

TIME AND DATE: May 4, 2021, 10:30 a.m.–12:30 p.m.

PLACE: Via tele-conference.

STATUS: Meeting of the Board of Directors, open to the public.

MATTERS TO BE CONSIDERED:

- Call to order
- Approval of the Minutes from the November 09, 2020, Meeting of the Board of Directors and Advisory Council
- Remarks from IAF President/CEO
- Management Team Updates
- Discussion
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Aswathi Zachariah, General Counsel, (202) 683–7118.

For Dial-in Information Contact: Karen Vargas, Board Liaison, (202) 524–8869.

Aswathi Zachariah,
General Counsel.

[FR Doc. 2021–09290 Filed 4–29–21; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2018–0048;
FXMB 12320900000//212//FF09M22000]

List of Bird Species to Which the Migratory Bird Treaty Act Does Not Apply; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service, are correcting our April 16, 2020, notice that published an amended list of the nonnative bird species that have been introduced by humans into the United States or U.S. territories and to which the Migratory Bird Treaty Act (MBTA) does not apply. That list erroneously included one bird species, European Robin (*Erithacus rubecula*), that is covered by the MBTA.

FOR FURTHER INFORMATION CONTACT: Eric L. Kershner, Chief, Branch of Conservation, Permits, and Regulations; Division of Migratory Bird Management; U.S. Fish and Wildlife Service; MS: MB; 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–2376.

SUPPLEMENTARY INFORMATION: On April 16, 2020, we published two documents in the **Federal Register**:

1. A final rule revising the regulations in title 50 of the Code of Federal Regulations (CFR) at § 10.13 (50 CFR 10.13) that sets forth the List of Migratory Birds protected by the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703 *et seq.*) (85 FR 21282; 2020–06779); and

2. A notice publishing an amended list of the nonnative bird species that have been introduced by humans into the United States or U.S. territories and to which the MBTA does not apply (85 FR 21262; 2020–06782).

One bird species, European Robin (*Erithacus rubecula*), was erroneously included in both published documents. In the final rule revising the regulations in 50 CFR 10.13, we determined that European Robin (*Erithacus rubecula*) is covered by the MBTA. See 85 FR 21282.

Thus, the European Robin (*Erithacus rubecula*) correctly appears in the List of Migratory Birds protected by the MBTA at 50 CFR 10.13. This species should not have been included in the April 16, 2020, notice published at 85 FR 21262. Therefore, with this document, we correct the April 16, 2020, notice to remove the entry “European Robin, *Erithacus rubecula*” under Family Muscicapidae from the list of nonnative, human-introduced bird species to which the MBTA does not apply.

Authority

The authority for this notice is the Migratory Bird Treaty Reform Act of 2004 (Division E, Title I, Sec. 143 of the Consolidated Appropriations Act, 2005; Pub. L. 108–447), and the Migratory Bird Treaty Act (16 U.S.C. 703–712).

Signing Authority

The Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service, 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 U.S. Fish and Wildlife Service. Jerome Ford, Assistant Director, U.S. Fish and Wildlife Service, approved this document on April 28, 2021, for publication.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2021–09250 Filed 4–30–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AABB003600/
A0T902020.253G]

Liquor Control Ordinance of the Kickapoo Tribe in Kansas

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance of the Kickapoo Tribe in Kansas. The liquor control ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Kansas for the purpose of generating new Tribal revenues. Enactment of this liquor control ordinance will help provide a source of revenue to strengthen Tribal government, provided for the economic

viability of Tribal enterprises, and improve delivery of Tribal government services.

DATES: This ordinance shall take effect on June 2, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Lovin, Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005, Telephone: (405) 247–1534 or (405) 247–6673, Fax: (405) 247–9240.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior must certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Kickapoo Tribe in Kansas Tribal Council duly adopted the Liquor Control Ordinance of the Kickapoo Tribe in Kansas on September 1, 2020.

This notice is published in accordance with the delegated authority by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Kickapoo Tribe in Kansas Tribal Council duly adopted by Resolution the Liquor Control Ordinance of the Kickapoo Tribe in Kansas by Resolution No. KT20–111 on September 1, 2020.

Bryan Newland,

Principal Deputy Assistant Secretary, Indian Affairs.

Liquor Control Ordinance of the Kickapoo Tribe in Kansas

Introduction

Title. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. 1161, by the authority of the Kickapoo Tribe in Kansas Tribal Council under the Constitution and Bylaws of the Kickapoo Tribe in Kansas, Article V, Section 1.

Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor within the Kickapoo Tribe in Kansas Reservation. The enactment of a tribal ordinance governing liquor possession and sale on the Kickapoo Tribe in Kansas Reservation will increase ability of the tribal government to control the sale, distribution and possession of liquor and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Effective date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the **Federal Register**.

Article 1. Declaration of Public Policy and Purpose

(1) The introduction, possession, and sale of liquor on the Kickapoo Tribe in Kansas Reservation is a matter of special concern to the Kickapoo Tribe in Kansas.

(2) Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. Sec. 1154 and other statutes), except as provided therein and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted. (18 U.S.C. Sec. 1161).

(3) The Kickapoo Tribe in Kansas Tribal Council finds that a complete ban on liquor within the Kickapoo Tribe in Kansas Reservation is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within Kickapoo Tribe in Kansas Reservation, because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Kickapoo Tribe in Kansas Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Kickapoo Tribe in Kansas Reservation.

(4) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the Kickapoo Tribe in Kansas Reservation and which provides for exclusive purchase, distribution, and sale on liquor only on tribal lands within the exterior boundaries of the Kickapoo Tribe in Kansas. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at a tribally-owned gaming facility complex.

Article II. Definitions

(1) As used in the title, the following words shall have the following meaning unless the context clearly requires otherwise:

(a) “Alcohol” means that substance known as ethyl alcohol, hydrated oxide of ethyl, Alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) “Alcoholic Beverage” is synonymous with the term “liquor” as defined in Article II (f) of this Chapter.

(c) “Bar” means any establishment with special space and accommodations for the Sale of liquor by the glass and for consumption on the premises as herein defined.

(d) “Beer” means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesale grain or cereal in pure water and containing the percent of alcohol by volume subject to regulations as an intoxicating beverage in the state where the beverage is located.

(e) “Tribal Council” means the governing body of the Kickapoo Tribe in Kansas.

(f) “Liquor” includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whisky, rum, gin aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.

(g) “Liquor Store” means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to sale of liquor or beer.

(h) “Malt liquor” means beer, strong beer, ale, stout and porter.

(i) “Package” means any container or receptacle used holding liquor.

(j) “Public Place” includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls, and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(k) “Sale” and “Sell” include exchange, barter and traffic, and also include the selling or supplying or distributing, by and means whatsoever, or liquor, or of any liquid known or

described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(l) “Spirits” means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(m) “Wine” means any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, hone, milk, or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

(n) “Kickapoo Tribe in Kansas General Council” means the general council of the Kickapoo Tribe in Kansas which is composed of the voting membership of the Tribe.

(o) “Kickapoo Tribe in Kansas Reservation” means all lands which are within the exterior boundaries of the Kickapoo Reservation, which is recognized by the federal government as the Kickapoo Tribe in Kansas Reservation.

(p) “Tribal Court” means the Kickapoo Tribe in Kansas Tribal Court.

Article III. Powers of Enforcement

(1) Kickapoo Tribe in Kansas Tribal Council. In furtherance of this ordinance, the Tribal Council shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Tribal Council governing the sale,

manufacture, distribution, and possession of alcoholic beverages on the Kickapoo Tribe in Kansas Reservation;

(b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its function. Such employees shall be tribal employees;

(c) To issue licenses permitting the sale or manufacture or distribution of liquor on the Kickapoo Tribe in Kansas Reservation;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the Tribal Court or other appropriate court to enforce this ordinance as necessary;

(f) To determine and seek damages for violation of the ordinance;

(g) To make such reports as may be required by the Kickapoo Tribe in Kansas Tribal Council; and

(h) To collect taxes and fees levied or set by the Kickapoo Tribe in Kansas Tribal Council and to keep accurate records, books and accounts.

(2) *Limitation on Powers.* In the exercise of its powers and duties under this ordinance, the Tribal Council and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the immunity of the Kickapoo Tribe in Kansas from suit without the express written consent and resolution of the Tribal Council.

(3) *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Council at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Tribal Council and this ordinance are being complied with.

Article IV. Sale of Liquor

(1) *License Required.* Sales of liquor and alcoholic beverages on Kickapoo Tribe in Kansas Reservation may only be made at businesses which hold a Kickapoo Tribe in Kansas Liquor license.

(2) *Sales for Cash.* All liquor sales on the Kickapoo Tribe in Kansas Reservation shall be on a cash only and no credit shall be extended to any person, organizations, or entity, except that the provision does not prevent the payment for purchases with use of credit cards such as Visa, MasterCard, American Express, etc.

(3) *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage on the Kickapoo Tribe in Kansas Reservation is prohibited. Any person who is not licensed pursuant to this ordinance who purchases any alcoholic beverage on the Kickapoo Tribe in Kansas Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Kickapoo Tribe in Kansas as set forth herein.

(4) *Other Licenses.* In addition to or in lieu of the license otherwise provided by this ordinance, a retailer of alcoholic beverages may also be licensed under this ordinance to make sales of alcoholic beverages in the same manner (a) as allowed by Kansas law in the state of Kansas for similar Class A or B clubs or (b) as allowed by Kansas law outside of the Kickapoo Tribe in Kansas Reservation and in Brown County, Kansas. Under no circumstances will any retailer be required to comply with

any state or county laws, rules or regulations which are inapplicable for any reason or which are preempted by or in violation of federal law.

Article V. Licensing

(1) *Procedure.* In order to control the proliferation and establishment on the Kickapoo Tribe in Kansas Reservation which sell or serve liquor by the bottle or by the drink, all persons or entities which desire to sell liquor on the Kickapoo Tribe in Kansas Reservation must apply to the Kickapoo Tribe in Kansas for a license to sell or serve liquor.

(2) *Application.* Any person or entity applying for a license to sell or serve liquor on the Kickapoo Tribe in Kansas Reservation must fill in the application provided for this purpose by the Kickapoo Tribe in Kansas and pay such application fee as may be set from time to time by the Tribal Council for this purpose. Said application must be filled out completely in order to be considered.

(3) *Issuance of License.* The Tribal Council may issue a license if it believes that such issuance is in the best interests of the Kickapoo Tribe in Kansas. The purpose of this ordinance is to permit liquor sales and consumption at the casino or casino-hotel facilities located on the Kickapoo Tribe in Kansas Reservation. Issuance of a license for any other purposes will not be considered to be in the best interest of the Kickapoo Tribe in Kansas.

(4) *Period of License.* Each license may be issued for a period not to exceed two (2) years from the date of issuance.

(5) *Renewal of License.* A license may renew its license if the licensee has complied in full with this ordinance provided however, that the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Kickapoo Tribe in Kansas.

(6) *Revocation in License.* The Tribal Council may suspend or revoke a license due to one or more violations of this ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

(7) *Hearings.* Within 15 days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Tribal Council under this ordinance, the licensee may deliver to the Tribal Council a written request for hearing on whether the proposed action should be taken. A hearing on the issues shall be

held before a person or persons appointed by the Tribal Council and a written decision will be issued. Such decision will be considered final unless an appeal is filed with the Tribal Court within 15 days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under this and any other sections of this ordinance shall be accord with due process of law.

(8) *Non-transferability of Licenses.* Licenses issued by the Tribal Council shall not be transferable and may not be utilized by the person or entity in whose name it was issued.

Article VI. Taxes

(1) *Sales Tax.* The Tribal Council shall have the authority, as may subsequently be specified under tribal law, to levy and to collect a tax on each retail sale of alcoholic beverage on the Kickapoo Tribe in Kansas Reservation. Based upon a percent of the retail sales price. All taxes from the sale of alcoholic beverages on the Kickapoo Tribe in Kansas Reservation shall be paid over to the General Treasury of the Kickapoo Tribe in Kansas.

(2) *Taxes Due.* All taxes for the sale of liquor and alcoholic beverages on the Kickapoo Tribe in Kansas Reservation are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(3) *Delinquent Taxes.* Past due taxes shall accrue interest at 2% per month.

(4) *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

(5) *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of liquor and alcoholic beverages on the Kickapoo Tribe in Kansas Reservation. Said review or audit may be done periodically by the Tribe or through its agents or employees whenever, in the opinion of the Tribal Council, such a review or audit is necessary to verify the accuracy of reports.

Article VII. Rules, Regulations and Enforcement

(1) In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

(2) Any person who shall in any manner sell or offer for sale or distribute or transport liquor in violation of this ordinance shall be subject to civil damages assessed by the Tribal Council.

(3) Any person within the boundaries of the Kickapoo Tribe in Kansas Reservation who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

(4) Any person who keeps or possess liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

(5) Any person who knowingly sells liquor of a person under the influence of liquor shall be guilty of a violation of this ordinance.

(6) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

(7) No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under this control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

(8) Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.

(9) Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this ordinance.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

(11) Any person guilty of violation of this ordinance shall be liable to pay the Kickapoo Tribe in Kansas the amount of \$500 per violation as civil damages to

defray the Tribe's cost of enforcement of this ordinance.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(a) Driver's license or identification card issued by any state department of motor vehicles;

(b) United States Active Duty Military;

(c) Passport.

(13) Liquor which is possessed, including for sale, contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee or officer who is authorized by the Tribal Council to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

(14) Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Kickapoo Tribe in Kansas.

Article VIII. Abatement

(1) Any room, house building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

(2) The Chairman of the Tribal Council or, if the Chairman fails or refuses to do so, by a majority vote, the Tribal Council shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and per perpetually enjoin any nuisance declared under this article. In addition to other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond a sufficient sum from \$1,000 to \$15,000, depending upon the severity of past offenses, the risk of offenses in the future and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other applicable tribal law and that he will pay all fines,

costs and damages assessed against him for any violation of this ordinance or other tribal liquor laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Tribe under this ordinance.

(3) In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article IX. Revenue

(1) Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Tribal Council for essential governmental and social services.

Article X. Severability and Effective Date

(1) If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

(2) This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and published the same in the **Federal Register**.

(3) Any and all prior liquor control enactments of the Tribal Council which are inconsistent with the provisions of this ordinance are hereby rescinded.

Article XI. Amendment and Construction

(1) This ordinance may only be amended by a vote of the Tribal Council, the governing body of the Kickapoo Tribe in Kansas.

(2) Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Kickapoo Tribe in Kansas or their tribal government.

[FR Doc. 2021-09196 Filed 4-30-21; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs**[212A2100DD/AAK001030/
A0A501010.999900]**HEARTH Act Approval of Cow Creek Band of Umpqua Tribe of Indians Title 105 Leasing Code****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Cow Creek Band of Umpqua Tribe of Indians, Title 105 Leasing Code under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business, residential, agricultural, wind and solar leases without further BIA approval.

DATES: BIA issued the approval on April 26, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, sharelene.roundface@bia.gov, (505) 563-3132.

SUPPLEMENTARY INFORMATION:**I. Summary of the HEARTH Act**

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant

Secretary—Indian Affairs, has approved the Tribal regulations for the Cow Creek Band of Umpqua Tribe of Indians.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447-48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of rent is indistinguishable from an impermissible tax on the land." See *Seminole Tribe of Florida v. Stranburg*, 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of "traditional notions of Indian self-government," requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447-48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and

activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [Tribes] to approve leases quickly and efficiently." H. Rep. 112-427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. See *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that "[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding"). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. See *id.* at 810-11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval.

responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Cow Creek Band of Umpqua Tribe of Indians.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–09197 Filed 4–30–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
211S180110; S2D2S SS08011000
SX064A000 21XS501520; OMB Control
Number 1029–0043]

Agency Information Collection Activities; Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations under Regulatory Programs

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 2, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0043 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202–208–2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Abstract: The regulations at 30 CFR part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that people planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Title of Collection: Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations under Regulatory Programs.

OMB Control Number: 1029–0043.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments and businesses.

Total Estimated Number of Annual Respondents: 3,375.

Total Estimated Number of Annual Responses: 8,825.

Estimated Completion Time per Response: Varies from two hours to 35 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 71,600.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$565,096.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2021–09124 Filed 4–30–21; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
211S180110; S2D2S SS08011000
SX064A000 21XS501520; OMB Control
Number 1029–0035]

Agency Information Collection Activities; Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 2, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and

Enforcement, 1849 C Street NW, Room 4556—MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0035 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202–208–2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Abstract: Applicants for surface and underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with

environmental protection performance standards.

Title of Collection: Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OMB Control Number: 1029–0035.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments and businesses.

Total Estimated Number of Annual Respondents: 224.

Total Estimated Number of Annual Responses: 1,975.

Estimated Completion Time per Response: Varies from one hour to 415 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 174,630.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2021–09107 Filed 4–30–21; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Health Insurance Claim Form

AGENCY: Department of Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of the Workers' Compensation Programs (OWCP)-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 June 2, 2021.

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: Mara Blumenthal by telephone at 202–693–8538, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Form OWCP–1500 is used by OWCP and contractor bill payment staff to process bills for medical services provided by medical professionals other than medical services provided by hospitals, pharmacies and certain other medical providers. This information is required to pay health care providers for services rendered to injured employees covered under the Office of Workers' Compensation Programs—administered programs. Appropriate payment cannot be made without documentation of the medical services that were provided by the health care provider that is billing OWCP. The information obtained to complete claims under these programs is used to identify the patient and determine their eligibility. It is also used to decide if the services and supplies received are covered by these programs and to assure that proper payment is made. Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C., Black Lung Benefits Act, 30 U.S.C. 901, and the Federal Employees Compensation Act, 5 U.S.C. 8101 authorize this information collection. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 9, 2021 (86 FR 8804).

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–OWCP.

Title of Collection: Health Insurance Claim Form.

OMB Control Number: 1240–0044.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 57,099.

Total Estimated Number of Responses: 3,381,232.

Total Estimated Annual Time Burden: 394,477 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 23, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–09210 Filed 4–30–21; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Registration and Equal Employment Opportunity in Apprenticeship Programs

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 June 2, 2021.

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: Mara Blumenthal by telephone at 202–693–8538, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The National Apprenticeship Act (NAA) of 1937 (29 U.S.C. 50) authorizes this information collection. If approved, this ICR will enable ETA to refine its data collection concerning the registration of apprenticeship programs and apprentices with DOL/ETA’s Office of Apprenticeship and recognized State Apprenticeship Agencies, properly assess the types of sponsors that are seeking to register an apprenticeship program and the level of growth in apprenticeship, collect the data necessary to calculate national registered apprenticeship program and apprentice totals, and implement the requirements of the Veterans Apprenticeship and Labor Opportunity Reform (VALOR) Act (Pub. L. 115–89). This ICR will also continue to enable ETA to collect data from registered apprenticeship programs relating to equal employment opportunity, and from applicants and/or apprentices, who file a discrimination complaint. Under the NAA, the Secretary of Labor (Secretary) is charged with the establishment of labor standards designed to safeguard the welfare of apprentices and promote apprenticeship opportunity. The NAA also authorizes the Secretary to “publish information relating to existing and proposed labor standards of apprenticeship.” For additional substantive information about this ICR, see the related notice

published in the **Federal Register** on January 13, 2021 (86 FR 2700).

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–ETA.

Title of Collection: Registration and Equal Employment Opportunity in Apprenticeship Programs.

OMB Control Number: 1205–0223.

Affected Public: Individuals or Households; Federal Government; State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 651,093.

Total Estimated Number of Responses: 980,606.

Total Estimated Annual Time Burden: 521,964 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 23, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–09208 Filed 4–30–21; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quarterly Census of Employment and Wages Business Supplement (QBS)

AGENCY: Department of Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-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 June 2, 2021.

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: Mara Blumenthal by telephone at 202–693–8538, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Bureau of Labor Statistics (BLS) intends to implement a new collection for a QCEW Business Supplement (QBS). Through the QBS, the BLS will be able to capture information on the US economy in a more efficient and timely manner than is currently possible. The QBS is intended to be a versatile collection instrument that will allow BLS to quickly collect and publish information so that stakeholders and data users can understand the impact of specific events on the US economy as they occur, improving the relevancy of the data. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 3, 2021 (86 FR 8037).

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–BLS.

Title of Collection: Quarterly Census of Employment and Wages Business Supplement (QBS).

OMB Control Number: 1220–0NEW.

Affected Public: Private Sector—Businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 149,250.

Total Estimated Number of Responses: 149,250.

Total Estimated Annual Time Burden: 12,438 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 26, 2021.

Mara Blumenthal,
Senior PRA Analyst.

[FR Doc. 2021–09203 Filed 4–30–21; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Local Area Unemployment Statistics (LAUS) Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-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 June 2, 2021.

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: Mara Blumenthal by telephone at 202–693–8538, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The BLS has been charged by Congress (29 U.S.C. Sections 1 and 2) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency-based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available in State Workforce Agencies. The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Workforce Innovation and Opportunity Act of 2014 (that supplanted the Workforce Investment Act of 1998) and the Public Works and Economic Development Act, among others. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 9, 2021 (86 FR 8803).

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–BLS.

Title of Collection: Local Area Unemployment Statistics (LAUS) Program.

OMB Control Number: 1220–0017.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 95,569.

Total Estimated Annual Time Burden: 143,045 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 26, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–09204 Filed 4–30–21; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Travel Refund Request

AGENCY: Department of Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of the Workers' Compensation Programs (OWCP)-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 June 2, 2021.

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:

Mara Blumenthal by telephone at 202–693–8538, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Form OWCP–957 is used to request reimbursement for out-of-pocket expenses incurred when traveling to medical providers for covered medical testing or treatment. Black Lung Benefits Act (BLBA), 30 U.S.C. 901, Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) 42 U.S.C. 7384, and the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 authorize this information collection. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 9, 2021 (86 FR 8805).

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–OWCP.

Title of Collection: Medical Travel Refund Request.

OMB Control Number: 1240–0037.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 34,703.

Total Estimated Number of Responses: 333,528.

Total Estimated Annual Time Burden: 55,366 hours.

Total Estimated Annual Other Costs Burden: \$193,446.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 23, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–09209 Filed 4–30–21; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement without change of the "Current Population Survey (CPS) Unemployment Insurance (UI) Non-Filer Supplement" to be conducted in February 2022 and May 2022. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before July 2, 2021.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments may also be transmitted by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, 202–691–7763 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The February and May 2022 CPS Unemployment Insurance (UI) Non-Filer Supplement will be conducted at the request of the Department of Labor's Chief Evaluation Office. The supplement was last collected in May and September of 2018.

The UI Non-Filer Supplement will gather information on people who are unemployed as well as on a subset of those who are not in the labor force. Information will be collected about UI participation and reasons for not participating. The supplement also contains questions about people's job search experience, such as information about jobs for which they have applied and whether they would accept a job similar to their last job but at lower pay. Additionally, this supplement contains questions about the job search process of unemployed individuals and the difficulties these seekers have in finding new employment.

Because this supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the supplement. Comparisons between UI filers and non-filers will be possible across characteristics such as sex, race and ethnicity, age, and educational attainment.

UI benefits provide temporary financial assistance to the unemployed who meet certain eligibility criteria and can also help protect the economy during economic downturns. Unemployment increased dramatically in the wake of the coronavirus (COVID–19) pandemic, making updated information of paramount importance. Data gathered in this supplement will help measure the effectiveness of current UI programs, identify possible shortcomings in existing UI programs, and assist policy makers in developing more effective policies.

II. Current Action

Office of Management and Budget clearance is being sought for the CPS UI Non-Filer Supplement.

This collection is needed to provide the Nation with timely information about individuals who do not file for UI benefits and their reasons for not doing so. In addition, data from the supplement will provide a fuller picture about how the unemployed search for jobs and the hardships they face when doing so.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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 submissions of responses.

Title of Collection: CPS UI Non-Filer Supplement.

OMB Number: 1220–0193.

Type of Review: Reinstatement without change.

Affected Public: Individuals or Households.

Total Respondents: 45,000.

Frequency: Once.

Total Responses: 45,000.

Average Time per Response: 3 minutes.

Estimated Total Burden Hours: 2,250 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on April 26, 2021.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2021–09205 Filed 4–30–21; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0066]

Vertical Tandem Lifts (VTLs) for Marine Terminals; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Vertical Tandem Lifts (VTLs) Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by July 2, 2021.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2011–0066) for the Information Collection Request (ICR). OSHA will place all comments, including personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance,

OSHA, U.S. Department of Labor;
telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The Vertical Tandem Lift (VTL) Standard for Marine Terminals (29 CFR part 1917) specifies the following collection of information requirements. The purpose of each of these requirements is to provide workers with safe work practices when using VTLs. A VTL is the practice of a container crane lifting two or more intermodal containers, one on top of the other, connected by a particular type of inter box connector, known as a semiautomatic twist lock.

Paragraph (a) of § 1917.71 requires that all intermodal containers are legibly and permanently marked with the weight of the container when empty ((a)(1)); the maximum weight the container is designed to carry in pounds ((a)(2)); and the maximum weight including the container ((a)(3)).

Additionally, loaded containers must display their gross weight plainly marked on the container in a way that it is visible to the crane operator or other hoisting equipment operator or signalman, or to every supervisor and foreman on the site and in charge of the operation ((b)(2)(i)), or supplied in the form of a cargo stowage plan or equivalent permanent record to the crane or other hoisting equipment

operator and signalman, if any, and to every supervisor and foreman on the site and in charge of the operation ((b)(2)(ii)).

The labeling of intermodal containers with the weight of the container, the maximum weight of cargo that can be packed in the container, and their sum provides the crane operator or other hoisting equipment operator or signalman, or to every supervisor and foreman on the site and in charge of the operation with a minimum and maximum range under which a container can be safely lifted. Providing the gross weight, either marked on the container or supplied in the form of a cargo stowage plan or equivalent permanent record, ensures that the containers being lifted and the cranes/derricks performing the lifting are not overloaded.

Paragraph (i)(8)(iv) of § 1917.71 requires employers to ensure that the interbox connectors used in VTLs has been certified by a competent authority authorized under § 1918.11 (for interbox connectors that are part of a vessel's gear) or § 1917.50 (for other interbox connectors). Paragraph (i)(8)(v) requires employers to make the certification available for inspection and that the certificate attests that the interbox connector meets the strength criteria specified in paragraph (i)(8)(iv) of the standard. Also, paragraph (i)(8)(vi) requires that each interbox connector be clearly and durably marked with its safe working load for lifting with and an identifying number or mark that will enable it to be associated with its test certificate. The certification is necessary to ensure that interbox connector-corner casting assemblies have adequate strength to ensure the safety of the lift. Marking of interbox connectors informs employers, workers and OSHA that the interbox connectors have been certified.

Paragraph (j)(2) of § 1917.71 requires the employer to develop, implement, and maintain a written plan for transporting vertically connected containers in the terminal. The transport plan helps ensure the safety of terminal workers and thereby enhances productivity. Paragraph (k)(2) of § 1917.71 requires that the written transport plan include the safe work zone and procedures to ensure that workers are not in the zone when a VTL is in motion.

Written plans give employers, workers, and OSHA compliance officers assurance that VTLs are safe to use and provide the compliance officers with an efficient means to assess employer compliance with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is proposing an adjustment increase and a program change of the existing burden hour estimate for the collection of information requirements specified by the Standard from 512 hours to 23,256 hours, a total increase of 22,744 hours. The estimated number of marine terminals that use VTLs is based on data from the North American Classification Information System (NACIS) retrieved from the Bureau of Labor Statistics website.

Type of Review: Extension of a currently approved collection.

Title: Vertical tandem Lifts (VTLs) for Marine Terminals (29 CFR part 1917).

OMB Control Number: 1218-0260.

Affected Public: Business or other for-profits; not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1,192.

Number of Responses: 75,875.

Frequency of Responses: On occasion.

Average Time per Response: Various.

Estimated Total Burden Hours: 23,256.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

- (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal;
- (2) by facsimile; or
- (3) by hard copy. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID-19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by

hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0066. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 23, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–09207 Filed 4–30–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0185]

Vehicle-Mounted Elevating and Rotation Work Platforms (Aerial Lifts) Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Vehicle-Mounted Elevating and Rotation Work Platforms (Aerial Lifts) Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by July 2, 2021.

ADDRESSES:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2011–0185). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney,

Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Manufacturer's Certification of Modifications (§ 1910.67(b)(2)). The Standard requires that when aerial lifts are "field modified" for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers upon request. This record provides assurance to employers, workers, and compliance officers that the modified aerial lift is safe for use, thereby preventing failure while workers are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

There are no program changes associated with this package. However, there was a slight burden hour decrease because of the methodology the agency uses to calculate burden hours. The agency uses fractions so that the public can better follow our calculations.

Type of Review: Extension of a currently approved collection.

Title: Vehicle-Mounted Elevating and Rotation Work Platforms (Aerial Lifts) Standard (29 CFR part 1910.67).

OMB Control Number: 1218-0230.

Affected Public: Business or other for-profits.

Number of Respondents: 1,000.

Frequency of Responses: On occasion.

Total Responses: 1,000.

Average Time per Response: Various.

Estimated Total Burden Hours: 17.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID-19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA-2011-0085). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket

Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627 for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Fredrick, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on April 23, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021-09206 Filed 4-30-21; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Joint Standards for Assessing the Diversity Policies and Practices

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork

and respondent burden, invites the general public and other federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before July 2, 2021 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6060, Alexandria, Virginia 22314; email PRAComments@NCUA.gov. Given the limited in-house staff because of the COVID-19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT:

Address requests for additional information to Mackie Malaka at the address or email above, or by telephone (703) 548-2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133-0193.

Title: Joint Standards for Assessing the Diversity Policies and Practices.

Type of Review: Extension of a currently approved collection.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Act) required the NCUA, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Bureau of Consumer Financial Protection (CFPB), and Securities and Exchange Commission (SEC) (Agencies) each to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. The Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the Agency. The Agencies worked together to develop joint standards, and on June 10, 2015, they jointly published in the **Federal Register** the "Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies."

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 325.

Estimated No. of Responses per

Respondent: 1.

Estimated Total Annual Responses: 325.

Estimated Burden Hours per Response: 8.

Estimated Total Annual Burden Hours: 2,600.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on April 26, 2021.

Dated: April 26, 2021.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2021-09029 Filed 4-30-21; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: 2022–2024 IMLS Library and Museum Reviewer Forms

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB Review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments about this

assessment process, instructions, and data collections.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 1, 2021.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting "Institute of Museum and Library Services" under "Currently Under Review;" then check "Only Show ICR for Public Comment" checkbox. Once you have found this information collection request, select "Comment," and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395-7316.

FOR FURTHER INFORMATION CONTACT: Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024-2135. Dr. Bodner can be reached by telephone at 202-653-4636, or by email at cbodner@imls.gov. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS via Federal Relay at 800-877-8339.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development.

Current Actions: This action is to renew the Library and Museum Reviewer forms for the next three years. The 60-Day Notice was published in the **Federal Register** on January 8, 2021 (86 FR 1538). No comments were received.

Agency: Institute of Museum and Library Services.

Title of Collection: 2022–2024 IMLS Library and Museum Reviewer Forms.

OMB Control Number: 3137-0099.

Agency Number: 3137.

Affected Public: Library and Museum professionals.

Total Estimated Number of Annual Responses: 1,778.

Frequency of Response: Once per year.

Average Hours per Response: 0.5.

Total Estimated Number of Annual Burden Hours: 889.

Total Annual Cost Burden: \$26,758.90.

Total Annual Federal Costs: \$77,503.02.

Dated: April 28, 2021.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2021-09251 Filed 4-30-21; 8:45 am]

BILLING CODE 7036-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456, STN 50–457, 72–73, STN 50–454, STN 50–455, 72–68, 50–317, 50–318, 72–8, 50–461, 72–1046, 50–10, 50–237, 50–249, 72–37, 50–333, 72–12, 50–373, 50–374, 72–70, 50–352, 50–353, 72–65, 50–220, 50–410, 72–1036, 50–171, 50–277, 50–278, 72–29, 50–254, 50–265, 72–53, 50–244, 72–67, 50–272, 50–311, 72–48, 50–289, 72–77, 50–295, 50–304, and 72–1037; NRC–2021–0099]

Braidwood Station, Units 1 and 2; Byron Station, Unit Nos. 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Clinton Power Station, Unit No. 1; Dresden Nuclear Power Station, Units 1, 2, and 3; James A. FitzPatrick Nuclear Power Plant; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Nine Mile Point Nuclear Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 1, 2, and 3; Quad Cities Nuclear Power Station, Units 1 and 2; R. E. Ginna Nuclear Power Plant; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Three Mile Island Nuclear Station, Unit 1; Zion Nuclear Power Station, Units 1 and 2; and the Associated Independent Spent Fuel Storage Installations; Consideration of Approval of Transfer of Licenses and Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for indirect transfer of licenses; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) received and is considering approval of an application filed by Exelon Generation Company, LLC (EGC), on behalf of itself and Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC (NMP LLC); R. E. Ginna Nuclear Power Plant, LLC (Ginna LLC); and Calvert Cliffs Nuclear Power Plant, LLC (Calvert LLC) (collectively, the applicants), on February 25, 2021. The applicants seek NRC approval of the indirect transfer of their facility operating licenses, materials license, and general licenses. The NRC is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by June 2, 2021. A request for a hearing must be filed by May 24, 2021. Any potential

party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

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–2021–0099. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- Email comments to: Hearing.Docket@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

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: Blake A. Purnell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1380; email: Blake.Purnell@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0099 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–2021–0099.

- *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 each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *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 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2021–0099 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. Introduction

The NRC is considering the issuance of an order under 10 CFR 50.80 and 72.50 approving the indirect transfer of control of Renewed Facility Operating License Nos. NPF–72 and NPF–77 for Braidwood Station (Braidwood), Units 1 and 2, respectively; Renewed Facility Operating License Nos. NPF–37 and NPF–66 for Byron Station (Byron), Unit Nos. 1 and 2, respectively; Renewed Facility Operating License Nos. DPR–53 and DPR–69 for Calvert Cliffs Nuclear Power Plant (Calvert Cliffs), Units 1 and 2, respectively; Facility Operating License No. NPF–62 for Clinton Power Station (Clinton), Unit No. 1; Facility Operating License No. DPR–2 and

Renewed Facility Operating License Nos. DPR-19 and DPR-25 for Dresden Nuclear Power Station (Dresden), Units 1, 2, and 3, respectively; Renewed Facility Operating License No. DPR-59 for James A. FitzPatrick Nuclear Power Plant (FitzPatrick); Renewed Facility Operating License Nos. NPF-11 and NPF-18 for LaSalle County Station (LaSalle), Units 1 and 2, respectively; Renewed Facility Operating License Nos. NPF-39 and NPF-85 for Limerick Generating Station (Limerick), Units 1 and 2, respectively; Renewed Facility Operating License Nos. DPR-63 and NPF-69 for Nine Mile Point Nuclear Station (NMP), Units 1 and 2, respectively; Facility Operating License No. DPR-12 and Subsequent Renewed Facility Operating License Nos. DPR-44 and DPR-56 for Peach Bottom Atomic Power Station (Peach Bottom), Units 1, 2, and 3, respectively; Renewed Facility Operating License Nos. DPR-29 and DPR-30 for Quad Cities Nuclear Power Station (Quad Cities), Units 1 and 2, respectively; Renewed Facility Operating License No. DPR-18 for R. E. Ginna Nuclear Power Plant (Ginna); Renewed Facility Operating License Nos. DPR-70 and DPR-75 for Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, respectively; Renewed Facility License No. DPR-50 for Three Mile Island Nuclear Station (TMI), Unit 1; Facility Operating License Nos. DPR-39 and DPR-48 for Zion Nuclear Power Station (Zion), Units 1 and 2, respectively; Renewed Materials License No. SNM-2505 for the independent spent fuel storage installation (ISFSI) at Calvert Cliffs; and the general licenses for the ISFSIs at the other sites (collectively, the licenses). These reactor units and associated ISFSIs are collectively referred to as the facilities. The NRC is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

The application dated February 25, 2021 (ADAMS Accession No. ML21057A273), as supplemented by letter dated March 25, 2021 (ADAMS Accession No. ML21084A165), requests that the NRC consent to the indirect transfer of control of the licenses to support a proposed transaction in which Exelon Corporation will transfer its 100 percent ownership of EGC to a newly-created subsidiary that will then be spun off to Exelon Corporation shareholders, becoming EGC's new ultimate parent company. Once the spin transaction is completed, the new ultimate parent company, EGC, and its subsidiaries will no longer be affiliated with Exelon Corporation. EGC will

remain the same Pennsylvania limited liability company as before the proposed transaction and will continue to own and/or operate the facilities, as applicable, and hold the licenses, but it will be renamed and reorganized. The name of the new ultimate parent company and the renamed EGC are yet to be determined; therefore, the application refers to these companies as HoldCo and SpinCo, respectively. The application also requests that the NRC consent to the indirect transfer of control of the licenses for the FitzPatrick, NMP, and Ginna facilities (*i.e.*, the reactor units and associated ISFSIs) to support the reorganization of EGC.

According to the application, EGC (operating under a new name) would continue to operate Braidwood, Units 1 and 2; Byron, Unit Nos. 1 and 2; Calvert Cliffs, Units 1 and 2; Clinton, Unit No. 1; Dresden, Units 1, 2, and 3; FitzPatrick; LaSalle, Units 1 and 2; Limerick, Units 1 and 2; NMP, Units 1 and 2; Peach Bottom, Units 1, 2, and 3; Quad Cities, Units 1 and 2; Ginna; TMI, Unit 1; and the associated ISFSIs. Although operation of the Dresden, Unit 1; Peach Bottom, Unit 1; and TMI, Unit 1, reactors is no longer authorized, EGC (operating under a new name) would continue to perform certain activities (*e.g.*, decommissioning) at these facilities, as authorized by NRC regulations and the licenses for these facilities.

According to the application, EGC (operating under a new name) would continue to be the full or partial direct owner of Braidwood, Units 1 and 2; Byron, Unit Nos. 1 and 2; Clinton, Unit No. 1; Dresden, Units 1, 2, and 3; LaSalle, Units 1 and 2; Limerick, Units 1 and 2; Peach Bottom, Units 1, 2, and 3; Quad Cities, Units 1 and 2; Salem, Unit Nos. 1 and 2; TMI, Unit 1; and their ISFSIs.

The February 25, 2021, application, as supplemented, describes additional proposed changes, including the reorganization of EGC, that would affect the ownership and operation of the FitzPatrick, Calvert Cliffs, NMP, and Ginna facilities (*i.e.*, the reactor units and associated ISFSIs). Currently, the FitzPatrick facilities are directly owned by Exelon FitzPatrick, LLC, which is a fully owned subsidiary of EGC. The Calvert Cliffs, NMP, and Ginna facilities are directly owned, in full or in part, by Calvert LLC, NMP LLC, and Ginna LLC, respectively, which are indirectly owned by EGC. According to the application, Exelon FitzPatrick, LLC (operating under a new name), Calvert LLC, NMP LLC, and Ginna LLC, would continue to own and hold the licenses

for the FitzPatrick, Calvert Cliffs, NMP, and Ginna facilities, respectively.

The application, as supplemented, requests that the NRC consent to the indirect transfer of Exelon FitzPatrick, LLC's, NMP LLC's, and Ginna LLC's respective ownership interests in the FitzPatrick, NMP, and Ginna facilities, whereby these entities and, as applicable, parent entities, would become subsidiaries of a newly-created, wholly-owned subsidiary of SpinCo. The name of this new subsidiary is yet to be determined; therefore, the application, as supplemented, refers to this subsidiary as New York HoldCo. Additionally, Exelon FitzPatrick, LLC will be renamed. The new name for Exelon FitzPatrick, LLC is yet to be determined; therefore, the application, as supplemented, refers to it as New FitzPatrick, LLC.

The February 25, 2021, application, as supplemented, also requests NRC approval to replace existing nuclear operating services agreements and financial support agreements associated with the ownership and operation of the Calvert Cliffs, NMP, Ginna, and FitzPatrick facilities. The application requests NRC approval to transfer the qualified and non-qualified trusts for FitzPatrick from Exelon Generation Consolidation, LLC (a subsidiary of EGC) to New FitzPatrick, LLC. The application, as supplemented, requests amendments to the Calvert Cliffs, Units 1 and 2; NMP, Units 1 and 2; and Ginna licenses to delete conditions referencing the Constellation Energy Nuclear Group, LLC (a subsidiary of EGC at the time of the proposed transaction) Board and its operating agreement to reflect the internal reorganization of EGC described in the application.

By order dated November 26, 2019 (ADAMS Accession No. ML19228A130), as modified by order dated October 21, 2020 (ADAMS Accession No. ML20259A469), the NRC authorized the direct transfer of Facility Operating License Nos. DPR-39 and DPR-48 for Zion, Units 1 and 2, respectively, and the generally licensed Zion ISFSI from ZionSolutions, LLC to EGC. Prior to completing the Zion license transfer, ZionSolutions, LLC must complete the decommissioning of Zion, Units 1 and 2. Once the Zion license transfer is completed, EGC will hold the licenses for Zion, Units 1 and 2, and own, operate, and hold the license for the Zion ISFSI. According to the February 25, 2021, application, the Zion license transfer will be completed prior to the spin transaction; therefore, following the spin transaction, EGC (operating under a new name) would continue to hold the licenses for Zion, Units 1 and

2, and own, operate, and hold the license for the Zion ISFSI.

No physical changes to the facilities or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 and 72.50 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an ISFSI that does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave to Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to

intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at <https://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present

evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion

or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-

Filing system timestamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated February 25, 2021, as supplemented on March 25, 2021.

VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Tamra Domeyer, EGC, at (630) 657-3753 or Alex Polonsky, Morgan, Lewis & Bockius LLP, at (202) 739-5830 for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated: April 28, 2021.

For the Nuclear Regulatory Commission.
Blake A. Purnell,
*Project Manager, Plant Licensing Branch III,
 Division of Operating Reactor Licensing,
 Office of Nuclear Reactor Regulation.*
 [FR Doc. 2021-09218 Filed 4-30-21; 8:45 am]
BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; System of Records

AGENCY: Office of the Chief Financial Officer, Office of Personnel Management.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Office of Personnel Management (OPM) proposes to add a new system of records, titled "OPM/Internal-23 Financial Management Records." This system of records contains financial records that OPM collects, maintains, and uses to manage its critical financial responsibilities. This system of records will be included in OPM's inventory of record systems.

DATES: Please submit comments on or before June 2, 2021. This new system is effective upon publication in today's **Federal Register**, with the exception of the routine uses, which are effective June 7, 2021.

ADDRESSES: You may submit written comments via the Federal Rulemaking Portal: <http://www.regulations.gov>. All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Rochelle Bayard, Associate Chief Financial Officer, Office of Personnel Management, at 202-606-1918 or OPMFinApps@opm.gov. For privacy questions, please contact: Kellie Cosgrove Riley, Chief Privacy Officer, Office of Personnel Management at privacy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is establishing the OPM/Internal 23 Financial Management Records system of records in order to clarify and

provide greater transparency regarding its financial records. OPM's Office of the Chief Financial Officer (OCFO) uses the records covered by this SORN in support of its financial management responsibilities, and to successfully implement OPM OCFO's internal and external budget and finance responsibilities.

The records in this system of records are used to meet accounting and financial reporting requirements and are a comprehensive source of financial, budget, and performance information to OPM program offices. They include records pertaining to purchasing, accounts receivables, accounts payable, disbursements, and other budget activities. The records are used for billing and collection, project costing, and funds control as well as to update budgets, financial plans, and the general ledger. The records are also critical to required financial auditing and reporting requirements.

The records include those that are used to support the acquisition management lifecycle, from requisitioning through source selection, award, post award management, blanket purchase agreements, interagency agreements, and closeout.

This system of records does not include those records used to administer the pay, leave, and travel requirements of OPM or the administration of the fare subsidy program, which are included in the OPM Internal-5 Pay, Leave, and Travel system of records. It also does not include records that are used to enable travel service providers under contract to the Federal Government to authorize, issue, or account for travel and travel reimbursements provided to individuals on official Federal Government business, which are covered under GSA/GOVT-4 Contracted Travel Services Program, 74 FR 26700 (June 3, 2009), and GSA/GOVT-4. Contracted Travel Services Program, 74 FR 28048 (June 12, 2009).

SYSTEM NAME AND NUMBER:

Financial Management Records, OPM/Internal-23.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Office of the Chief Financial Officer, Office of Personnel Management is responsible for the records in this system of records. Records are located at 1900 E Street NW, Washington, DC and, pursuant to an inter-agency agreement with the Department of Transportation, Federal Aviation Authority, in Oklahoma City, Oklahoma.

SYSTEM MANAGER(S):

Associate Chief Financial Officer for Financial Strategy and Operations, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415-1100.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. Title 31, Subtitles II and III; Public Law 101-576; Public Law 104-208; OMB Circular A-123; OMB Memorandum 16-11; OMB Memorandum 13-08, Executive Order 9397, as amended by Executive Order 13478.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to permit OPM to collect and maintain records to administer its financial management responsibilities. This includes conducting all activities related to accounts receivable and accounts payable, budgeting, purchasing, acquisitions, reimbursement, settlements, and debt collections for OPM. The records are also used to meet financial auditing and reporting requirements, both within OPM and external to OPM, such as to other Federal and private sector entities as required and necessary in accordance with existing laws and regulations; and to support the acquisition management lifecycle, from requisitioning through source selection, award, post award management, blanket purchase agreements, interagency agreements, and closeout.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom OPM has a financial obligation, including current and former federal employees, vendors, contractors, experts, and others who are owed monies from OPM; and individuals who are indebted to OPM, including those who receive goods and services from OPM, those indebted for advancements or overpayments, and those who are otherwise financially liable to OPM.

CATEGORIES OF RECORDS:

- a. Name,
- b. Social Security number,
- c. Bank account information,
- d. Credit card number,
- e. Data Universal Numbering System (DUNS) number
- f. Employee identification number.
- g. Tax identification number.
- h. addresses and other general contact information, such as phone numbers, facsimile numbers, and email addresses.
- i. records of expenses, such as bills, receipts.
- j. records of payments.

k. invoices,

l. any other record necessary to document and make payment for a financial obligation owed to or from OPM.

Records in this system are subject to the Privacy Act only to the extent, if any, they are about an individual within the meaning of the Act, and not if they are about a business or other non-individual.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals to whom OPM has a financial obligation, individuals who are indebted to OPM, OPM program offices, the Department of the Treasury, and the General Services Administration.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside OPM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice, including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party in litigation before a court, adjudicative, or administrative body; or to a court, an adjudicative body, or an administrative body. Such disclosure is permitted only when it is relevant or necessary to the litigation or proceeding and one of the following is a party to the litigation or has an interest in such litigation:

- (1) OPM, or any component thereof;
- (2) Any employee or former employee of OPM in his or her official capacity;
- (3) Any employee or former employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee;
- (4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the OPM General Counsel's approval, pursuant to 5 CFR part 295 or otherwise.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.

c. To a member of Congress from the record of an individual in response to

an inquiry made at the request of the individual to whom the record pertains.

d. To the National Archives and Records Administration (NARA) for records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

e. To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that there has been a breach of the system of records; (2) OPM has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, OPM (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OPM's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

f. To another Federal agency or Federal entity, when OPM determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

g. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for OPM when OPM determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to OPM employees.

h. To an external auditor for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

i. To the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, or other person or entity responsible for the administration of the Federal Labor-Management Program, for the purpose of processing any corrective actions, presiding over grievances, or conducting administrative hearings or appeals, or if needed in the performance of similar authorized duties.

j. To the United States Department of the Treasury to verify eligibility for payment and to effect disbursement of authorized payments.

k. To the United States Department of the Treasury in order to identify programs and activities susceptible to improper payments in accordance with the Improper Payment Information Act of 2002 and the Improper Payments Elimination and Recovery Act of 2010.

l. To the General Service Administration's Federal Procurement Data System, a central

repository for statistical information on Government contracting, information pertaining to OPM's acquisition activities for the purpose of providing public access to Government-wide data about agency contract actions.

m. To a Federal, state, or local agency for the purpose of adjudicating an individual's eligibility for a benefit or for any other legally mandated purpose in accordance with its authorizing statute or regulation where an approved Computer Matching Agreement or other information sharing agreement is in place between OPM and the agency.

n. To another Federal agency to obtain financial management services for OPM under a cross-servicing or inter-agency agreement, including for budgeting, purchasing, procurement, reimbursement, reporting, and collection functions.

o. To the Department of Justice, another Federal agency, or a debt collection agency for any purpose related to collecting a debt owed to the Federal government.

p. To consumer reporting agencies, as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), pursuant to 5 U.S.C. 552a(b)(12) and in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records in this system of records are stored electronically in an automated application database and storage area network and in paper in locked offices or cabinets with restricted access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records may be retrieved by name, DUNs, Social Security number, tax identification number, or other personal identifier available in this system of records.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records in this system of records are retained and disposed of in

accordance with General Records Schedule 1.1. The record requires that the records be destroyed six years after final payment or cancellation, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the system are protected from unauthorized access and misuse through various administrative, technical and physical security measures in compliance with the Federal Information Security Modernization Act (Pub. L. 113–283), associated OMB policies, and applicable standards and guidance from the National Institute of Standards and Technology (NIST). Electronic records are located in a secured information technology hosting facility and are available only to authorized personnel whose duties require access. Paper records are located in locked offices and locked cabinets with restricted access.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Office of Personnel Management, Office of Privacy and Information Management—FOIA, 1900 E Street NW, Washington, DC 20415–7900 or by emailing foia@opm.gov.

Individuals must furnish the following information for their records to be located:

1. Full name.
2. Social Security number or Tax identification number.
3. The type of information requested.
4. The address to which the information should be sent.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should write to the Office of Personnel Management, Office of Privacy and Information Management—FOIA, 1900 E Street NW, Washington, DC 20415–7900.

Individuals must furnish the following information in writing for their records to be located:

1. Full name.
2. Social Security number or Tax identification number.
3. Precise identification of the information to be amended.

Individuals requesting amendment must also follow OPM's Privacy Act

regulations regarding verification of identity and amendment to records (5 CFR 297).

NOTIFICATION PROCEDURES:

See “Record Access Procedure.”

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Office of Personnel Management.

Alexys Stanley,
Regulatory Affairs Analyst.

[FR Doc. 2021–09038 Filed 4–30–21; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91673; File No. SR–ICEEU–2021–008]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

April 26, 2021.

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 April 19, 2021, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(4)(ii)⁴ thereunder, such that the proposed rule was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Delivery Procedures (the “Delivery Procedures”) in connection with the transition of the trading of Deliverable EU Emissions

Contracts from ICE Futures Europe to ICE Endex.⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend Part A of its Delivery Procedures in connection with the contemplated transition of the trading of Deliverable EU Emissions Contracts from ICE Futures Europe to ICE Endex Markets B.V. (“ICE Endex”).⁶ The transition is expected to occur in June 2021.⁷ The Deliverable EU Emissions Contracts being transitioned will be the EUA Futures and Options, EUA Daily Futures and EUAA Futures. Following the transition, the contracts will continue to be cleared by ICE Clear Europe. ICE Clear Europe is also removing from Part A provisions relating to CER Contracts and Auction Contracts, which are no longer traded on ICE Futures Europe.

Changes would be made throughout Part A to reference ICE Endex as the relevant exchange in lieu of ICE Futures Europe, including to refer to the relevant contracts as “ICE Endex Deliverable EU Emissions Contracts.” In connection with the removal of the CER Contracts, the Clearing House is proposing to remove the definitions of Auction, Auctioneer Seller, Certified Emission Reduction or CER, CER Contract, CER Delivery Amount, CER Transfer Request, Kyoto Protocol, Linking Directive and UNFCCC Independent Transaction Log and related concepts. The defined term “Account” would be renamed “Registry Account” (with references to CERs removed), with conforming changes made throughout Part A.

⁵ Capitalized terms used but not defined herein have the meaning specified in the ICE Clear Europe Clearing Rules (the “Rules”).

⁶ See ICE Futures Europe Circular 21/012 (Feb. 8, 2021).

⁷ See ICE Futures Europe Circular 21/025 (Feb. 25, 2021).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(a).

⁴ 17 CFR 240.19b–4(f)(4)(ii).

In addition, throughout Part A, references to the Crystal system would be updated to references to ECS and/or MFT, reflecting current Clearing House systems.

The defined term “Carbon Emissions Allowance” or “EUA” would be amended to remove reference to the start date of the validity period for the ICE Futures EUA Phase 4 Daily Futures Contract because the referenced date (January 1, 2021) has already passed, and would instead reference validity during the relevant period.

In paragraphs 2.2 and 8, a clarification would be made that the time of the determination of the EDSP for purposes of calculating the payment owed for delivery under certain contracts would be the end of the trading period on the Contract Date (as opposed to the last trading day of the contract month) to be consistent with relevant exchange rules.

Certain amendments would be made to the routine delivery timetable for emissions contracts in paragraph 5, including the following: the note that some events may occur up to 24 hours earlier would be removed; various clarifications would be made to the description of certain steps; the description of consequences of transfer requests made by the Seller before the deadline for submission would be deleted; the requirement that with respect to ICE Endex EUA and EUAA Futures Contracts, the Clearing House, upon receipt of allowances from the applicable sellers would randomly select the order in which it will make outbound Transfer Requests to applicable buyers would be deleted as inapplicable to those contracts; and the timetable would provide that account sales will be available via MFT.

Consistent with the removal of provisions referencing auction contracts, the ICE EUA and EUAA Auction Contracts timetable for routine and for late and failed delivery would be removed. The delivery documentation summary would also be deleted as it references an outdated monthly confirmation form that is not used.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁸ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing

agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are designed to facilitate the transition of trading of the Deliverable EU Emissions Contracts from ICE Futures Europe to ICE Endex. Such contracts will continue to be cleared by the Clearing House in the same manner as they are currently, and will be supported by ICE Clear Europe’s existing financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contracts following the transition to ICE Endex (and to address physical delivery under such contracts) and to manage the risks associated with such contracts. As a result, in ICE Clear Europe’s view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁹ (In ICE Clear Europe’s view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).¹⁰)

In addition, Rule 17Ad–22(e)(10)¹¹ requires that each covered clearing agency establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries. As discussed above, the amendments would incorporate into the Delivery Procedures the amendments necessary to facilitate the transition of trading of the Deliverable EU Emissions Contracts from ICE Futures Europe to ICE Endex. Such contracts will continue to be cleared in the same manner as they are currently cleared, supported by ICE Clear Europe’s existing financial resources, risk management, systems and operational arrangements. The amendments would remove other provisions related to contracts that are not currently traded and make certain other clarifications. As a result, ICE Clear Europe believes the amendments

are consistent with the requirements of Rule 17Ad–22(e)(10).¹²

(B) Clearing Agency’s Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Delivery Procedures in connection with the transition of the trading of the Emission Contracts from ICE Futures Europe to ICE Endex and to provide general drafting clarifications and improvements. The terms of clearing of such contracts are not otherwise changing. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f) of Rule 19b–4¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

⁹ 15 U.S.C. 78q–1(b)(3)(F).

¹⁰ 15 U.S.C. 78q–1(b)(3)(F).

¹¹ 17 CFR 240.17Ad–22(e)(10).

¹² 17 CFR 240.17Ad–22(e)(10).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b–4(f).

⁸ 15 U.S.C. 78q–1(b)(3)(F).

arguments concerning the foregoing, including whether the proposed rule 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-ICEEU-2021-008 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-ICEEU-2021-008. 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, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

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-ICEEU-2021-008 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91676; File No. SR-LCH SA-2021-001]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Clearing of Single-Name Credit Default Swaps by U.S. Customers

April 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on April 13, 2021, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by LCH SA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), is proposing to amend its (i) CDS Clearing Rule Book (the "Rule Book"), (ii) CDS Clearing Supplement (the "Clearing Supplement"), (iii) some of its CDS Clearing Procedures (the "Procedures"), and (iv) FCM Clearing Regulations ("Clearing Regulations"), to allow LCH SA to offer clearing services in respect of single-name credit default swaps ("CDS") that are "security-based swaps" ("SBS") ("Single-Name CDS") to be submitted by Clearing Members on behalf of their U.S. Clients for clearing by LCH SA.³ LCH SA is also proposing to revise a number of its rules to make additional amendments and conforming and clarifying amendments for consistency purposes. The text of the

proposed rule change has been annexed as Exhibit 5. The launch of clearing Single-Name CDS for U.S. Clients will be contingent upon LCH SA's receipt of all necessary regulatory approvals, including the approval by the Commission of the proposed rule change described herein.

(b) Not applicable.

(c) Not applicable.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to revise LCH SA's rules and procedures to (1) allow LCH SA to extend its clearing services in respect of Single-Name CDS for U.S. Clients of Clearing Members and (2) make additional amendments and conforming and clarifying amendments for consistency purposes.

(1) Amendments To Permit LCH SA To Offer Clearing Services in Relation to the Clearing of Single-Name CDS for U.S. Clients

Under the derivatives regulatory regime established by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the SEC was given regulatory authority over derivatives that qualify as "security-based swaps" and the US Commodity Futures Trading Commission ("CFTC") was given regulatory authority over derivatives that qualify as "swaps." As a result of this division of regulatory responsibility, certain index CDS that are not based on a narrow-based security index constitute "swaps" subject to the regulations of the CFTC. On the other hand, Single-Name CDS constitute "security-based swaps" subject to the regulations of the SEC. Currently, U.S. Clients are permitted to clear index CDS that qualify as "swaps" at LCH SA but not Single-Name CDS.

A Single-Name CDS is a contract based on the credit risk of a single issuer (a "Reference Entity") in which the

¹⁵ 17 CFR 200.30-3(a)(12).

¹⁶ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein shall have the meaning specified in the Rule Book, the Clearing Supplement, the Procedures and the Clearing Regulations, as applicable.

buyer of protection transfers the credit risk of the Reference Entity to the seller of protection without transferring the underlying obligation of the Reference Entity. The key terms of a Single-Name CDS include, among other things, (1) the identity of the Reference Entity, (2) the agreed upon notional amount, (3) the maturity date, (4) required payments by the protection buyer, (5) “credit events” that result in an obligation from the protection seller to the protection buyer, and (6) settlement terms. Upon the launch of clearing of Single-Name CDS for U.S. Clients, LCH SA will provide central counterparty services for such Single-Name CDS that are accepted for clearing.

The proposed changes described below would allow U.S. Clients to clear Single-Name CDS at LCH SA.

i. Rule Book

a. Changes to Defined Terms

The Rule Book would be amended to add several new defined terms in order to accommodate the extension of LCH SA’s CDS Clearing Services in respect of Single-Name CDS submitted to LCH SA for clearing on behalf of U.S. Clients. Specifically, LCH SA proposes to add a definition for “BD” as a legal entity that is a “broker” or “dealer” as defined in Section 3(a)(4) or 3(a)(5) of the Securities Exchange Act of 1934 (the “Exchange Act”), respectively, and is registered in such capacity with the SEC and a member in good standing of FINRA (a defined term of “FINRA” would be added to the Rule Book and defined as the Financial Industry Regulatory Authority, Inc., or any successor thereto). The term “FCM Clearing Member” would in turn be retitled as “FCM/BD Clearing Member” and would be defined as any FCM, BD, or legal entity that is both an FCM and BD that has been admitted as a clearing member. “FCM Client” would likewise be retitled as “FCM/BD Client” and would mean any Client that is (i) a Cleared Swaps Customer of an FCM/BD Clearing Member to which the FCM/BD Clearing Member provides CDS Client Clearing Services with respect to positions in FCM/BD Cleared Transactions that are “Cleared Swaps,” or (ii) an SBS Customer of an FCM/BD Clearing Member to which the FCM/BD Clearing Member provides CDS Client Clearing Services with respect to positions in FCM/BD Cleared Transactions that are SBS. A defined term “SBS Customer” would be added to the Rule Book and would be defined as “security-based swap customer” (as

defined in Exchange Act Rule 15c3–3)⁴ of an FCM/BD Clearing Member to which the FCM/BD Clearing Member provides CDS Client Clearing Services with respect to positions in FCM/BD Cleared Transactions that are SBS in one or more accounts described in the FCM/BD SBS Client Account Structure.

A new defined term “Cleared Swap” would be added in the Rule Book, in order to differentiate between “swaps” and “SBS” and the different account structures for each (as further described below), to mean an “FCM/BD Cleared Transaction” (i) constituting a “Cleared Swap” as defined in CFTC Regulation 22.1⁵ or (ii) constituting an SBS that is held in the FCM/BD Swaps Client Account Structure.⁶ A “Cleared Swaps Customer,” in turn, would be defined as (i) a “Cleared Swaps Customer,” as defined in CFTC Regulation 22.1, of an FCM/BD Clearing Member with respect to Cleared Swaps that is an eligible contract participant as defined in Section 1a(18) of the U.S. Commodity Exchange Act, other than subparagraph (C) thereof, or as may be further defined by CFTC Regulations, and (ii) a person that would be a “Cleared Swaps Customer,” as defined in CFTC Regulation 22.1, of an FCM/BD Clearing Member with respect to any transaction constituting an SBS that is a Cleared Swap, as if such transaction is a Cleared Swap for purposes of the definition of “Cleared Swaps Customer” in CFTC Regulation 22.1.⁷ “Cleared Swaps Customer Collateral” would be defined as “Cleared Swaps Customer Collateral,” as defined in CFTC Regulation 22.1, with respect to Cleared Swaps, including with respect to any transaction constituting an SBS that is a Cleared Swap, as if such transaction is a Cleared Swap for purposes of the definition of “Cleared Swaps Customer Collateral” in CFTC Regulation 22.1.⁸

The defined terms in the Rule Book which relate to the account structure in which collateral for Cleared Swaps and SBS would be held would be revised to accommodate three account structures: (1) A separate account structure for

Cleared Swaps, (2) a separate account structure for SBS, and (3) an account structure in which an FCM/BD Clearing Member that is both an FCM and a BD may elect to clear and hold margin for FCM/BD Cleared Transactions that are SBS for FCM/BD Clients on a commingled basis with Cleared Swaps in accordance with the Portfolio Margining Order. Each account structure is described in further detail below and the defined terms (and the changes to existing defined terms) with respect to those account structures would include:

- “FCM/BD Client Account Structure” would mean the accounts comprising the FCM/BD Swaps Client Account Structure and the FCM/BD SBS Client Account Structure set out in the Rule Book and registered in the CDS Clearing System in the name of an FCM/BD Clearing Member.

- “FCM/BD Swaps Client Account Structure” would mean the accounts comprising the FCM/BD Swaps Client Account Structure and registered in the CDS Clearing System in the name of an FCM/BD Clearing Member.

- “FCM/BD SBS Client Account Structure” would mean the accounts comprising the FCM/BD SBS Client Account Structure and registered in the CDS Clearing System in the name of an FCM/BD Clearing Member.

- “FCM/BD Client Collateral Account” would mean an FCM/BD Swaps Client Collateral Account and/or an FCM/BD SBS Client Collateral Account.

- “FCM/BD Swaps Client Collateral Account” would mean an account opened in the books of LCH SA to record the Collateral held by LCH SA for the benefit of an FCM/BD Clearing Member’s FCM/BD Clients with respect to Cleared Swaps, the aggregate value of such Collateral being divided among, and recorded in: (i) The FCM/BD Swaps Client Financial Account; (ii) the FCM/BD Swaps Buffer Financial Account; and (iii) the FCM/BD Swaps Unallocated Client Collateral Financial Account.

- “FCM/BD SBS Client Collateral Account” would mean an account opened in the books of LCH SA to record the Collateral held by LCH SA for the benefit of an FCM/BD Clearing Member’s SBS Customers with respect to FCM/BD Cleared Transactions that are SBS (excluding any SBS transactions held in the FCM/BD Swaps Client Account Structure as Cleared Swaps), the aggregate value of such Collateral being divided among, and recorded in: (i) The FCM/BD SBS Client Financial Accounts; (ii) the FCM/BD SBS Buffer Financial Account; and (iii) the FCM/

⁴ 17 CFR 240.15c3–3.

⁵ 17 CFR 22.1.

⁶ SBS held in the FCM/BD Swaps Client Account structure would include SBS eligible for portfolio margining as contemplated in the Commission’s Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in connection with Portfolio Margining of Swaps and Security-Based Swaps. See Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps, Exchange Act Release No. 68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012) (the “Portfolio Margining Order”).

⁷ 17 CFR 22.1.

⁸ 17 CFR 22.1.

BD SBS Client Excess Collateral Financial Account.

- “FCM/BD Client Financial Account” would mean an FCM/BD Swaps Client Financial Account or an FCM/BD SBS Client Financial Account.

- “FCM/BD Swaps Client Financial Account” would mean a segregated account opened in the books of LCH SA for each Cleared Swaps Customer of an FCM/BD Clearing Member with a view to record the Legally Segregated Value related to Cleared Swaps of such Cleared Swaps Customer as determined by LCH SA in accordance with the CDS Clearing Rules.

- “FCM/BD SBS Client Financial Account” would mean a segregated account opened in the books of LCH SA for an SBS Customer of an FCM/BD Clearing Member with a view to record the Legally Segregated Value related to SBS (excluding SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) of such FCM/BD Clearing Member’s SBS Customer as determined by LCH SA in accordance with the CDS Clearing Rules.

- “FCM/BD Client Margin Account” would mean an FCM/BD Swaps Client Margin Account or an FCM/BD SBS Client Margin Account.

- “FCM/BD Swaps Client Margin Account” would mean an account opened by LCH SA in the name of an FCM/BD Clearing Member for the benefit of each Cleared Swaps Customer of such FCM/BD Clearing Member in the CDS Clearing System for risk management purposes, in which the FCM/BD Cleared Transactions of such Client that are Cleared Swaps are netted and corresponding Open Positions are registered, and each FCM/BD Client related Cleared Swaps positions corresponding to Eligible Intraday Transactions and Irrevocable Backloading STM Transactions pre-registered in the Account Structure of such FCM/BD Clearing Member (if so applicable) are recorded, in order to calculate the FCM/BD Client Margin Requirement and Client NPV Payment Requirement of such FCM/BD Clearing Member in respect of such FCM/BD Client.

- “FCM/BD SBS Client Margin Account” would mean an account opened by LCH SA in the name of an FCM/BD Clearing Member for the benefit of each SBS Customer of such FCM/BD Clearing Member in the CDS Clearing System for risk management purposes, in which the SBS of the SBS Customers (excluding SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) are netted and corresponding Open Positions are

registered, and each FCM/BD Client related SBS positions (excluding SBS transactions that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) corresponding to Eligible Intraday Transactions and Irrevocable Backloading STM Transactions pre-registered in the Account Structure of such FCM/BD Clearing Member (if so applicable) are recorded, in order to calculate the FCM/BD Client Margin Requirement and Client NPV Payment Requirement of such FCM/BD Clearing Member in respect of such SBS Customer.

- “FCM/BD Client Trade Account” would mean an FCM/BD Swaps Client Trade Account or an FCM/BD SBS Client Trade Account.

- “FCM/BD Swaps Client Trade Account” would mean an account opened by LCH SA in the name of an FCM/BD Clearing Member for the benefit of a Customer of such FCM/BD Clearing Member in order to register all Cleared Swaps (including any SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) in relation to such FCM/BD Client.

- “FCM/BD SBS Client Trade Account” would mean an account opened by LCH SA in the name of an FCM/BD Clearing Member for the benefit of an SBS Customer of such FCM/BD Clearing Member in order to register all SBS cleared by such FCM/BD Clearing Member (excluding SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps) in relation to such SBS Customer.

- “FCM/BD Buffer Financial Account” would mean an FCM/BD Swaps Buffer Financial Account or an FCM/BD SBS Buffer Financial Account.

- “FCM/BD Swaps Buffer Financial Account” would mean a segregated account opened in the books of LCH SA to record the value of an FCM/BD Clearing Member’s FCM/BD Client Collateral Buffer with respect to Cleared Swaps.

- “FCM/BD SBS Buffer Financial Account” would mean a segregated account opened in the books of LCH SA to record the value of an FCM/BD Clearing Member’s FCM/BD SBS Client Collateral Buffer.

- “FCM/BD Client Collateral Buffer” would mean FCM/BD Swaps Client Collateral Buffer or FCM/BD SBS Client Collateral Buffer.

- “FCM/BD Swaps Client Collateral Buffer” would mean the aggregate value of Collateral transferred by an FCM/BD Clearing Member to LCH SA, comprising such FCM/BD Clearing Member’s own property, and recorded in such FCM/BD Clearing Member’s

FCM/BD Swaps Buffer Financial Account which may be used by LCH SA to meet obligations in respect of the Cleared Swaps of Cleared Swaps Customers, including for the purpose of satisfying the Notional and Collateral Checks performed by LCH SA in respect of Eligible Intraday Transactions comprising one or more Client Trade Leg(s).

- “FCM/BD SBS Client Collateral Buffer” would mean the aggregate value of Collateral transferred by an FCM/BD Clearing Member to LCH SA, comprising such FCM/BD Clearing Member’s own property, and recorded in such FCM/BD Clearing Member’s FCM/BD SBS Buffer Financial Account which may be used by LCH SA to meet obligations in respect of the FCM/BD Cleared Transactions of SBS Customers, including for the purpose of satisfying the Notional and Collateral Checks performed by LCH SA in respect of Eligible Intraday Transactions comprising one or more Client Trade Leg(s).

- “FCM/BD Available Client Collateral Buffer” would mean the FCM/BD Swaps Available Client Collateral Buffer or the FCM/BD SBS Available Client Collateral Buffer.

- “FCM/BD Swaps Available Client Collateral Buffer” would mean the portion of the FCM/BD Swaps Client Collateral Buffer which, at the relevant time, is not allocated to any FCM/BD Swaps Client Margin Account and is available to be used to enable the novation of Client Trade Legs.

- “FCM/BD SBS Available Client Collateral Buffer” would mean the portion of the FCM/BD SBS Client Collateral Buffer which, at the relevant time, is not allocated to any FCM/BD SBS Client Margin Account and is available to be used to enable the novation of Client Trade Legs.

- “FCM/BD Swaps Client Excess Collateral” would mean the amount of any FCM/BD Excess Collateral attributable to an FCM/BD Swaps Client Margin Account and held on an intraday basis prior to the next Morning Call before it is transferred to the related FCM/BD Clearing Member’s FCM/BD Swaps Unallocated Client Collateral Financial Account.

- “FCM/BD SBS Client Excess Collateral” would mean the FCM/BD Client Excess Collateral as set out in the proposed new Article 6.2.5.2(ii) of the Rule Book.

- “FCM/BD SBS Client Excess Collateral Financial Account” would mean a segregated account opened in the books of LCH SA to record the value of FCM/BD SBS Client Excess Collateral as determined by LCH SA.

- “FCM/BD Swaps Unallocated Client Collateral Financial Account” would mean a segregated account opened in the books of LCH SA to record the value of FCM/BD Swaps Unallocated Client Excess Collateral as determined by LCH SA.

- “FCM/BD Swaps Unallocated Client Excess Collateral” would mean the FCM/BD Client Excess Collateral as set out in the proposed amended Section 6.2.5 of the Rule Book.

Changes to the Rule Book would also be made in certain jurisdictional definitions to reflect that SBS would be available for Clearing to U.S. Clients. Specifically, “Non-U.S. CCM” would be defined, when used in the context of an Original Transaction, as a CCM that has its residence in, is organized under the laws of, or has its principal place of business located in, a jurisdiction other than the United States, its territories or possessions and is not a registered BD or FCM. A “Non-U.S. CCM Client” would be defined as a CCM Client that is not a U.S. CCM Client. A “U.S. CCM Client” would be defined as a Client of an FCM or a BD or any Client that has its residence in, is organized under the laws of, or has its principal place of business located in the United States, its territories or possessions.

The following defined terms in Chapter 1, Section 1.1.1 would also include conforming changes to accommodate the clearing of Single-Name CDS for U.S. Clients: “Account Structure,” “Affiliate,” “Allocated Client Collateral Buffer,” “Available Client Collateral Buffer,” “Backup Clearing Member,” “Carrying Clearing Member,” “CCM,” “CDS Clearing Rules,” “CDS Clearing Service,” “Cleared Transaction,” “Client,” “Client Account Structure,” “Client Assets,” “Client Collateral Account,” “Client Collateral Buffer,” “Client Collateral Buffer Shortfall,” “Client Collateral Buffer Threshold,” “Client Excess Collateral,” “Client Margin Account,” “Client Margin Requirement,” “Client Margin Shortfall,” “Client Termination Amount,” “Client Trade Account,” “Excess Collateral,” “Excess Collateral Threshold,” “FCM Allocated Client Collateral Buffer,” “FCM CDS Clearing Regulations,” “FCM Cleared Transaction,” “FCM Client Collateral Buffer Shortfall,” “FCM Client Collateral Buffer Threshold,” “FCM Client Excess Collateral,” “FCM Client Margin Requirement,” “FCM Client Margin Shortfall,” “FCM Client Termination Amount,” “FCM Excess Collateral,” “FCM House Cleared Transaction,” “FCM House Collateral Account,” “FCM House Excess Collateral,” “FCM House Excess

Collateral Shortfall,” “FCM House Excess Collateral Threshold,” “FCM House Margin Account,” “FCM House Margin Requirement,” “FCM House Margin Shortfall,” “FCM Margin Balance,” “FCM Required Collateral Amount,” “General Member,” “House Collateral Account,” “House Excess Collateral,” “House Excess Collateral Shortfall,” “House Excess Collateral Threshold,” “House Margin Account,” “House Margin Requirement,” “House Margin Shortfall,” “Legally Segregated Value,” “Margin Account,” “Margin Balance,” “Notional and Collateral Check,” “Porting FCM Cleared Transaction,” “Receiving Clearing Member,” “Required Collateral Amount,” and “Select Member.”

In addition to the foregoing changes, various other conforming and clarifying changes would be made throughout Title I (General Provisions & Legal Framework) to incorporate terms to accommodate Single-Name CDS cleared for FCM/BD Clients. Those conforming and clarifying changes are set forth in Articles 1.2.10.3(xix) and (xxi), 1.2.10.4(vii), (x) and (xi), 1.2.14.4, 1.2.14.5(iv), 1.3.1.3(vi), 1.3.1.4, 1.3.1.6 (ii)—(iv), 1.3.1.9, and 1.3.1.10.

b. Membership and Clearing Operations

Article 2.1.1.2 of the Rule Book would be revised to provide that, without prejudice to the membership requirements set out in the CDS Clearing Rules and applicable law, both FCMs and BDs are eligible to become FCM/BD Clearing Members.

Additional conforming and clarifying changes would be made throughout Title II (Legal Obligations) to include terms for Single-Name CDS and certain other clarifying changes, including in Article 2.2.0.3, 2.2.1.1 (iv), (xxi), (xxiv), and (xxv), 2.2.1.2, 2.2.2.1, 2.2.3.1, 2.3.4.2, 2.4.2.11, and 3.1.10.9.

c. Risk Management

The procedures with respect to the return of collateral are set forth in Article 4.2.2.5 of the Rule Book and would be revised, in the case of an FCM/BD Clearing Member, so that if the FCM/BD Margin Balance of an FCM/BD Client Financial Account exceeds the relevant FCM/BD Client Margin Requirement prior to the Morning Call or the value of the Collateral attributed to the FCM/BD Buffer Financial Account exceeds the FCM/BD Client Collateral Buffer Threshold, then the amount of the excess: (1) If related to Cleared Swaps, will be reclassified as FCM/BD Swaps Unallocated Client Excess Collateral; and (2) if related to SBS (excluding SBS that are held in the FCM/BD Swaps Client Account

Structure as Cleared Swaps (as described below)), will be reclassified as FCM/BD SBS Client Excess Collateral, and thereafter may be returned to the FCM/BD Clearing Member.

Other conforming changes in Title IV (Risk Management) of the Rule Book are set forth in Article 4.2.2.1, 4.2.2.4, 4.2.2.6, 4.2.3.1, 4.2.6.3, 4.2.6.4, 4.2.6.6, 4.3.1.3, 4.3.2.3(i), (x), (xv) and (xix), 4.3.2.4, 4.3.2.7, 4.3.3.1(i), 4.3.3.2, and 4.3.3.4.

d. CDS Client Clearing Services Provided by a CCM

Article 5.1.1.2, which relates to the provision of CDS Client Clearing Services and sets limitations on the scope of services that may be provided by a Clearing Member that is a CCM, previously provided, in clause (v), that a Non-U.S. CCM shall not provide CDS Client Clearing Services to any U.S. CCM Client with respect to an Original Transaction that is SBS and that a U.S. CCM shall not provide any CDS Client Clearing Services to any U.S. CCM Client with respect to an Original Transaction that is SBS. Clause (v) of Article 5.1.1.2 would be deleted in its entirety. Separately, clause (vi) would be re-numbered as clause (v) and would provide that a CCM shall not provide CDS Client Clearing Services to any U.S. CCM Client with respect to an Original Transaction (which would include any SBS) unless such CCM is an FCM and/or BD.

e. CDS Client Clearing Services Provided by an FCM/BD Clearing Member

Article 6.1.1.2(vi) previously provided that an FCM shall not provide CDS Client Clearing Services to any FCM Client with respect to SBS; it would be revised to delete that restriction.

Article 6.2.1.1 sets forth the required account structure for FCM/BD Clearing Members. Article 6.2.1.1(i) would set forth the required account structure for an FCM (which may also be a BD) with respect to any Cleared Swaps, which would entail:

- An FCM/BD Swaps Client Trade Account for each Cleared Swaps Customer.
- An FCM/BD Swaps Client Margin Account for each Cleared Swaps Customer.
- An FCM/BD Swaps Client Financial Account for each Cleared Swaps Customer.
- An FCM/BD Swaps Unallocated Client Collateral Financial Account.
- An FCM/BD Swaps Buffer Financial Account.
- An FCM/BD Swaps Client Collateral Account.

For an FCM/BD Clearing Member that is a BD (which may also be an FCM), with respect to SBS (excluding SBS that are permitted to be held in an account with Cleared Swaps), Article 6.2.1.1(ii) would require the following account structure:

- An FCM/BD SBS Client Trade Account for each SBS Customer.⁹
- An FCM/BD SBS Client Margin Account for each SBS Customer.¹⁰
- An FCM/BD SBS Client Financial Account for each SBS Customer.¹¹
- An FCM/BD SBS Client Excess Collateral Financial Account.¹²
- An FCM/BD SBS Buffer Financial Account.¹³
- An FCM/BD SBS Client Collateral Account.¹⁴

⁹ Article 6.2.2.1, which relates to the establishments of trade accounts, would be revised to provide for the establishment of FCM/BD SBS Client Trade Accounts for SBS Customers.

¹⁰ Article 6.2.3.1, which relates to the establishment of client margin accounts, would be revised to provide for the establishment of FCM/BD SBS Client Margin Accounts for SBS Customers. Article 6.2.3.2 would be revised to provide that FCM/BD Cleared Transactions (i) registered in an FCM/BD Swaps Client Trade Account for a Cleared Swaps Customer will be allocated to the corresponding FCM/BD Cleared Swaps Client Margin Account and (ii) registered in an FCM/BD SBS Client Trade Account for an SBS Customer will be allocated to the corresponding FCM/BD SBS Client Margin Account, for the purpose of the determination of the Open Positions and NPV Payment Requirements attributable to such FCM/BD Client.

¹¹ Article 6.2.4.1, which relates to the establishment of Client Financial Accounts, would be revised to include a new clause (ii) (a) setting forth the establishment of an FCM/BD SBS Client Financial Account for each SBS Customer, in which LCH SA will record the value of Collateral provided by the FCM/BD Clearing Member in respect of such SBS Customer's Open Positions in SBS.

¹² Article 6.2.4.1(ii)(c) would be added to provide that LCH SA shall open an FCM/BD SBS Client Excess Collateral Financial Account, in which LCH SA will record the value of FCM/BD SBS Client Excess Collateral. Article 6.2.5.2 (ii) would provide that an FCM/BD Clearing Member is not permitted to maintain any FCM/BD Client Excess Collateral on a day-to-day basis with respect to SBS, but may hold FCM/BD Client Excess Collateral on an intraday basis and that LCH SA shall transfer the value of any FCM/BD Client Excess Collateral that is reflected in any FCM/BD SBS Client Financial Account of the FCM/BD Clearing Member prior to the Morning Call to the FCM/BD Clearing Member's FCM/BD SBS Client Excess Collateral Financial Account. In addition, Article 6.2.5.2(iv) would provide that LCH SA shall hold FCM/BD SBS Client Excess Collateral in the FCM/BD SBS Client Excess Collateral Financial Account for the benefit of FCM/BD Clearing Member's FCM/BD Clients that are SBS customers as a class in accordance with SEC regulations and Applicable Law and that upon the request of an FCM/BD Clearing Member, LCH SA will return FCM/BD SBS Client Excess Collateral to such FCM/BD Clearing Member.

¹³ Article 6.2.4.1(ii)(b) would be added to provide that LCH SA shall open an FCM/BD SBS Buffer Financial Account, in which LCH SA will record the value of Collateral provided as FCM/BD SBS Client Collateral Buffer.

¹⁴ Article 6.2.4.1(ii)(d) would be added to provide that LCH SA shall open an FCM/BD SBS Client

A new Article 6.2.1.1(iii) would also be added to provide that an FCM/BD Clearing Member that is both an FCM and a BD may elect to clear and hold margin for FCM/BD Cleared Transactions that are SBS for FCM/BD Clients in the FCM/BD Swaps Client Account Structure on a commingled basis with Cleared Swaps and margin such combined positions on a portfolio basis in compliance with Applicable Laws, provided that each FCM/BD Client participating in the portfolio margining shall be an eligible contract participant as defined in Section 1a(18) of the Commodity Exchange Act. Upon such election, FCM/BD Cleared Transactions that are SBS will be included as "Cleared Swaps" and maintained in the FCM/BD Swaps Client Account Structure.

Articles 6.1.1.1, 6.1.1.2, 6.1.1.3, 6.1.1.4, 6.1.1.5, 6.2.1.2, 6.2.1.3, 6.2.1.4, 6.2.2.1, 6.2.2.2, 6.2.3.1, 6.2.3.2, 6.2.3.3, 6.2.4.1, 6.2.4.2, 6.2.4.3, 6.2.4.4, 6.2.5.1, 6.2.5.2, 6.2.6.1, 6.2.6.2, 6.3.1.1, 6.3.2.1, 6.3.3.1, 6.3.4.1, 6.3.4.2, 6.3.5.1, 6.3.5.2, 6.4.1.1, and 6.4.1.3 would also include certain conforming and clarifying changes.

f. Default Management

Appendix I of the Rule Book (CDS Default Management Process), Clause 1.1 which provides for the definition of "Transaction Categories" would be amended to provide that different categories of Cleared Transactions will include "Single Name Cleared Transactions" for consistency purposes. Clause 3.3 of Appendix I would also be amended to provide that the CDS Default Management Process shall be carried out in a manner consistent with the requirements of the SIPC (which is the Securities Investor Protection Corporation or any successor thereto in accordance with the proposed definition of new defined term of "SIPC" in Section 1.1.1 of the Rule Book), Exchange Act and SEC Regulations. Clause 5.4 of Appendix I, which relates to the Competitive Bidding Process, would be revised to provide in Clause 5.4.1, that a Non-Defaulting Clearing Member that is a BD but not an FCM is not required to participate in Competitive Bidding for an Auction Package containing any Cleared Swaps and that a Non-Defaulting Clearing Member that is an FCM but not a BD is not required to participate in Competitive Bidding for an Auction Package containing any SBS.

Collateral Account in which LCH SA will record the Collateral held by LCH SA recorded in the foregoing accounts.

Other conforming changes in Appendix I are set forth in Clauses 3.3, 4.2.1, 4.2.2, 4.2.3, 4.2.5, 4.2.8, 4.3.1, 4.4.3, 4.5.2, 8.1.4, 8.5, 8.7 and 8.9.

ii. Clearing Supplement

Various clarifying and conforming changes would be made to the Clearing Supplement to account for the clearing of SBS for FCM/BD Clients. Specifically, certain references to "FCM" therein would be replaced with "FCM/BD." Those changes are set forth in Sections 1.7 and 9.2(c) of Parts A and B of the Clearing Supplement and in Sections 1.7 and 6.10(b) and (d) of Part C of the Clearing Supplement.

iii. Procedures

Section 2 of the Procedures (Margin, NPV Payment and Price Alignment) would include conforming changes in Sections 2.2, 2.3, 2.5, and 2.16.

Section 3 of the Procedures (Collateral, Variation Margin and Cash Payment) would be amended, in Section 3.3(b), which relates to the Collateral Account structure, to add a reference to the FCM/BD SBS Client Collateral Account to record the collateral held by LCH SA for the benefit of an FCM/BD Clearing Member's SBS Customers with respect to SBS (excluding SBS that are held in an account in the FCM/BD Swaps Client Account Structure), the aggregate value of such Collateral being divided amongst, and recorded in: the FCM/BD SBS Client Financial Account; the FCM/BD SBS Buffer Financial Account; and the FCM/BD SBS Client Excess Collateral Financial Account.

Section 3.7(a) would be amended to provide that with respect to the Clients of a Clearing Member, LCH SA will perform Collateral Calls, in respect of SBS, with a "TARGET2 Account" used to make Collateral Calls in relation to the Client Margin Requirements with respect to SBS (excluding SBS held in the FCM/BD Swaps Client Account Structure) and FCM/BD Client Collateral Buffer Threshold of each FCM/BD Clearing Member, which for the avoidance of doubt would form part of the LCH SBS Client Segregated Depository Account. Section 3.7(b) would also be amended to provide that an FCM/BD Clearing Member must hold three "TARGET2 Accounts," for purposes of Collateral Calls in respect of (i) its FCM/BD House Margin Requirement and FCM/BD House Excess Collateral Threshold, (ii) its Client Margin Requirement(s) with respect to Cleared Swaps and FCM/BD Client Collateral Buffer Threshold and (iii) its Client Margin Requirement(s) with respect to SBS (excluding SBS that are held in the FCM/BD Swaps Client

Account Structure) and FCM/BD Client Collateral Buffer Threshold. Section 3.7(g) would be amended to provide that, in respect of an FCM/BD SBS Client Excess Collateral Financial Account, the FCM/BD Clearing Member may request LCH SA to return some or all FCM/BD SBS Client Excess Collateral in the form of Euro denominated Cash Collateral provided that the requested amount does not exceed the FCM/BD SBS Client Excess Collateral recorded in its FCM/BD SBS Client Collateral Account.

Section 3.8(a)–(b) of the Procedures would be amended to provide that with respect to Clients of a Clearing Member, LCH SA would open (i) a multi-currency account used to credit non-Euro, non-USD Cash Collateral which is transferred by an FCM/BD Clearing Member to be recorded in its FCM/BD SBS Client Collateral Account, which would form part of the LCH SBS Client Segregated Depository Account for purposes of the FCM/BD CDS Clearing Regulations and (ii) an account used to credit USD Cash Collateral which is transferred by FCM/BD Clearing Members to be recorded in their FCM/BD SBS Client Collateral Account, which would also form part of the LCH SBS Client Segregated Depository Account for purposes of the FCM/BD CDS Clearing Regulations. With respect to excess collateral, Section 3.8(h) and (i), which relate to the return of collateral would be amended to provide for the return of excess collateral in respect of SBS. Section 3.18(c) would be amended to provide that LCH SA will open a cash account used to debit or credit USD to satisfy Cash Payments and/or Variation Margin Collateral Transfer obligations in USD with respect to all relevant Client Cleared Transactions of each FCM/BD Clearing Member that are SBS (excluding SBS that are held in the FCM/BD Swaps Client Account Structure). Other conforming changes in Section 3 of the Procedures are included in the recital and Sections 3.2, 3.3, 3.4, 3.7(a), (d), (f) and (g), 3.8(a), (b), (c), (f), (g), (h) and (i), 3.9(d) and (e), 3.10(b), 3.14, 3.17 and 3.18.

Section 4 of the Procedures (Eligibility Requirements) would be amended to delete the provision in Section 4.1 which previously provided that (i) in respect of an FCM Client, a U.S. CCM Client of a Non-U.S. CCM or a CCM Client of a U.S. CCM, the Original Transaction may not be a Single Name CDS or any other SBS identified as such in a Clearing Notice; and (ii) in respect of a Non-U.S. CCM Client, the Original Transaction may not be a Single Name CDS or any other SBS

identified as such in a Clearing Notice unless such transaction is cleared through a Non-U.S. CCM.

Section 5 of the Procedures (CDS Clearing Operations) would be revised to include conforming changes in Sections 5.6 and 5.11.

iv. Clearing Regulations

The Clearing Regulations, currently titled as “FCM CDS Clearing Regulations,” would be retitled as the “FCM/BD CDS Clearing Regulations.”

Various defined terms in the Clearing Regulations would be updated to accommodate the extension of LCH SA’s clearing services in respect of Single-Name CDS to U.S. Clients. The defined term “FCM Cleared Swaps Client Segregated Depository Account” would be retitled as the “FCM/BD Cleared Swaps Client Segregated Depository Account” and references in that definition to “FCM Clients” would be replaced with “Cleared Swap Customers.” Similarly, the references in the defined term “LCH Cleared Swaps Client Segregated Depository Account” to “FCM Clients” would be replaced with “Cleared Swaps Customers” and references to “Cleared Transactions” therein would refer to Cleared Transactions that are “Cleared Swaps.” A new defined term “LCH SBS Client Segregated Depository Account” would be added and would mean an omnibus account maintained by an FCM/BD Clearing Member for its SBS Customers with a Bank, which is segregated in accordance with the Exchange Act and SEC Regulations and contains collateral deposited by such SBS Customers in connection with FCM/BD Cleared Transactions that are SBS cleared for such SBS Customers by such FCM/BD Clearing Member, excluding any SBS held in the FCM/BD Swaps Client Account Structure that are permitted to be held in an account with Cleared Swaps as defined in CFTC Regulation 22.1 under Applicable Law. A new defined term for “Bank” would also be added, to refer to a “Bank” as defined in Section 3(a)(6) of the Exchange Act. Finally, the defined term “LCH Cleared Swaps Proprietary Depository Account” would be replaced with the general term of “LCH Proprietary Depository Account”.

Regulation 1 of the Clearing Regulations (Governing Law and Jurisdiction) would be updated to replace references to “FCM” with “FCM/BD” and to provide that the Clearing Regulations shall also be construed in accordance with the Exchange Act.

Regulation 2 (Depository Accounts) of the Clearing Regulations would be

revised to provide for the relevant accounts for SBS. Each FCM/BD would be required to establish and maintain an FCM/BD SBS Client Segregated Depository Account on behalf of its SBS Customers in accordance with applicable provisions of the Exchange Act and SEC regulations, including but not limited to Section 3E and Section 15(c) of the Exchange Act¹⁵ and Exchange Act Rule 15c3–3.¹⁶ The Clearing Regulations would require that the SBS Client Segregated Depository Account be maintained with a Bank in accordance with the Exchange Act and SEC Regulations. The FCM/BD SBS Client Segregated Depository Account maintained by each FCM/BD Clearing Member would be designated as a “Special Reserve Bank Account for the Exclusive Benefit of the Cleared Security-Based Swap Customers” of the FCM/BD Clearing Member as provided in Exchange Act Rule 15c3–3(p).¹⁷ LCH SA would be required to open an LCH SBS Client Segregated Depository Account on behalf of the SBS Customers of FCM/BD Clearing Members in accordance with applicable provisions of the Exchange Act and SEC Regulations. This account shall be maintained with a Bank and shall contain no assets other than Collateral deposited by FCM/BD Clearing Members in connection with the clearing of SBS held in the FCM/BD SBS Client Account Structure on behalf of their SBS Customers. The LCH SBS Client Segregated Depository Account maintained by LCH SA shall be designated as a “Special Clearing Account for the Exclusive Benefit of the Cleared Security-Based Swaps Customers” of the FCM/BD Clearing Member for purposes of the Exchange Act and SEC Regulations.

Regulation 3 (Collateral) of the Clearing Regulations would be updated to provide that securities or cash deposited will be subject to a security interest and held in either an LCH Cleared Swaps Client Segregated Depository Account or an LCH SBS Client Segregated Depository Account, as applicable. Regulation 3 would also be updated to provide that no collateral deposited in an FCM/BD Clearing Member’s LCH Cleared Swaps Client Segregated Depository Account or LCH SBS Client Segregated Depository Account shall be applied on or in respect of payment or satisfaction of any of the FCM/BD Clearing Member’s liabilities to LCH SA as recorded in any

¹⁵ 15 U.S.C. 78c–5, 78o(c).

¹⁶ 17 CFR 240.15c3–3.

¹⁷ 17 CFR 240.15c3–3(p).

of the FCM/BD Clearing Member's Proprietary Accounts.

Regulation 4 (Transfer) of the Clearing Regulations would be amended to provide that if an FCM/BD Clearing Member is a Defaulting Clearing Member, any action taken by LCH SA pursuant to the CDS Clearing Rule Book (including the CDS Default Management Process appended thereto) would be taken in compliance with the U.S. Commodity Exchange Act or the Exchange Act and SEC Regulation, as applicable, and applicable bankruptcy laws regarding the liquidation or transfer of Cleared Swaps carried by an FCM on behalf of its Cleared Swaps Customers or SBS carried by a BD on behalf of its SBS Customers.

Regulation 5 (Security Interest) of the Clearing Regulations would be revised to specify that each FCM/BD Clearing Member grants LCH SA a first security interest in and a first priority and unencumbered first lien upon any and all cash, securities, receivables, rights and intangibles and any other Collateral or assets deposited with or transferred to LCH SA, or otherwise held by LCH SA, including all property deposited in an LCH SBS Client Segregated Depository Account. Regulation 5 would also clarify that notwithstanding such security interest, in no event shall LCH SA's security interest in the Collateral in an LCH SBS Client Segregated Depository Account held on behalf of the FCM/BD Clearing Member's Clients be exercised to satisfy any obligations or liabilities of such FCM/BD Clearing Member other than in connection with obligations or liabilities relating to Cleared Swaps cleared by such FCM/BD Clearing Member on behalf of its Cleared Swaps Customers or relating to SBS cleared by such FCM/BD Clearing Member on behalf of its SBS Customers.

Additional clarifying and conforming changes in the Clearing Regulations would be set forth in the Clearing Regulations, including the use of new defined terms such as FCM/BD Clearing Members, FCM/BD Cleared Transactions, FCM/BD Clients, Cleared Swaps, Cleared Swaps Customers, FCM/BD Swaps Client Financial Account.

(2) Additional Amendments

Appendix I of the Rule Book (CDS Default Management Process) would be amended to provide that each Non-Defaulting Clearing Member would never be required to bid for more than 100% of the relevant Auction Package. Therefore, Clause 5.4.4, which relates to the calculation of the Minimum Bid Size for each Non-Defaulting Clearing Member required to bid for an Auction

Package, is revised by repealing and replacing the current calculation formula applied by LCH SA to determine the Minimum Bid Size with the following one: $MBS = \min([A/B] \times C; 100\%)$. An equivalent amendment is proposed to be made to Clause 5.9.1, which deals with the Recalculated Minimum Bid Size to be determined in the context of a second round of Competitive Bidding, to ensure that each Non-Defaulting Clearing Member will not be required to bid for more than 100% of the relevant Residual Auction Package by adding a reference to the "maximum value for the Bid Credit of the Minimum Bid Size" at the end of indent (i).

Clause 8.1.1 of Appendix 1 of the Rule Book would be amended to remove a reference to the Early Termination Trigger Date at the end of the paragraph for consistency purpose since all payment and delivery obligations in the context of the Early Termination process will be made at the date and times as set out in the following provisions of Clause 8.

Regulation 6 (*Rules Relating to FCM/BD Cleared Swaps Client Segregated Accounts*) of the Clearing Regulations would be also modified to implement CFTC Letter No 19–17 of July 10, 2019 ("Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants") pursuant to which a Derivatives Clearing Organization may permit the Futures Commission Merchant to treat the separate accounts of a customer as accounts of separate entities subject to a number of conditions provided for in that letter. Therefore, Regulation 6(e) would be amended to allow FCM/BD Clearing Members to benefit from this no-action relief regarding the withdrawal of the Cleared Swaps Customer funds by providing that references to "Cleared Swaps Customer" shall include all Cleared Swaps Customers for the same beneficial owner, unless the FCM/BD Clearing Member complies with the relevant conditions set out in CFTC Letter No. 19–17 of July 10, 2019. Other technical and conforming changes to Regulation 6 are included in Regulation 6(a) and 6(e).

In addition to the foregoing changes, the amendments to the Rule Book, Clearing Supplement, Procedures and Clearing Regulations also contain typographical corrections, cross-references corrections, clean-up changes, and similar technical corrections as well as various conforming references to the new or revised defined terms.

(b) Statutory Basis

LCH SA believes that the proposed rule change and the extension of the CDS Clear Service in respect of Single-Name CDS for FCM/BD Clients is consistent with the requirements of Section 17A of the Exchange Act¹⁸ and the regulations thereunder, including the standards under Exchange Act Rule 17Ad–22.¹⁹ Section 17A(b)(3)(F) of the Exchange Act²⁰ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions. As noted above, the proposed rule change is designed to provide for the clearing of Single-Name CDS to FCM/BD Clients. From a financial risk management and margin requirements and an operational point of view, clearing Single-Name CDS would not require changes to the existing operational procedures as Single-Name CDS transactions are already cleared by LCH SA for Clearing Members admitted as CCMs for their own account and for the account of their Non U.S. Clients. Therefore, LCH SA believes that the clearing of Single-Name CDS for U.S. Clients and the related changes described herein are consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions, in accordance with Section 17A(b)(3)(F) of the Exchange Act.²¹

In addition, the proposed amendments also satisfy the relevant requirements of Exchange Act Rule 17Ad–22 (e)(1), (4), (13), (14), (17) and (18).²² Exchange Act Rule 17Ad–22(e)(1)²³ requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. The proposed rule change would modify LCH SA's existing rules and procedures to clearly define the requirements for Single-Name CDS and establish a legal framework for LCH SA to clear Single-Name CDS on behalf of U.S. Clients. The proposed rule change would also make certain clarifying and conforming changes in the Rule Book. LCH SA therefore

¹⁸ 15 U.S.C. 78q–1.

¹⁹ 17 CFR 240.17Ad–22.

²⁰ 15 U.S.C. 78q–1(b)(3)(F).

²¹ 15 U.S.C. 78q–1(b)(3)(F).

²² 17 CFR 240.17Ad–22(e)(1), (4), (13), (14), (17) and (18).

²³ 17 CFR 240.17Ad–22(e)(1).

believes that the proposed rule change is consistent with the requirements of Exchange Act Rule 17Ad-22(e)(1).²⁴

Exchange Act Rule 17Ad-22(e)(4)²⁵ requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. Exchange Act Rule 17Ad-22(e)(14)²⁶ requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to enable, when the covered clearing agency provides central counterparty services for SBS or engages in activities that the Commission has determined to have a more complex risk profile, the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant. Further, Exchange Act Rule 17Ad-22(e)(13)²⁷ requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations, by, at a minimum, requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto. Finally, Exchange Act Rule 17Ad-22(e)(17)²⁸ requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

Consistent with Exchange Act Rule 17Ad-22(e)(4),²⁹ LCH SA will apply its existing practices, policies, and procedures with respect to the

identification, measuring, monitoring, and management of its credit exposures to Clearing Members for Single-Name CDS being cleared on behalf of U.S. Clients, and which, among other things, give LCH SA the discretion to suspend a Clearing Member or required Credit Quality Margin to be paid where LCH SA deems it necessary to contain its exposure.

LCH SA will apply its existing margin methodology, segregation requirements and existing default management policies and procedures for Single Name CDS to be cleared on behalf of U.S. Clients, including the procedures for participation in a competitive auction process for a Defaulting Clearing Member's transactions and the appointment of at least five Clearing Members to be part of the CDS Default Management Group, to allow LCH SA to take timely action to contain losses and liquidity demands, in accordance with Exchange Act Rule 17Ad-22(e)(13).³⁰ Similarly, in providing clearing for Single-Name CDS on behalf of U.S. Clients, LCH SA will apply its existing practices, policies, and procedures with respect to the portability of accounts, including as to the portability of accounts from Defaulting Clearing Members to an appointed Backup Clearing Member, allowing the protection of collateral from Clearing Member default or insolvency consistent with Exchange Act Rule 17Ad-22(e)(14).³¹ LCH SA will also apply its existing practices, policies, and procedures with respect to the management of operational risk in providing clearing for Single-Name CDS on behalf of U.S. Clients and consistent with Exchange Act Rule 17Ad-22(e)(17).³² Finally, Exchange Act Rule 17Ad-22(e)(18) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct, and where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis. As noted above, the proposed rule change would extend existing participation requirements to persons proposing to enter into Single-

Name CDS on behalf of their FCM/BD Clients and make clear that such persons must have operational capacity and the applicable regulatory registrations in respect of Single-Name CDS on behalf of their FCM/BD Clients. Therefore, LCH SA believes that the proposed rule change is consistent with the requirements of Exchange Act Rule 17Ad-22(e)(18).³³ Further, the membership requirements applicable to persons proposing to enter into Single-Name CDS on behalf of their FCM/BD Clients are designed to identify persons with sufficient operational capacity and expertise in relation to Single-Name CDS; such requirements or criteria apply to every and all persons applying to enter into Single-Name CDS clearing service equally and, as such, are not designed to permit unfair discrimination in the admission of participants or among participants in the use of LCH SA, in accordance with Section 17A(b)(3)(F) of the Exchange Act.³⁴

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.³⁵ LCH SA does not believe that its clearing of Single-Name CDS on behalf of FCM/BD Clients will adversely affect competition in the trading market for those contracts or CDS generally. By allowing LCH SA to clear Single-Name CDS for FCM/BD Clients, market participants will have additional choices on where to clear and which products to use for risk management purposes, which, in turn, will promote competition and further the development of CDS for risk management. In addition, LCH SA will apply its existing fair and open access criteria to the clearing of Single-Name CDS on behalf of FCM/BD Clients and will apply the same criteria to every person who proposes to enter into the clearing of Single-Name CDS on behalf of their Clients. Such criteria are designed to identify persons with sufficient operational capacity and expertise in relation to Single-Name CDS as part of the membership requirements that are necessary and appropriate for LCH SA to manage the risk arising from allowing persons to transact in Single-Name CDS. Accordingly, LCH SA does not believe that the proposed rule change will

²⁴ 17 CFR 240.17Ad-22(e)(1).

²⁵ 17 CFR 240.17Ad-22(e)(4).

²⁶ 17 CFR 240.17Ad-22(e)(14).

²⁷ 17 CFR 240.17Ad-22(e)(13).

²⁸ 17 CFR 240.17Ad-22(e)(17).

²⁹ 17 CFR 240.17Ad-22(e)(4).

³⁰ 17 CFR 240.17Ad-22(e)(13).

³¹ 17 CFR 240.17Ad-22(e)(14).

³² 17 CFR 240.17Ad-22(e)(17).

³³ 17 CFR 240.17Ad-22(e)(18).

³⁴ 15 U.S.C. 78q-1(b)(3)(F).

³⁵ 15 U.S.C. 78q-1(b)(3)(I).

impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

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 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-LCH SA-2021-001 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-LCH SA-2021-001. 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 LCH SA and on LCH SA's website at: <https://www.lch.com/resources/rulebooks/proposed-rule-changes>.

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-LCH SA-2021-001 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-09025 Filed 4-30-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91689; File No. SR-CBOE-2021-025]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 5.37 and Rule 5.38 in Connection With Allocations at the Conclusion of the Exchange's Automated Improvement Mechanism ("AIM") and Complex AIM ("C-AIM") Auctions

April 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 14, 2021, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") 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 Exchange.

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rule 5.37 and Rule 5.38 in connection with allocations at the conclusion of the Exchange's Automated Improvement Mechanism ("AIM") and Complex AIM ("C-AIM") auctions. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a Priority Order Plus status in connection with the allocation of exclusively listed³ index option classes, as designated by the Exchange, at the conclusion of an AIM and C-AIM auction.

The AIM and C-AIM auctions are electronic auctions intended to provide an Agency Order with the opportunity to receive price improvement (over the

³ An "exclusively listed option" is an option that trades exclusively on an exchange because the exchange has an exclusive license to list and trade the option or has the proprietary rights in the interest underlying the option. An exclusively listed option is different than a "singly listed option," which is an option that is not an "exclusively listed option" but that is listed by one exchange and not by any other national securities exchange.

National Best Bid or Offer (“NBBO”) in AIM, or the synthetic best bid or offer (“SBBO”) on the Exchange in C-AIM). Upon submitting an Agency Order into an AIM or C-AIM auction, the Initiating Trading Permit Holder (“Initiating TPH”) must also submit a contra-side second order (“Initiating Order”) for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price. Upon commencement of an auction, market participants may submit responses to trade against the Agency Order. At the conclusion of an auction, depending on the contra-side interest available, the Initiating Order may be allocated a certain percentage of the Agency Order. Rule 5.37(e) and Rule 5.38(e) currently govern the order in which an Agency Order submitted into an AIM and C-AIM auction, respectively, is allocated among available contra-side interest. At the time each AIM or C-AIM Auction concludes, the System allocates the Agency Order pursuant to Rule 5.37(e) or Rule 5.38(e), as applicable, and takes into account all auction responses and unrelated orders and quotes in place at the exact time of conclusion. Any execution prices at the conclusion of an AIM Auction must be at or better than both sides of the BBO existing at the conclusion of the AIM Auction and at or better than both sides of the Initial NBBO,⁴ and any execution prices at the conclusion of a C-AIM Auction must be at or between the SBBO and the best prices of any complex orders resting on⁵ each side of the Complex Order Book (“COB”) at the conclusion of the C-AIM Auction.

Currently, the Exchange may offer Priority Order status for allocations at the conclusion of an AIM Auction. If the Exchange designates a class as eligible for Priority Order status, then Priority Orders receive Agency Order executions after Priority Customers and the Initiating TPH (as applicable) have received their Agency Order allocations.⁶ Rule 5.37(e)(4) provides that if the Exchange designates a class as eligible for Priority Order status,

Users with displayed resting quotes and orders that were at a price equal to the Initial NBBO on the opposite side of the market from the Agency Order have priority up to their size for their contra-side interest (“Priority Orders”)⁷ in the Initial NBBO at each price level at or better than the Initial NBBO (after Priority Customers and the Initiating TPH have received allocations, as set forth in subparagraphs (e)(1) through (3)). Priority Order status is only valid for the duration of the particular AIM Auction.⁸

The Exchange now proposes to adopt a new allocation incentive for Priority Orders in exclusively listed index options classes at the conclusion of AIM, as well as C-AIM, auctions. First, the proposed rule change amends Rule 5.34(e)(4) to permit the Exchange to designate any exclusively listed index option class as eligible for Priority Order Plus status at the conclusion of an AIM Auction. As stated, Rule 5.34(e)(4) currently governs Priority Order status and, as proposed, the manner in which Priority Order Plus status functions is substantively the same as Priority Order status, except that Priority Order Plus status will be available only for exclusively listed index option classes and Priority Orders eligible for Priority Order Plus status will receive higher priority than Priority Orders eligible for Priority Order status. Specifically, proposed Rule 5.37(e)(4) provides that the Exchange may designate any exclusively listed index option class as eligible for Priority Order Plus status and any class as eligible for Priority Order status. A class designated as eligible for one status is not eligible for the other status. If the Exchange designates a class as eligible for Priority Order Plus or Priority Order status, Users with displayed resting quotes and orders that were at a price equal to the Initial NBBO on the opposite side of the market from the Agency Order have priority for their contra-interest (“Priority Orders”) up to their size in the Initial NBBO at each price level at or better than the Initial NBBO. Priority

Order Plus and Priority Order allocations are received after Priority Customers have received allocations, and Priority Order allocations are also received after the Initiating TPH has received its entitlement allocation, as set forth in Rule 5.37(e)(1) through (3). Each status is only valid for the duration of the particular AIM Auction. As a result of the proposed status, the proposed rule change also adopts new Rule 5.37(e)(1)(B),⁹ which provides for the allocation of Priority Orders, if the Exchange has designated the class as eligible for Priority Order Plus status, immediately following Priority Customer allocations but prior to Initiating TPH allocations when an AIM Auction results in no price improvement. The proposed rule change also amends Rule 5.37(e)(2)(B) to include that Priority Orders may be allocated immediately following Priority Customer allocations, in the same order of allocation priority as they currently are, if the Exchange has designated a class as eligible for Priority Order Plus or Priority Order status.

Additionally, proposed Rule 5.37(e)(1)(B) provides that Priority Orders eligible for Priority Order Plus status are allocated in a pro-rata manner. Likewise, the proposed rule change updates Rules 5.37(e)(1)(C) and (D)¹⁰ and (e)(2)(B), (C) and (D) to reflect that Priority Orders, all other contra-side interest (including AIM responses and orders and quotes on the Book) and non-Priority Customer non-displayed Reserve Quantity pursuant to these Rules are allocated in a pro-rata manner. The proposed rule change also updates Rule 5.39(e)(2)(C), which provides for generally similar order of allocations at the conclusion of a Solicitation Auction Mechanism (“SAM” or “SAM Auction”), to likewise reflect that non-Priority Customer non-displayed Reserve Quantity is allocated in a pro-rata manner.¹¹ Currently, these Rules provide that Priority Orders and all other contra-side interest are allocated pursuant to the base allocation

⁹ The proposed rule change also updates the numbering of current Rule 5.37(e)(1)(B) through (e)(1)(E) to reflect the addition of new Rule 5.37(e)(1)(B).

¹⁰ Rule 5.37(e)(1)(D) and (E), as a result of the addition of new Rule 5.37(e)(1)(B). *See id.*

¹¹ The proposed rule change also corrects an inadvertent error in Rule 5.39(e)(2)(B), that currently references EDGX Option “Rule 21.8(c)” regarding pro-rata allocation of remaining contra-side interest. The proposed rule change corrects this incorrect reference to EDGX Option’s pro-rata rule to appropriately reference “a pro-rata manner.” The Exchange notes that Rule 5.39 was intended to be substantively identical to EDGX Options Rule 21.21 (EDGX Options SAM). *See Securities and Exchange Act Release No. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR-CBOE-2019-063).*

⁴ The term “Initial NBBO” means the national best bid or national best offer at the time an Auction is initiated. *See* Rule 5.37.

⁵ The proposed rule change removes an extraneous “the” from Rule 5.38(e).

⁶ Priority Orders receive priority pursuant to the order of allocation as set forth in Rule 5.37(e)(1) (if the Auction results in no price improvement), Rule 5.37(e)(2) (if the Auction results in price improvement for the Agency Order and the Initiating TPH selected a single-price submission) or Rule 5.37(e)(3) (if the Auction results in price improvement for the Agency Order and the Initiating TPH selected auto-match).

⁷ The proposed rule also updates the language in Rule 5.37(e)(4) to clarify that a User that establishes Priority Order status (by having displayed resting quotes and orders priced equal to the Initial NBBO contra to the Agency Order) receives that Priority Order status for their contra-side interest (up to their size in the Initial NBBO) at each price level at which the Agency Order executes. This is how the Priority Order status functions today and the proposed clarification does not alter any current functionality. Instead, the proposed clarification merely makes the Rule more explicit and relocates the defined term “Priority Orders” to more appropriately describe the Priority Order status allocation process.

⁸ Priority Order status is currently activated for numerous classes in AIM.

algorithm applicable to the class pursuant to Rule 5.32(b) (*i.e.*, either in time priority or in a pro-rata manner)¹² and that non-Priority Customer non-displayed Reserve Quantity is allocated in time priority. The Exchange notes that pro-rata allocation for Priority Orders and all other contra-side interest at the conclusion of an AIM Auction is consistent with the manner in which the same orders currently receive allocations at the conclusion of an AIM auction on the Exchange's affiliated options exchange, Cboe EDGX Exchange, Inc. ("EDGX Options"), pursuant to EDGX Options Rules 21.19(e)(1)(C) and (D) and (e)(2)(B) and (C).¹³ Pro-rata allocation is also consistent with the manner in which other options exchanges allocate agency orders at the conclusion of comparable price improvement auctions¹⁴ and solicitation auctions on those exchanges.¹⁵

Second, the proposed rule change adopts new Rule 5.38(e)(4),¹⁶ which permits the Exchange to designate any exclusively listed index option class as eligible for Priority Complex Order Plus status, pursuant to which proposed Priority Complex Orders may receive Agency Order executions after Priority Customers at the conclusion of a C-AIM Auction. Specifically, proposed Rule

5.38(e)(4) provides that, if the Exchange designates a class as eligible for Priority Complex Order Plus status, Users with contra-side complex interest at the conclusion of the C-AIM Auction and displayed resting quotes and orders that were at a price equal to the BBO on the opposite side of the market from any of the components of the Agency Order at the time the C-AIM Auction commenced, have priority in their contra-side complex interest ("Priority Complex Orders") up to their largest size in a BBO in a pro-rata manner (after Priority Customers have received allocations, as set forth in subparagraphs (e)(1) through (3) above). Priority Complex Order Plus status is only valid for the duration of the particular C-AIM Auction. As a result of the proposed status, the proposed change also adopts new Rules 5.38(e)(1)(B) and 5.38(e)(2)(B),¹⁷ which provide for the allocation of Priority Complex Orders (in a pro-rata manner), if the Exchange has designated the class as eligible for Priority Complex Order Plus status, immediately following Priority Customer allocations and prior to any Initiating TPH allocations, pursuant to Rule 5.38(e)(1)(A) (if the C-AIM Auction results in no price improvement) and Rule 5.38(e)(2) (if the C-AIM Auction results in price improvement for the Agency Order and the Initiating TPH selected a single-price submission).

The proposed Priority Complex Order Plus status and Priority Complex Orders in C-AIM Auctions will function in substantively the same manner in which Priority Order status (and Priority Order Plus status, as proposed) and Priority Orders currently function in AIM Auctions, and differ only to the extent that certain requirements or functionality differs for complex orders and C-AIM. Like Priority Order (and Priority Order Plus) status, Priority Complex Order Plus status allows for Users' to be given, at the conclusion of an auction, priority in their contra-side interest at each price level up to their size that existed at the best price level available at the start of an auction. Reference to Users' orders and quotes on the BBO (as opposed to the Initial NBBO for Priority Orders in an AIM Auction) for Priority Complex Order status is consistent with the permissible pricing and Customer Priority requirements for all complex orders, which consider the BBO of each component of a complex

strategy.¹⁸ Priority Complex Orders are also allocated in a pro-rata manner, which is consistent with the manner that all non-Customer contra-side complex interest is currently allocated at the conclusion of a C-AIM Auction. Users contra-side complex interest (which includes complex orders on the COB and C-AIM responses)¹⁹ at the end of an auction will receive an allocation of the Agency Order up to their largest BBO size that existed at the time the C-AIM Auction commenced. For example, a complex Agency Order to sell 12 SPX JUN 2950 calls and buy 4 SPX MAY 2850 calls is submitted into C-AIM. At the time the C-AIM Auction commences a User has two orders at the best bid for the SPX JUN 2950 calls, an order for two contracts and an order for five contracts (for a total of seven contracts on the BBO). The User also has one order for 10 contracts at the best offer for the SPX MAY 2850 calls. If the User has any contra-side complex interest at the time the C-AIM Auction concludes, then the User will receive up to 10 Agency Order contracts executed against the User's contra-side complex interest (after Agency Order executions are given to any Priority Customer complex orders on the COB) because the User's largest size on a BBO was 10-lot order at the best offer opposite the buy leg of the Agency Order.

By permitting the Exchange to designate any exclusively listed index option class as eligible for Priority Order Plus and Priority Complex Order Plus status (collectively, "Priority Plus" statuses), the proposed rule change provides further incentive for market participants that set the market in eligible classes, as such market participants would receive priority over all other non-Customer contra-side interest, including the Initiating Order, at the conclusion of an AIM or C-AIM auction. By allowing Priority Orders to receive allocation prior to the Initiating Order, the proposed Priority Plus statuses are designed to encourage competition and the provision of more aggressive prices in exclusively listed index options (as designated) displayed in the Exchange's Book. While the Exchange acknowledges that price improvement auctions have provided the market with benefits (such as

¹² Rule 5.32(b) provides that the Exchange may determine that a class has a base algorithm of price-time (*i.e.*, price time priority) (where the System prioritizes resting orders at the same price in the order in which the System received them) or pro-rata (where the System allocates orders resting at the same price proportionally according to size).

¹³ Pursuant to EDGX Options Rules 21.19(e)(1)(C) and (D) and (e)(2)(B) and (C), Priority Orders or all other contra-side interest, as applicable, are allocated pursuant to Rule 21.8(c), which provides that all option classes on EDGX Options have a pro-rata base algorithm for orders resting at the same best price. The Exchange notes that EDGX Options intends to submit a rule filing to, among other things, update its corresponding AIM and SAM allocation provisions to harmonize pro-rata allocation of non-Priority Customer non-displayed Reserve Quantity with the proposed changes herein.

¹⁴ See Nasdaq ISE Options 3, Section 13(d)(3), which governs allocations at the conclusion of ISE's price improvement mechanism and allocates an agency order across non-Priority Customer interest "based upon the percentage of the total number of contracts available at the price that is represented by the size of such interest"; and MIAX Options Rule 515A(a)(2)(iii), which governs allocations at the conclusion of MIAX's price improvement mechanism and allocates an agency order across Professional interest on a pro-rata basis.

¹⁵ See Nasdaq ISE Options 3, Section 11(d)(3), which governs the allocations at the conclusion of ISE's solicitation mechanism and allocates an agency order across non-Priority Customer interest "based upon the percentage of the total number of contracts available at the best price that is represented by the size of the non-Priority Customer [interest]".

¹⁶ The proposed rule change also updates the numbering of current Rule 5.38(e)(4) through (e)(6) to reflect the addition of new Rule 5.38(e)(4).

¹⁷ The proposed rule change also updates the numbering of current Rule 5.38(e)(1)(B) through (e)(1)(D) and current Rule 5.38(e)(2)(B) to reflect the addition of new Rules 5.38(e)(1)(B) and (e)(2)(B).

¹⁸ See Rule 5.33(f)(2)(A). The Exchange notes that the prices at which complex orders may execute is based on prices set in the simple market and the proposed Priority Complex Order Plus status allows those market participants that set the simple market prices which create permissible complex pricing to have priority in the complex market and is, thus, equivalent to AIM Priority Order status, providing a benefit to those market participants who set the market.

¹⁹ See Rule 5.38(e).

providing an efficient manner of access to liquidity for customers), the options industry overall has observed that quoted liquidity on the book has decreased, quotes have widened, and options market makers have reduced their participation in the market, which the Exchange believes has impacted market quality.²⁰ By providing market participants, particularly Market-Makers and other liquidity providers, the opportunity to receive priority over the Initiating TPH in exclusively listed index classes if they post more aggressive markets, the Exchange believes the proposed rule change creates an AIM incentive allocation feature that may enhance displayed liquidity, provide for tighter markets, and ultimately provide better execution prices for all market participants in classes available exclusively for trading on the Exchange's marketplace.

The Exchange likewise believes that updating the allocation of Priority Orders and other contra-side interest (including non-Priority Customer non-displayed Reserve Quantity) to be pro-rata for all AIM- or SAM-eligible classes (as applicable), as opposed to price-time, creates more appropriate incentives in connection with the Exchange's auctions, which are intended to encourage market participants to produce competitive bids and offers within the entirety of an auction, and thus ultimately increases price improvement opportunities in the auctions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to,

and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that by allowing the Exchange to permit Priority Orders and Priority Complex Orders, as proposed, to receive allocation of an Agency Order prior to any other non-Customer contra-side interest (including the Initiating Order), the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, protect investors. For classes in which Priority Plus status is enabled, interest of Users with orders and quotes displayed at the best bid or offer in the book will be prioritized higher at the conclusion of AIM and C-AIM auctions, namely, ahead of the Initiating Order, and thus possibly be allocated more contracts from an Agency Order than they otherwise would be. As such, the proposal is designed to create an AIM allocation incentive that encourages Market-Makers and other liquidity providers to quote more aggressively so that they have the opportunity for higher priority in the event an auction commences. As described above, price improvement auctions may have diminished the incentive for displayed liquidity provider participation in the options markets. The Exchange believes the proposed allocation status may incentivize participation on the Exchange at more aggressive and competitive prices by providing an opportunity for liquidity providers to receive priority ahead of an Initiating TPH if they have such quotes in the Book when an auction commences. The Exchange believes that this may increase competitive and meaningful quotes on the Exchange's displayed markets, which may enhance liquidity provide for tighter markets and ultimately result in better execution prices for customer orders (both submitted into auctions or to the Book), to the benefit of all investors.

The proposed Priority Plus statuses will function in substantively the same manner as the currently Priority Order status available for AIM Auction allocations, allowing for Users to receive priority in their contra-side interest at

each price level up to their size that existed at the best price level available at the start of an auction,²⁴ but will just allow Users' Priority Orders to have a higher priority at the conclusion of an auction and will be available in any exclusively listed index option classes so designated by the Exchange.²⁵ Complex Order Plus status differs only to the extent that certain requirements or functionality differs for complex orders and C-AIM, in particular, reference to the BBO pricing and pro-rata allocation. The proposed Priority Plus statuses are consistent with the allocation rules and will continue to yield to Priority Customer allocations. The proposed rule change provides an additional benefit at the conclusion of AIM and C-AIM auctions to those market participants that set the market prices upon which auction prices must ultimately be based.²⁶ The Exchange believes that further prioritizing the orders and quotes of Users that set the market will further incentivize liquidity providing market participants to increase their displayed liquidity at the best prices in eligible exclusively listed index option classes. An increase in displayed liquidity would encourage more participation overall on the Exchange, in turn contributing to increased levels of overall market quality to the benefit of all investors.

In addition to this, the Exchange believes that updating the allocation of Priority Orders and other contra-side interest (including non-Priority Customer non-displayed Reserve Quantity) to be pro-rata for all AIM- or SAM-eligible classes (as applicable) serves to remove impediments to and perfect the mechanism of a free and open market and national market system because the proposed change is also designed to encourage increased participation at the best prices, resulting in enhanced liquidity, competition, and ultimately more price improvement opportunities, thereby benefitting investors. As stated above, the Exchange believes that providing allocations based on price and size, as opposed to price-time, creates more appropriate incentives in connection with the Exchange's auctions, which are designed to encourage price improvement. The Exchange believes allocating interest to market participants with the best-priced interest during the entirety of the auction rather than

²⁰ See Letter to Brett Redfearn, Director, Division of Trading & Markets, from Cboe Global Markets, Inc. the Listed Options Trading Committee of the Securities Industry and Financial Markets Association ("SIFMA"), and the Listed Options Committee of the Security Traders Association ("STA"), dated June 4, 2018, available at http://cdn.batstrading.com/resources/comment_letters/Cboe-Joint-Letter-with-SIFMA-and-The-STA-on-Options-Market-Structure.pdf.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ *Id.*

²⁴ See also *supra* note 7.

²⁵ The Exchange notes that, pursuant to proposed Rule 5.37(e)(4), a class designated as eligible for one status (Priority Order or Priority Order Plus) is not eligible for the other status.

²⁶ See also *supra* note 18.

allocating interest to the fastest responding market participants more appropriately encourages competitive pricing in an auction environment. Indeed, the Commission has previously asserted that it believes “that allocations based on price/size priority are consistent with the Act” and that it does not believe that a lack of time priority would discourage price competition in a price improvement auction.²⁷ The proposed change also benefits investors by further harmonizing the auction rules across the Exchange and its affiliated options exchange, EDGX Options, which facilitates increased understanding of auction functionality for market participants and mitigates any potential confusion by removing discrepancies, where possible, between the two sets of rules governing auctions.²⁸ Additionally, pro-rata allocation is also consistent with the manner in which other options exchanges allocate agency orders at the conclusion of their comparable price improvement auctions²⁹ and solicitation auctions.³⁰

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 intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposed Priority Plus statuses will be equally available and apply in the same manner to all orders and quotes resting in the Book or COB, as applicable, in an exclusively listed index option class the Exchange has designated as eligible for the status. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to Exchange-specific auction mechanisms in index option classes listed exclusively on the Exchange. The Exchange also notes that other options

exchanges offer similar price improvement auctions³¹ that are available to market participants, and other options exchanges may, in their discretion, adopt similar priority order statuses in connection with allocations at the conclusion of their auctions. Additionally, the Exchange believes it is appropriate to limit Priority Order Plus status to exclusively listed index option classes because they only trade on the Exchange (or an affiliated Cboe options exchange). The proposal is designed to incentivize competitive quoting in the Exchange’s displayed marketplace in connection with its auctions. Other options exchanges may propose a similar allocation incentive for any classes that trade on those exchanges.

Additionally, the proposed pro-rata allocations for Priority Orders and other contra-side interest (including non-Priority Customer non-displayed Reserve Quantity) will apply equally to all such orders at the conclusion of an AIM or SAM Auction (as applicable). The Exchange notes pro-rata allocation is currently applied to all Priority Orders and other contra-side interest at the conclusion of an AIM auction on EDGX Options³² and at the conclusion of price improvement and solicitation auctions on other options exchanges.³³

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–CBOE–2021–025 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2021–025. 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–CBOE–2021–025, and

²⁷ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR–ISE–2003–06) (Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 Thereto by the International Securities Exchange, Inc. To Establish Rules Implementing a Price Improvement Mechanism).

²⁸ See also *supra* note 13.

²⁹ See *supra* note 14.

³⁰ See *supra* note 15.

³¹ See e.g., *supra* note 14; BOX Options’ Price Improvement Period (“PIP”) available at <https://boxoptions.com/about/price-improvement/>; and Complex Order Price Improvement Period (“COPIP”) available at <https://boxoptions.com/about/complexorder-description/>; and MIAx Options’ Price Improvement Mechanism (“PRIME”) and Complex Price Improvement Mechanism (“cPRIME”) available at https://www.miaxoptions.com/sites/default/files/knowledge-center/2017-07/MIAx_PRIME_07212017.pdf.

³² See *supra* note 13. The Exchange notes that EDGX Options also intends to submit a rule filing to, among other things, update the allocation of non-Priority Customer non-displayed Reserve Quantity to pro-rata in order to more closely align its AIM and SAM rules with Cboe Options.

³³ See *supra* notes 14 and 15.

should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-09132 Filed 4-30-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, May 6, 2021.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;

- Institution and settlement of administrative proceedings;

- Resolution of litigation claims; and

- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: April 29, 2021.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2021-09398 Filed 4-29-21; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91670; File No. SR-BOX-2021-05]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility

April 26, 2021.

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 April 15, 2021, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC ("BOX") facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxexchange.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section II.C (QOO Order Rebate) of the BOX Fee Schedule. Specifically, the Exchange proposes to reinstate the monthly rebate cap of \$30,000 per month per Broker Dealer. The Exchange notes that the proposed rebate cap was previously in place when BOX established fees for the Trading Floor in 2017.⁵

Currently, Floor Brokers are eligible to receive a \$0.075 per contract rebate for all Broker Dealer and Market Maker QOO Orders presented on the Trading Floor and \$0.05 per contract rebate for all Professional Customer QOO Orders presented on the Trading Floor. The rebate is not applied to Public Customer executions, executions subject to the Strategy QOO Order Fee Cap, or Broker Dealer executions where the Broker Dealer is facilitating a Public Customer. Under this proposal, Floor Brokers will continue to be eligible to receive a per contract rebate for all applicable QOO Orders; however, the total monthly rebate for Broker Dealer orders will now be capped at \$30,000 per month per Broker Dealer.⁶

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

BOX established the QOO Order Rebate program and the monthly rebate cap in August 2017. As discussed in BOX's 2017 proposal to establish the QOO Order Rebate program and rebate

⁵ See Securities Exchange Act Release Nos. 81504 (August 30, 2017), 82 FR 42195 (September 6, 2017) (SR-BOX-2017-28) (Establishing Fees and Rebates for the Trading Floor on the BOX Market LLC Options Facility).

⁶ The Exchange notes that all Broker Dealer QOO Orders that are eligible for the rebate will also be subject to the rebate cap.

⁷ 15 U.S.C. 78f(b)(4) and (5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

³⁴ 17 CFR 200.30-3(a)(12).

cap, the rebate was created to incentivize order flow to the BOX Trading Floor. Further, the QOO Order Rebate program was established to attract order flow by rewarding Floor Brokers with rebates for directing qualifying orders to the BOX Trading Floor.⁸ The Exchange notes that it is not making any changes to the amount of the QOO Order Rebate, and that the QOO rebate will continue to apply to both sides of the qualifying paired QOO Order.⁹

The Exchange notes that the rebate cap was removed in December 2019 to further incentivize Floor Brokers to bring QOO Order flow to the BOX Trading Floor.¹⁰ The Exchange now believes the same level of incentive is no longer necessary for Floor Brokers to bring additional order flow to the BOX Trading Floor and, as such, believes the proposed change to reinstate the rebate cap is reasonable and appropriate at this time.¹¹ Further, the Exchange notes that Floor Brokers will continue to be offered the per contract rebate for applicable QOO Orders (subject to the proposed rebate cap) and fees for Broker Dealers will continue to be capped at \$75,000 per month per Broker Dealer.¹² The

⁸ Unlike competing exchanges, the Exchange does not offer a front-end order entry system to its Floor Brokers to submit orders on the BOX Trading Floor. Instead, Floor Brokers use their own proprietary front-end order entry systems on the BOX Trading Floor. Given this, Participants have two possible means of bringing orders to the Exchange's Trading Floor for possible execution: (1) They can invest in the technology, systems and personnel to participate on the Trading Floor and deliver the order to the Exchange matching engines for validation and execution; or (2) they can utilize the services of another Participant acting as a Floor Broker. The Exchange notes that the investment in the technology, systems and personnel to establish a front-end order entry system on the BOX Trading Floor is substantial. As such, the Exchange established the QOO Order Rebate program to incentivize Participants to (1) make such an investment to become a Floor Broker on the BOX Trading Floor and (2) allow Floor Brokers to price their services at a level that would enable them to attract QOO order flow from participants who would otherwise utilize the front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and resources to install and develop their own internal systems to deliver QOO orders directly to the Exchange system.

⁹ As noted above, currently the rebate does not apply to Public Customer executions, executions subject to the Strategy QOO Order Fee Cap, or Broker Dealer executions where the Broker Dealer is facilitating a Public Customer.

¹⁰ See Securities Exchange Act Release No. 87704 (December 10, 2019), 84 FR 68499 (December 16, 2019) (SR-BOX-2019-35).

¹¹ As with any incentive, there are multiple ways to reduce or raise the level. The Exchange notes it could have lowered the QOO Rebate amount, but instead decided to reinstate the QOO rebate cap that had already previously been in place on the Exchange.

¹² The Exchange notes that QOO Order fees are capped for Broker Dealers only on the BOX Trading

Exchange believes that, despite the reinstatement of the proposed rebate cap, the current per contract rebate for Floor Brokers and fee cap for Broker Dealer QOO Orders will continue to incentivize Floor Brokers to bring Broker Dealer QOO order flow to the Exchange. The Exchange also believes the proposed rebate cap is reasonable as it was previously in place on the BOX Trading Floor.¹³ For the foregoing reasons, the Exchange believes it is appropriate to reinstate the rebate cap for Broker Dealer orders on the BOX Trading Floor.

Lastly and as noted above, the Exchange further believes that the \$30,000 rebate cap for Broker Dealer orders is equitable and not unfairly discriminatory as Broker Dealer QOO Order execution fees are currently capped at \$75,000 per month and other QOO Order fees are not. Further, all similarly situated Floor Brokers on the BOX Trading Floor who receive rebates on Broker Dealer orders will be uniformly capped at \$30,000 per month per Broker Dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rebate cap will not impose an unfair burden on intramarket competition because all similarly situated Floor Brokers who receive rebates on Broker Dealer orders on the BOX Trading Floor would be uniformly capped at \$30,000 per month per Broker Dealer.¹⁴ Further, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges with trading floors if they deem rebate opportunities at other trading floors to be more favorable. In such an environment, the Exchange must

Floor—Market Maker and Professional Customer order fees are not subject to any such fee cap. As such, the Exchange believes that reinstating the rebate cap for Broker Dealer orders is reasonable and appropriate at this time.

¹³ See *supra* note 5.

¹⁴ As mentioned above, the Exchange believes that reinstating the rebate cap for Broker Dealer orders is reasonable and appropriate because Broker Dealer orders are the only executions currently capped at \$75,000 per month (Market Maker and Professional Customer orders are not subject to any fee cap).

continually review, and consider adjusting, its fees and rebates to remain competitive within the industry. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act¹⁵ and Rule 19b-4(f)(2) thereunder,¹⁶ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2021-05 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-BOX-2021-05. 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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-BOX-2021-05, and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91675; File No. SR-NASDAQ-2021-023]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Nasdaq Rule 5760 To Permit the Listing and Trading of Managed Portfolio Shares

April 26, 2021.

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 April 14, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II,

and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Nasdaq Rule 5760 to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Nasdaq Rule 5760 for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment company. This proposed rule change to add new Nasdaq Rule 5760 is substantially similar to the recently approved rule change by Cboe BZX Exchange, Inc. ("Cboe BZX") to adopt rule 14.11(k).³

Proposed Listing Rules

Proposed Nasdaq Rule 5760(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading

privileges, Managed Portfolio Shares that meet the criteria of Nasdaq Rule 5760.

Proposed Nasdaq Rule 5760(b) provides that Nasdaq Rule 5760 is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Nasdaq Rule 5760, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Nasdaq Rule 5760(b) provides further that Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Nasdaq Rule 5760(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares. Additionally, that all statements or representations regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values ("VIIV") (as applicable); or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards.

Proposed Nasdaq Rule 5760(b)(2) provides that transactions in Managed Portfolio Shares will occur throughout the Exchange's System Hours.⁴

Proposed Nasdaq Rule 5760(b)(3) provides that the minimum price variation for quoting and entry of orders in Managed Portfolio Shares is \$0.01.

Proposed Nasdaq Rule 5760(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed Nasdaq Rule 5760(b)(5) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and

⁴ See Nasdaq Equity Rules Equity 1. Section 1(a)(9). The term "System Hours" is defined as the period of time beginning at 4:00 a.m. E.T. and ending at 8:00 p.m. E.T. (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities and Exchange Act Release No. 87759 (December 16, 2019) 84 FR 70223 (December 20, 2019) (SR-CboeBZX-2019-047).

personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Proposed Nasdaq Rule 5760(c)(1) defines the term "Managed Portfolio Share" as a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value ("NAV") and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the SEC) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of

instruments (and/or an amount of cash) with a value equal to the next determined NAV delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.⁵

Proposed Nasdaq Rule 5760(c)(2) defines the term "Verified Intraday Indicative Value" as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Nasdaq's regular market session by the Reporting Authority.

Proposed Nasdaq Rule 5760(c)(3) defines the term "AP Representative" as an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Proposed Nasdaq Rule 5760(c)(4) defines the term "Confidential Account" as an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed Nasdaq Rule 5760(c)(5) defines the term "Creation Basket" as on any given business day the names and quantities of the specified instruments and/or an amount of cash that are required for an AP Representative to deposit in-kind on behalf of an

Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments and/or an amount of cash that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Proposed Nasdaq Rule 5760(c)(6) defines the term "Creation Unit" as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

Proposed Nasdaq Rule 5760(c)(7) defines the term "Redemption Unit" as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

Proposed Nasdaq Rule 5760(c)(8) defines the term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the NAV, the VIIV, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Nasdaq Rule 5760(c)(9) provides that the term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Nasdaq Rule 5760(d)(1) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Nasdaq Rule 5760(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the

⁵ For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a "Fund" and shares of a series of Managed Portfolio Shares are generally referred to as the "Shares".

Exchange. In addition, proposed Nasdaq Rule 5760(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Nasdaq Rule 5760(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Nasdaq Rule 5760(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Nasdaq Rule 5760(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Nasdaq's regular market session, and will be disseminated to all market participants at the same time. Proposed Nasdaq Rule 5760(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Nasdaq Rule 5800 Series, for a series of Managed Portfolio Shares, under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940 ("1940 Act"), or such holdings are not made available to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue

persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained; (vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) The description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and VIIVs; or (d) the applicability of Nasdaq listing rules specified in such proposals; or (viii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Nasdaq Rule 5760(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment

Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

Proposed Nasdaq Rule 5760(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Nasdaq Rule 5760(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Nasdaq Rule 5760(e), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Nasdaq Rule 5760(f), which relates to disclosures, provides that the provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this

subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that Members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

A Member carrying an omnibus account for a non-Member broker-dealer is required to inform such non-Member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to Members under this rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Nasdaq Rule 5735),⁶ Managed Portfolio Shares differ from Managed Fund Shares in the following important

respects. First, in contrast to Managed Fund Shares, which require a “Disclosed Portfolio” to be disseminated at least once daily,⁷ the portfolio for a series of Managed Portfolio Shares will be disclosed at least quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.⁸ The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described further below in “Creation and Redemption of Shares”) without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, the VIIV will be disseminated reflecting an estimated intraday value of a fund’s portfolio. Specifically, the VIIV will be based upon all of a series’ holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the regular market session. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange, after consulting with various Designated Liquidity Providers

(“DLPs”)⁹ that trade exchange-traded funds (“ETFs”) on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF’s intraday value as long as a VIIV is disseminated in one second intervals, and market makers employ market making techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹⁰ For Managed Portfolio Shares, market makers may use the knowledge of a Fund’s means of achieving its investment objective, as described in the applicable Fund registration statement (the “Registration Statement”), to construct a hedging proxy for a Fund to manage a market maker’s quoting risk in connection with trading Fund Shares.

Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without

⁹ As defined in Nasdaq Equity 7 Sec. 114(f)(2), the term DLP means a registered Nasdaq market maker for a “Qualified Security” that has committed to maintain minimum performance standards. As defined in Nasdaq Equity 7 Sec. 114(f)(1), the term “Qualified Security” means an ETP that has at least one DLP. The performance measurement is the percent of time at the NBBO.

¹⁰ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Managed Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

⁶ The Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78918 (Sept. 23, 2016), 81 FR 67033 (Sept. 29, 2016) (SR-NASDAQ-2016-104) (order approving proposed rule change to amend Nasdaq Rule 5735 to adopt generic listing standards for Managed Fund Shares).

⁷ Nasdaq Rule 5735(c)(2) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of NAV at the end of the business day. Nasdaq Rule 5735(d)(1)(B) and Nasdaq Rule 5735(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁸ Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

precise knowledge¹¹ of a fund's underlying portfolio.¹² This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, *i.e.* the Deposit Instruments or "Redemption Instruments" and the estimated "Balancing Amount" (if any),¹³ for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a Fund, as described below.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected

through a Confidential Account¹⁴ with an AP Representative,¹⁵ which will be a broker-dealer for the benefit of an AP.¹⁶ An AP must be a Depository Trust Company ("DTC") Participant that has executed a "Participant Agreement" with the applicable distributor (the "Distributor") with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP. The Funds will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit Funds to be as fully invested as possible, Shares will be

purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances required or determined permissible by the Fund, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and APs redeeming their Shares will receive an in-kind transfer of Redemption Instruments through the AP Representative in their Confidential Account.¹⁷

In the case of a creation, the AP¹⁸ would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, they will have to do so through an AP.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional

¹¹ Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the NAV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

¹² APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum securities haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each Fund's website.

¹³ The Balancing Amount is the cash amount necessary for the applicable Fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

¹⁴ Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a Fund's Creation Basket or portfolio securities, such as a Fund's custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

¹⁵ Each AP shall enter into its own separate Confidential Account with an AP Representative.

¹⁶ Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund's Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

¹⁷ Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933.

¹⁸ An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during the regular market session.

Information (“SAI”). The NAV of each Fund is expected to be determined once each business day at a time determined by the board of the Investment Company (“Board”), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the “Valuation Time”). Each Fund will establish a cut-off time (“Order Cut-Off Time”) for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per Share purchased plus applicable “Transaction Fees,” as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of the regular market session on the date such order is placed (“Transmittal Date”) in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.¹⁹

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (“AP Redemption Order”). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive

as redemption proceeds using similar tactics.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²⁰ Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a Fund’s custodian (“Custodian”) will typically deliver securities to the Confidential Account with a value approximately equal to the value of the Shares²¹ tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP’s Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP

²⁰ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

²¹ If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable Fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts’ respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs will provide the AP Representative with a list of restricted securities applicable to the AP on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or minus any cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Managed Portfolio Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products. The Exchange will require the issuer of each series of Managed Portfolio Shares, upon initial listing and periodically thereafter, to provide a representation that it is in compliance with Nasdaq Rule 5760. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Nasdaq Rule 5760.

The Exchange will require each issuer of a Fund to represent that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the

¹⁹ A “custom order” is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq Rule 5800 Series.

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Nasdaq Rule 5760(b)(4), the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily portfolio holdings of any series of Managed Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Managed Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

The Exchange notes that any equity instruments or futures held by a Fund operating under an exemptive order would trade on markets that are a member of Intermarket Surveillance Group ("ISG") or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²² While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Nasdaq Rule 5760(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series.

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from other markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares) (collectively, "Availability of Information Halts"). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

Availability of Information

As noted above, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the VIIV, as defined in proposed Nasdaq Rule 5760(c)(2), will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the regular market session.

Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Transactions in Managed Portfolio Shares will occur throughout the Exchange's System Hours as provided in proposed Nasdaq Rule 5760(b)(2). As provided in Nasdaq Rule 5760(b)(3), the minimum price variation for quoting and entry of orders in Managed Portfolio Shares traded on the Exchange is \$0.01.

Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, the Exchange will inform its Members in an Information Circular ("Circular") of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) Members and associated persons of a Member shall comply with FINRA Rule 2111, which imposes suitability

²² For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

obligations on Exchange members with respect to recommending transactions in the Managed Portfolio Shares to customers, as if such rule were part of Nasdaq's rules; (3) how information regarding the VIIV is disseminated; (4) the requirement that Members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²³ in general and Section 6(b)(5) of the Act²⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Nasdaq Rule 5760 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Nasdaq Rule 5760(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Nasdaq Rule 5760(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Nasdaq Rule 5760(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all

market participants at the same time.²⁵ Proposed Nasdaq Rule 5760(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions (as defined in the rule).

Proposed Nasdaq Rule 5760(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Nasdaq Rule 5760(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the regular market session and will be disseminated to all market participants at the same time. Proposed Nasdaq Rule 5760(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Nasdaq Rule 5800 Series, for a series of Managed Portfolio Shares, under any of the following circumstances: (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940, or such holdings are not made available to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v)

²⁵ Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained; (vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) The description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and VIIVs; or (d) the applicability of Nasdaq listing rules specified in such proposals; or (viii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Nasdaq Rule 5760(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(5).

Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

Proposed Nasdaq Rule 5760(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Nasdaq Rule 5760(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or Statement of Additional Information. The Exchange also notes that an issuer must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise does not apply to issuers of Managed Fund Shares.

Proposed Nasdaq Rule 5760(b)(3) provides that the minimum price variation for quoting and entry of orders in Managed Portfolio Shares is \$0.01.

Proposed Nasdaq Rule 5760(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed Nasdaq Rule 5760(b)(5) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority,

distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information.

Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Nasdaq Rule 5760(b)(6)²⁶ will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material nonpublic information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer

²⁶ As described above, proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange, after consulting with various DLPs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a Fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The DLPs also indicated that, as with some other new exchange-traded products, spreads would tend to narrow

as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by DLPs were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Shares they perceive to be trading at a price higher than that which will be available at a subsequent time.

It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets²⁷ or by netting the exposure against other, offsetting trading positions—much as such firms

do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.²⁸

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. In-

kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for "free riding" or "front-running," while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the regular market session by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its Members in a Circular of the special characteristics and risks associated with trading the Shares.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the shares of a Fund may be inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or

²⁷ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

²⁸ With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge—buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

circumstances detrimental to the maintenance of a fair and orderly market are present. Specifically, the Exchange would halt trading as soon as practicable under the following circumstances: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

The Exchange is proposing to retain discretion to halt trading in a series of Managed Portfolio Shares based on market conditions or where the Exchange determines that trading in such series is inadvisable (each a “Discretionary Halt”) and is also proposing the four Availability of Information Halts described above. The Exchange believes that retaining discretion to implement a Discretionary Halt as specified is consistent with the Act. The proposed rule retaining discretion related to halts is designed to ensure the maintenance of a fair and orderly market and protect investors and the public interest in that it provides the Exchange with the ability to halt when it determines that trading in the shares is inadvisable. This could be based on the Exchange’s own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. There are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments composing the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent.

Also, as noted above, there are certain circumstances under which trading in the Shares of a Fund may be inadvisable or where the Investment Company or its agent will request that the Exchange halt

trading in the applicable series of Managed Portfolio Shares. Upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio Shares is inadvisable and that halting trading is necessary in order to maintain a fair and orderly market. As such, the Exchange believes that the proposal to provide the Exchange with discretion to implement a Discretionary Halt is consistent with the Act.

The Exchange believes that the proposed Availability of Information Halts to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) The Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate; (ii) the other Availability of Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Nasdaq Rule 5735(d)(2)(D) related to trading halts in Managed Fund Shares²⁹ is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and orderly market in Managed Portfolio Shares;³⁰

²⁹ Nasdaq Rule 5735(d)(2)(C)(ii) provides that “Nasdaq will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Managed Fund Shares under any of the following circumstances: . . . if the Disclosed Portfolio is not made available to all market participants at the same time;” and (d)(2)(D) provides that “If Nasdaq becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.” These are generally consistent with the proposed Availability of Information Halts, specifically as it relates to whether the NAV or Disclosed Portfolio is not being made available to all market participants at the same time.

³⁰ See, e.g., Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017); Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that “the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities” and that “the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs” and that “by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a

and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading. The Exchange notes, however, that an Investment Company that issues Managed Portfolio Shares will still be subject to Nasdaq Rule 5701, which requires that a “A Company with securities listed under this Rule 5700 Series must provide Nasdaq with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5700 Series.”

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the

fair and orderly market for ETFs”); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that “[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities”).

Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, any equity instruments or futures held by a Fund operating under an exemptive order would trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Nasdaq Rule 5760(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and that all of the statements or representations regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and VIIVs; or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards. Also, such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of a new type of actively-managed exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2021-023. 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/>

³¹ 15 U.S.C. 78s(b)(3)(A)(iii).

³² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[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-NASDAQ-2021-023 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-09024 Filed 4-30-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91691; File No. SR-IX-2021-07]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Set Forth in SR-IX-2020-20

April 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 21, 2021, Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Pursuant to the provisions of Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ IEX is filing with the Commission a proposed rule change to amend IEX Rule 2.160 (Registration Requirements and Restrictions on Membership), Supplementary Material .02 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under paragraph (i) of the rule. The Exchange is proposing to extend the expiration date of the temporary amendment initially set forth in SR-IEX-2020-20⁵ from April 30, 2021, to June 30, 2021. The proposed rule change would harmonize the IEX Rule with a Financial Industry Regulatory Authority, Inc. ("FINRA") rule amendment that extended the 120-day period during which certain individuals can function as a principal without having successfully passed an appropriate qualifying examination, from April 30, 2021 through June 30, 2021.⁶ IEX does not anticipate providing any further extensions to the temporary amendment identified in this proposed rule change beyond June 30, 2021.⁷

The text of the proposed rule change is available at the Exchange's website at www.iextrading.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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose
IEX Rule 2.160(i), Supplementary Material .01 provides, *inter alia*, that an IEX Member ("Member") may designate any person currently registered, or who becomes registered with the Member as a representative to function as a principal for 120 calendar days prior to passing an appropriate principal qualification examination and that, in no event, may such person function as a principal beyond the initial 120 calendar day period without having passed an appropriate principal qualifying examination.

On December 15, 2020, the Exchange filed with the Commission, for immediate effectiveness, a proposed rule change to adopt Supplementary Material .02 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under Rule 2.160(i).⁸ Supplementary Material .02 extended the 120-day period during which an individual designated by a Member to function as a principal could do so without having successfully passed the required qualifying examination. Specifically, the rule change provided that any individual designated by a Member as a principal prior to January 1, 2021 may continue to function as a principal without having passed an appropriate qualifying examination until April 30, 2021.

The Exchange is proposing to further extend the temporary relief provided in Supplementary Material .02. Under the proposed amendment, an individual designated to function as a principal prior to March 3, 2021 may continue to function as a principal without having successfully passed an appropriate qualifying examination until June 30, 2021. The proposed amendment will align IEX's rule with FINRA Rule 1210, which was recently amended to provide the same temporary extension for individuals designated as principals due to the continuing impact of the COVID-19 pandemic.⁹ FINRA performs certain functions related to the qualification, registration and continuing education requirements for registered persons pursuant to a regulatory services agreement with the Exchange.

In response to the COVID-19 global pandemic, during 2020 FINRA began providing temporary relief to firms from

FINRA rules and requirements via frequently asked questions ("FAQs") on its website.¹⁰ Two of these FAQs¹¹ provided temporary relief to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that had significantly limited the ability of individuals to sit for these examinations due to Prometric test center capacity issues.¹²

FINRA published the first FAQ on March 20, 2020, providing that individuals designated to function as principals under FINRA Rule 1210.04 prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.¹³ FINRA revised the FAQ to extend the expiration of the temporary relief to pass the appropriate examination until June 30, 2020, and then until August 31, 2020.

On August 28, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness to extend the temporary relief provided via the two FAQs by adopting temporary Supplementary Material .12 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under FINRA Rule 1210 (Registration Requirements).¹⁴ Pursuant to this rule filing, individuals who were designated prior to September 3, 2020, to function as a principal under FINRA Rule 1210.04 would have until December 31, 2020, to pass the appropriate qualification examination.

On December 9, 2020, FINRA filed with the Commission a proposed rule

¹⁰ See Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic, available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq>.

¹¹ See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

¹² At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March 2020 Prometric closed all its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. Currently, Prometric has resumed testing in many of its United States and Canada test centers, at either full or limited occupancy, based on local and government mandates.

¹³ FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination.

¹⁴ See Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR-FINRA-2020-026). FINRA's proposed rule changes also provided for a similar temporary extension of the limited period for persons to function as an Operations Professional under FINRA Rule 1220(b)(3)(B) to December 31, 2020, and later to April 30, 2021, to pass the appropriate qualification examination. IEX does not have Operations Professional as a registration category.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ See Exchange Act Release No. 90752 (December 21, 2020), 85 FR 85824 (December 21, 2020) (SR-IEX-2020-20).

⁶ See Exchange Act Release No. 34-91506 (April 8, 2021), 86 FR 19671 (April 14, 2021) (SR-FINRA-2021-005).

⁷ If due to unforeseen circumstances a further extension is necessary, IEX will submit a separate rule filing to further extend the temporary amendment.

⁸ See *supra* note 5.

⁹ See *supra* note 6.

change for immediate effectiveness to extend the limited period for registered persons to function as a principal through April 30, 2021.¹⁵ IEX thereafter filed with the Commission its proposed rule change to adopt Temporary Supplementary Material .02, to provide the same relief extending the limited period for registered persons to function as a principal without successfully passing the appropriate qualifying examination through April 30, 2021.¹⁶

The temporary relief was extended to address the interruptions in the administration of qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examination as a result of the COVID-19 pandemic.¹⁷ It was noted that the pandemic could also result in firms potentially experiencing significant disruptions to their normal business operations that may be exacerbated if principal positions remained unfilled. Specifically, the limitation of in-person operations and staff absenteeism as a result of health and welfare concerns stemming from COVID-19 could result in firms having difficulty finding other qualified individuals to transition into the principal role or requiring them to reallocate employee time and resources away from other critical responsibilities at the firm.

While there are signs of improvement, the COVID-19 conditions necessitating temporary relief persist, and the Exchange has determined that there is a continued need for this temporary relief beyond April 30, 2021. Although Prometric has resumed testing in many of its U.S. test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.¹⁸ In addition, while certain states have started to ease COVID-19 restrictions on businesses and social activities, public health officials continue to emphasize the importance for individuals to keep taking steps to

protect themselves and help slow the spread of the disease.¹⁹

Although the COVID-19 conditions necessitating the temporary relief persist, the Exchange believes that an extension of the relief is necessary only until June 30, 2021, because of a recently expanded availability of online examinations. Prior to this expansion, the ongoing effects of the pandemic made it impracticable for IEX Members to ensure that the individuals designated to function in a principal capacity, as set forth in IEX Rule 2.160(i), could successfully sit for and pass the appropriate qualification examination within the 120-calendar day period required under the rule. Specifically, if the individual wanted to take a qualifying examination, they were required to accept the health risks associated with taking an in-person examination because the examination was not available online. On February 24, 2021, however, FINRA adopted an interim accommodation request process to allow candidates to take additional FINRA examinations online, including the General Securities Principal ("Series 24") examination.²⁰ Because the Series 24 qualifying examination has been made available online only recently, the Exchange is concerned that individuals who have been designated to function in a principal capacity may not have sufficient time to schedule, study for, and take the applicable examination before April 30, 2021, the date the temporary amendment is set to expire. Therefore, the Exchange is proposing to extend the expiration date of the temporary amendment set forth in SR-IEX-2020-20 from April 30, 2021 to June 30, 2021. The proposed rule change would apply only to those individuals who have been designated to function as a principal prior to March 3, 2021. As noted above, the Exchange does not anticipate providing any further extensions to the temporary amendments and any individuals designated to function as a principal on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

The Exchange believes that this proposed continued extension of time is tailored to address the needs and constraints on Members' operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The

proposed extension of time will help to minimize the impact of COVID-19 on Members by providing continued flexibility so that they can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by the ongoing requirement that Members supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as IEX Rules.

As noted in Item 1 of this filing, IEX has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so IEX can implement the proposed rule change immediately.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)²¹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act²² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by harmonizing the Exchange's registration rules with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting the application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange.

The Exchange further notes that the proposed rule change is intended to minimize the impact of COVID-19 on Members' operations by further extending the 120-day period during which individuals may function as a principal without having successfully passed the appropriate qualifying examination required under IEX Rule 2.160(i), Supplementary Material .01, until June 30, 2021. The proposed change does not relieve Members from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules that directly serve investor protection. In a time

¹⁵ See Exchange Act Release No. 90617 (December 9, 2020), 85 FR 81258 (December 15, 2020) (SR-FINRA-2020-043).

¹⁶ See *supra* note 5.

¹⁷ Information about the continued impact of COVID-19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/key-topics/covid-19/exams>.

¹⁸ Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/corona-virus-update>.

¹⁹ See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

²⁰ See *supra* note 177.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

when faced with unique challenges resulting from the COVID-19 pandemic, IEX believes that the proposed rule change is a sensible accommodation that will continue to afford Members the ability to ensure that critical principal positions are filled and customer services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 pandemic and the related health and safety risks of conducting in-person activities. IEX believes that the proposed rule change is necessary to temporarily rebalance the attendant benefits and costs of the obligations under IEX Rule 2.160 in response to the impacts of the COVID-19 pandemic that would otherwise result if the current temporary extension were to expire on April 30, 2021.

IEX further notes that the proposed rule change is not designed to address any competitive issue but to align the Exchange's rules with those of FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with IEX. The proposed rule change will also provide for consistent application of the Exchange's registration rules with those of FINRA, on which they are based. Consequently, the Exchange believes that the proposed temporary relief afforded by the proposed rule change and the benefit of harmonizing the Exchange's registration and qualification rules with those of FINRA does not present any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and Rule 19b-4(f)(6) thereunder.²⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, the Exchange stated that the conditions necessitating the temporary relief continue to exist and the proposed extension of time will help minimize the impact of the COVID-19 outbreak on IEX Members' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. Despite signs of improvement, the Exchange further stated that the ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure that individuals designated to act in a principal capacity are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules.

The Exchange observed that, following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.²⁵ However, on February 24, 2021, FINRA began providing the General Securities Principal (Series 24) Examination online through an interim accommodation request process.²⁶ Prior to this change, if individuals wanted to take these qualifying examinations, they

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁵ See *supra* notes 17 and 18. The Exchange notes that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

²⁶ See *supra* note 17 (including the February 24, 2021 announcement of the interim accommodation process for candidates to take certain examinations, including the General Securities Principal (Series 24) Examination, online.)

were required to accept the health risks associated with taking an in-person examination. Even with the expansion of online qualifications examinations, the Exchange stated that extending the expiration date of the relief set forth in SR-IEX-2020-20 until June 30, 2021 is still needed. The Exchange stated that this temporary relief will provide flexibility to allow individuals who have been designated to function as a principal sufficient time to schedule, study for and take the applicable examination before the temporary relief expires. Notably, the Exchange stated that it does not anticipate providing any further extensions to the temporary amendment and that any individuals designated to function as a principal on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.²⁷ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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

²⁷ As noted above by the Exchange, this proposal is an extension of temporary relief provided in SR-IEX-2020-20 where the Exchange also requested and the Commission granted a waiver of the 30-day operative delay. See SR-IEX-2020-20, 85 FR at 85826-27.

²⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

• Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2021-07 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-IEX-2021-07. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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-IEX-2021-07 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-09133 Filed 4-30-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 22083, April 26, 2021.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, April 29, 2021 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, April 29, 2021 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: April 28, 2021.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2021-09305 Filed 4-29-21; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91688; File No. SR-BOX-2021-09]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Effective Date of the Temporary Amendment set Forth in SR-BOX-2021-02 From April 30, 2021, to June 30, 2021

April 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 20, 2021, BOX Exchange LLC (the "Exchange" or "BOX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 extend the expiration date of the temporary amendment set forth in SR-BOX-2021-02 ("Temporary Qualification Examination Relief Filing") from April 30, 2021, to June 30, 2021. The Exchange does not anticipate providing any further extensions to the temporary amendment identified in this proposed rule change beyond June 30, 2021. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the

Exchange's internet website at <http://boxoptions.com>.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the expiration date of the temporary amendment set forth in the Temporary Qualification Examination Relief Filing.³ The proposed rule change would extend the 120-day period that certain individuals on the Exchange can function as a principal without having successfully passed an applicable qualification examination through June 30, 2021, and would apply only to those individuals who were designated to function as a principal prior to March 3, 2021. This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. ("FINRA")⁴ and is intended to harmonize the Exchange's registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to COVID-19 global pandemic, last year FINRA began providing temporary relief by way of frequently asked questions ("FAQs")⁵ to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the

³ See Exchange Act Release No. 34-90973 (January 22, 2021), 86 FR 7437 (January 28, 2021) (SR-BOX-2021-02).

⁴ See Exchange Act Release No. 34-91506 (April 8, 2021), 86 FR 19671 (April 14, 2021) (SR-FINRA-2021-005) (the "FINRA Filing"). The Exchange notes that the FINRA Filing also provides temporary relief to individuals registered with FINRA as Operations Professionals under FINRA Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

⁵ See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#q4>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁹ 17 CFR 200.30-3(a)(12).

ability of individuals to sit for examinations due to Prometric test center capacity issues.⁶

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04⁷ prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.⁸ FINRA revised the FAQ to extend the expiration of the temporary relief to pass the appropriate principal examination until June 30, 2020, and then until August 31, 2020.

On January 12, 2021, BOX filed with the Commission a proposed rule change for immediate effectiveness to extend the temporary relief provided via the FAQ by adopting temporary IM-2020-1 (Temporary Extension for Representatives to Function as Principals) under BOX Rule 2020 (Participant Eligibility and Registration).⁹ Pursuant to this rule filing, individuals who were designated prior to January 1, 2021, to function as a principal under BOX Rule 2020(d) had until April 30, 2021, to pass the appropriate qualification examination.

As mentioned in the Temporary Qualification Examination Relief Filing, FINRA began providing, and then extended, temporary relief to address the interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations caused by the COVID-19 pandemic.¹⁰ The Temporary Qualification Examination Relief Filing also noted that the pandemic could result in firms potentially experiencing

significant disruptions to their normal business operations that may be exacerbated by being unable to keep principal positions filled. Specifically, the limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID-19 could result in firms having difficulty finding other qualified individuals to transition into those roles or requiring them to reallocate employee time and resources away from other critical responsibilities at the firm.

While there are signs of improvement, the COVID-19 conditions necessitating the temporary relief persist and the Exchange has determined that there is a continued need for this temporary relief beyond April 30, 2021. Although Prometric has resumed testing in many of its U.S. test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.¹¹ In addition, while certain states have started to ease COVID-19 restrictions on businesses and social activities, public health officials continue to emphasize the importance for individuals to keep taking numerous steps to protect themselves and help slow the spread of the disease.¹²

Although the COVID-19 conditions necessitating the temporary relief persist, in the FINRA Filing, FINRA stated that an extension of the relief is necessary only until June 30, 2021, because FINRA recently expanded the availability of online examinations. Prior to this expansion, the ongoing effects of the pandemic made it impracticable for FINRA members to ensure that the individuals who they had designated to function in a principal capacity, as set forth in FINRA Rule 1210.04, could successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rule.¹³ Specifically, if the individual wanted to take a qualifying examination, they were required to accept the health risks associated with taking an in-person examination because the examination was not available online. On February 24, 2021, however, FINRA adopted an

interim accommodation request process to allow candidates to take additional FINRA examinations online, including the General Securities Principal ("Series 24") Examination.¹⁴ Because the qualifying examination has been made available online only recently, FINRA is concerned that individuals who have been designated to function in a principal capacity may not have sufficient time to schedule, study for, and take the applicable examination before April 30, 2021, the date the temporary amendments are set to expire.

These ongoing circumstances make it impracticable for Participants to ensure that the individuals whom they have designated to function in a principal capacity, as set forth in BOX Rule 2020(d), are able to successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rule, or to find other qualified staff to fill this position. Therefore, the Exchange is proposing to extend the expiration date of the temporary amendment set forth in the Temporary Qualification Examination Relief Filing until June 30, 2021. The proposed rule change would apply only to those individuals who have been designated to function as a principal prior to March 3, 2021. As noted above, the Exchange does not anticipate providing any further extensions to the temporary amendments and any individuals designated to function as a principal on or after March 3, 2021, would need to successfully pass an appropriate qualification examination within 120-calendar days.

The Exchange believes that this proposed continued extension of time is tailored to address the needs and constraints on a firm's operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID-19 on firms by providing continued flexibility so that firms can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by a firm's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as BOX rules.

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule

⁶ At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March 2020 Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. Currently, Prometric has resumed testing in many of its United States and Canada test centers, at either full or limited occupancy, based on local and government mandates.

⁷ BOX Rule 2020(d) is similar to FINRA Rule 1210.04.

⁸ FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. BOX Rule 2020(d) provides the same allowance to Participants.

⁹ See Exchange Act Release No. 34-90973 (January 22, 2021), 86 FR 7437 (January 28, 2021) (Notice of Filing and Immediate Effectiveness of SR-BOX-2021-02).

¹⁰ Information about the continued impact of COVID-19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/key-topics/covid-19/exams>.

¹¹ Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/covid-19-update/corona-virus-update>. See also *supra* note 10.

¹² See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹³ See *supra* note 10.

¹⁴ See *id.*

change not become operative for 30 days after the date of the filing, so that the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁵ in general, and Section 6(b)(5) of the Act,¹⁶ 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 proposed rule change is intended to minimize the impact of COVID-19 on firm operations by further extending the 120-day period certain individuals may function as a principal without having successfully passed an appropriate qualification examination under BOX Rule 2020(d) until June 30, 2021. The proposed rule change does not relieve firms from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable BOX rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed rule change is a sensible accommodation that will continue to afford firms the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

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. As set forth in the Temporary Qualification Examination Relief Filing, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak and the related health and safety risks of conducting in-person activities. In its filing, FINRA noted that

the proposed rule change is necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rule 1210 in response to the impacts of the COVID-19 pandemic that would otherwise result if the temporary relief was to expire on April 30, 2021. The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, the Exchange stated that the conditions necessitating the temporary relief continue to exist and the proposed extension of time will help minimize the impact of the COVID-19 outbreak on Participants' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. Despite signs of improvement, the Exchange further stated that the ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure

that individuals designated to act in these capacities are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules.

The Exchange observed that, following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.¹⁹ However, on February 24, 2021, FINRA began providing the General Securities Principal (Series 24) Examination online through an interim accommodation request process.²⁰ Prior to this change, if individuals wanted to take this qualifying examination, they were required to accept the health risks associated with taking an in-person examination. Even with the expansion of online qualifications examinations, the Exchange stated that extending the expiration date of the relief set forth in the SR-BOX-2021-02 until June 30, 2021 is still needed. The Exchange stated that this temporary relief will provide flexibility to allow individuals who have been designated to function in a principal capacity sufficient time to schedule, study for and take the applicable examination before the temporary relief expires. Notably, the Exchange stated that it does not anticipate providing any further extensions to the temporary amendments and that any individuals designated to function as a principal on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.²¹ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²²

¹⁹ See *supra* notes 10 and 11. The Exchange notes that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

²⁰ See *supra* note 10 (including the February 24, 2021 announcement of the interim accommodation process for candidates to take certain examinations, including the General Securities Principal (Series 24) Examination, online).

²¹ As noted by the Exchange, this proposal is an extension of temporary relief provided in SR-BOX-2021-02 where BOX also requested and the Commission granted a waiver of the 30-day operative delay. See SR-BOX-2021-02, 86 FR at 7439.

²² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-BOX-2021-09 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-BOX-2021-09. 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 such filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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-BOX-2021-09 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-09131 Filed 4-30-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91686; File No. SR-CBOE-2020-075]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 2, To Make Qualified Contingent Cross Orders Available for FLEX Option Trading

April 27, 2021.

On August 3, 2020, Cboe Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make Qualified Contingent Cross ("QCC") Orders available for electronic FLEX option trading.

The proposed rule change was published for comment in the **Federal Register** on August 20, 2020.³ On October 1, 2020, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On October 23,

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89564 (August 14, 2020), 85 FR 51531.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 90062 (October 1, 2020), 85 FR 63312 (October 7, 2020).

2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ On November 18, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ On February 2, 2021, the Exchange submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.⁹ On February 12, 2021, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.¹⁰ On April 14, 2021, the Exchange withdrew the proposed rule change (SR-CBOE-2020-075).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-09129 Filed 4-30-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91687; File No. SR-MRX-2021-04]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7

April 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ In Amendment No. 1, the Exchange provided additional support for the proposal. The full text of Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-075/sr-cboe2020075-7940531-224727.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 90457, 85 FR 75071 (November 24, 2020).

⁹ In Amendment No. 2, the Exchange provided further support for the proposal. The full text of Amendment No. 2 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-075/sr-cboe2020075-8330243-228699.pdf>.

¹⁰ See Securities Exchange Act Release No. 91127, 86 FR 10378 (February 19, 2021).

¹¹ 17 CFR 200.30-3(a)(12).

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 13, 2021, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, as further described below.

Market Maker Fees

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange assesses the following maker/taker fees for regular orders in Non-Penny Symbols:

NON-PENNY SYMBOLS

Market participant	Maker fee Tier 1	Maker fee Tier 2	Taker fee Tier 1	Taker fee Tier 2
Market Maker ³	\$0.20	\$0.10	\$1.10	\$1.10
Non-Nasdaq MRX Market Maker (FarMM)	0.90	0.90	1.10	1.10
Firm Proprietary/Broker-Dealer	0.90	0.90	1.10	1.10
Professional Customer	0.90	0.90	1.10	1.10
Priority Customer	0.00	0.00	0.00	0.00

The Exchange now proposes to increase the maker fees for Market Makers⁴ from \$0.20 to \$0.35 per contract (Tier 1) and from \$0.10 to \$0.20 per contract (Tier 2).

Qualifying Tier Thresholds

Currently, the Exchange operates a maker/taker fee model for Penny and Non-Penny Symbols in Table 1 of Options 7, Section 3 where all market

participants are charged a fee (or are eligible for free executions) with potentially discounted fees based on the following qualifying tier thresholds in Table 3 of Options 7, Section 3:

Tiers	Total affiliated member or affiliated entity ADV ⁵
Tier 1	executes 0.00%—0.7499% of Customer Total Consolidated Volume. ⁶
Tier 2	executes 0.75% or more of Customer Total Consolidated Volume.

The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

The Exchange now proposes to amend the Tier 1 qualification to require that Members execute 0.00% to less than 0.75% of Customer Total Consolidated Volume. The proposed rule change will not impact current Tier 1 rates. Rather, the purpose of the proposed change is to ensure that all eligible volume gets included in the calculation of the tiers. Specifically, the proposed rule change

recognizes the potential for a Member to execute a percentage of Customer Total Consolidated Volume that falls between 0.7499% and 0.75%. As such, the proposed changes will make clear that Members that execute anywhere from 0.00% to less than 0.75% of Customer Total Consolidated Volume will qualify for Tier 1 pricing in the Exchange's maker/taker fee schedule. The Exchange believes that its proposal will have minimal impact as no Member falls into this category.

The Exchange further proposes to permit Market Makers to alternatively qualify for the Tier 1 and Tier 2 maker/taker fees in Penny and Non-Penny Symbols based on Total Market Maker ADV. Specifically, Market Makers may alternatively qualify for the Tier 1 and Tier 2 maker/taker fees if they: execute up to 0.10% of Customer Total Consolidated Volume which adds liquidity in regular orders (Tier 1), and execute more than 0.10% of Customer Total Consolidated Volume which adds

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This fee also applies to Market Maker orders sent to the Exchange by Electronic Access Members.

⁴ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market

Makers" collectively. See Options 1, Section 1(a)(21).

⁵ "Total Affiliated Member or Affiliated Entity ADV" means all average daily volume ("ADV") executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume

from Affiliated Members or an Affiliated Entity are aggregated in determining applicable tiers.

⁶ "Customer Total Consolidated Volume" means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

liquidity in regular orders (Tier 2).⁷ The Exchange also proposes to add a definition of Total Market Maker ADV to include all Market Maker ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members⁸ or Affiliated Entities.⁹ All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.¹⁰ The Exchange also proposes to add a new note 5 in Table 1 of Options 7, Section 3, which will provide that Market Makers may alternatively qualify for the fees in Table 1 if they meet the applicable tier thresholds based on Total Market Maker ADV set forth in Table 3. Lastly, the Exchange proposes to amend the current definition of Total Affiliated Member or Affiliated Entity ADV in Table 3 as follows: “Total Affiliated Member or Affiliated Entity ADV means all ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.” With the foregoing change, the Exchange also proposes to delete redundant language regarding aggregation of Affiliated Member or Affiliated Entity volume currently in the last bullet point of Table 3.

While the fees in Table 1 of Options 7, Section 3 for nearly all market participants (*i.e.*, Non-Nasdaq MRX

Market Makers,¹¹ Firm Proprietary^{12/} Broker-Dealers,¹³ Professional Customers,¹⁴ and Priority Customers)¹⁵ will not be impacted by this proposal,¹⁶ the proposed volume requirements will impact Market Makers that will be eligible to alternatively qualify for the lower maker fees.¹⁷ The Exchange believes that the proposed fee structure will encourage Market Makers and their Affiliated Members or Affiliated Entities to increase their liquidity providing activity on the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders.

PIM Break-Up Rebates

Today, as set forth in Options 7, Section 3.A, the Exchange pays a PIM break-up rebate to an originating Priority Customer PIM order that executes with a response (order or quote), other than the PIM contra-side order, of \$0.25 per contract in Penny Symbols and \$0.60 per contract in Non-Penny Symbols.¹⁸ The Exchange also offers additional break-up rebates in note 3 of Options 7, Section 3.A for Members that meet certain volume requirements or alternatively, that enter into Affiliated Member or Affiliated Entity relationships. In particular, note 3 currently provides: “Members that are not in an Affiliated Member or Affiliated Entity relationship and that execute 0.05% or greater of Customer

Total Consolidated Volume in non-PIM Priority Customer contracts within a month will receive an additional rebate of: (i) \$0.20 per contract in Penny Symbols for Complex PIM Orders only, (ii) \$0.15 per contract in Penny Symbols for Regular PIM Orders only, and (iii) \$0.45 per contract in Non-Penny Symbols for both Regular and Complex PIM Orders. Alternatively, Affiliated Members or Affiliated Entities will be eligible to receive the rebates in this note 3 without any additional volume requirements.”

The Exchange now proposes to modify the note 3 rebate qualifications only for those Members that are not in Affiliated Member or Affiliated Entity relationships. Under this proposal, Affiliated Members or Affiliated Entities will continue to be eligible to receive the note 3 rebates without any additional volume requirements. Specifically, the Exchange proposes to require Members not in Affiliated Member or Affiliated Entity relationships to execute 0.05% or greater of Customer Total Consolidated Volume *which adds liquidity* in non-PIM Priority Customer contracts within a month in order to receive the additional rebates in note 3.

Marketing Fee

Today, as set forth in Options 7, Section 5.B, the Exchange assesses Market Makers a marketing fee of \$0.25 per contract in Penny Symbols and \$0.70 per contract in Non-Penny Symbols for each regular Priority Customer contract executed.¹⁹ This fee is currently waived for (i) Flash Order²⁰ responses; (ii) Market Maker orders that take liquidity from the order book; (iii) Crossing Orders²¹ and Responses to

⁷ 0.10% of Customer Total Consolidated Volume is approximately 28,000 contracts per day.

⁸ An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member’s Form BD, Schedule A.

⁹ An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFF for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFFs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually by each party sending an email to the Exchange. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

¹⁰ The proposed definition will be set forth in the Table 3 notes of Options 7, Section 3.

¹¹ A “Non-Nasdaq MRX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

¹² A “Firm Proprietary order is an order submitted by a Member for its own proprietary account.

¹³ A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

¹⁴ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

¹⁵ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq MRX Options 1, Section 1(a)(36).

¹⁶ In particular, other non-Priority Customers will continue to be uniformly charged the same maker fees of \$0.47 per contract (Penny Symbols) and \$0.90 per contract (Non-Penny Symbols), regardless of tier achieved. Priority Customers will continue to receive free executions for their orders.

¹⁷ Currently, Market Makers are charged maker fees of \$0.20 per contract (Tier 1) and \$0.10 per contract (Tier 2) in both Penny and Non-Penny Symbols. As proposed above, the maker fees for Market Makers will be increased to \$0.35 per contract (Tier 1) and \$0.20 per contract (Tier 2) in Non-Penny Symbols only.

¹⁸ Break-up rebates apply only to regular PIM orders of 500 or fewer contracts and to complex PIM orders where the largest leg is 500 or fewer contracts.

¹⁹ The marketing fee is rebated proportionately to the Members that paid the fee such that on a monthly basis the marketing fee fund balance administered by a Primary Market Maker for a Group of options established under Options 2, Section 3(b) does not exceed \$100,000 and the marketing fee fund balance administered by a preferred Competitive Market Maker for such a Group does not exceed \$100,000. A preferred Competitive Market Maker that elects not to administer a fund is not charged the marketing fee. The Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month.

²⁰ A “Flash Order” is an order that is exposed at the National Best Bid or Offer by the Exchange to all Members for execution, as provided under Supplementary Material .02 to Nasdaq MRX Options 5, Section 2. For all Flash Orders, the Exchange will charge the applicable taker fee and for responses that trade against a Flash Order, the Exchange will charge the applicable maker fee.

²¹ A “Crossing Order” is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, PIM or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

Crossing Orders;²² and (iv) complex orders.

The Exchange now proposes to set this marketing fee to \$0.00 per contract. The Exchange also proposes in Options 7, Section 5.B to add language that makes clear no marketing fees will be charged with the proposed changes. Specifically, the Exchange will add that no marketing fees are charged for Penny and Non-Penny Symbols. If the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

Technical Amendments

The Exchange proposes non-substantive, technical amendments in Options 7, Section 1(c) to rearrange the definitions in alphabetical order without changing the substance of the Rule. The Exchange also proposes in Options 7, Section 3 to relocate the definition of Total Affiliated Member or Affiliated Entity Priority Customer ADV from Table 3 into Table 1 as this definition is currently only used within Table 1 pricing. The relocated definition will provide that Total Affiliated Member or Affiliated Entity Priority Customer ADV means all Priority Customer ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market

is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'." . . ."²⁵

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²⁶

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Market Maker Fees

The Exchange believes that the proposed increase in the Tier 1 and Tier 2 maker fees for Market Makers in Non-Penny Symbols is reasonable. As proposed, the maker fees will increase from \$0.20 to \$0.35 per contract (Tier 1) and from \$0.10 to \$0.20 per contract (Tier 2). The Exchange believes that the proposed maker fees will remain

attractive to Market Makers and will continue to incentivize them to add liquidity in Non-Penny Symbols as the proposed fees will remain the lowest maker fees assessed to any other market participant on the Exchange, except for Priority Customers who will continue to receive free executions.²⁷ Incentivizing Market Makers to provide liquidity through the lower maker fees will create additional displayed liquidity and opportunities for market participants to trade.

The Exchange's proposal to increase the Tier 1 and Tier 2 maker fees in Non-Penny Symbols for Market Makers is equitable and not unfairly discriminatory as the proposed increase will apply uniformly to all similarly situated market participants. Market Makers will continue to pay lower maker fees in Non-Penny Symbols compared to other non-Priority Customers. The Exchange believes that it is equitable and not unfairly discriminatory to continue charging lower maker fees for Market Makers as they, unlike other market participants, add value to the Exchange through quoting obligations and their commitment of capital.

Qualifying Tier Thresholds

The Exchange believes that the proposal to amend the current Tier 1 threshold is reasonable, equitable, and not unfairly discriminatory. As discussed above, the proposed rule change will not impact current Tier 1 rates; rather, the proposed change will ensure that all eligible volume gets included in the calculation of the tiers and will make clear that Members that execute 0.00% to less than 0.75% of Customer Total Consolidated Volume will qualify for Tier 1 pricing in the Exchange's maker/taker fee schedule. As noted above, the Exchange believes that its proposal will have minimal impact as no market participant falls into this category. Furthermore, the proposed changes to the existing Tier 1 threshold will apply uniformly to all market participants.

Furthermore, the Exchange believes that it is reasonable to introduce an alternative way for Market Makers to qualify for the Tier 1 and Tier 2 fees based on Total Market Maker ADV.²⁸ As

²² "Responses to Crossing Order" is any contra-side interest (*i.e.*, orders & quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or Price Improvement Mechanism.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4) and (5).

²⁵ *NetCoalition v. SEC*, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21)).

²⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

²⁷ Specifically, Non-Nasdaq MRX Market Makers, Firm Proprietary/Broker-Dealers, and Professional Customers will continue to be assessed the \$0.90 per contract maker fee in Non-Penny Symbols, regardless of tier achieved.

²⁸ As discussed above, Total Market Maker ADV will be defined in the Pricing Schedule as all Market Maker ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated

discussed above, Market Makers may alternatively qualify for the Tier 1 and Tier 2 maker/taker fees if they: execute up to 0.10% of Customer Total Consolidated Volume which adds liquidity in regular orders (Tier 1), and execute more than 0.10% of Customer Total Consolidated Volume which adds liquidity in regular orders (Tier 2). The Exchange believes that the proposal would encourage additional order flow, especially liquidity adding regular order flow, from Market Makers and their Affiliated Members or Affiliated Entities by providing an alternative method for Market Makers to qualify for the Tier 1 and Tier 2 fees. This, in turn, will benefit all market participants that will have an opportunity to trade with the order flow that these firms bring to the market.

The Exchange's proposal to introduce an alternative way for Market Makers to qualify for Tier 1 and Tier 2 pricing based on Total Market Maker ADV is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants. The Exchange believes it is equitable and not unfairly discriminatory to introduce the proposed alternative qualifications for only Market Makers because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). As such, the Exchange's proposal is designed to increase Market Maker participation and reward Market Makers for the unique role that they play in ensuring a robust market.

PIM Break-up Rebates

The Exchange believes that the proposed changes to the qualifications for receiving the additional PIM break-up rebates are reasonable, equitable, and not unfairly discriminatory. As discussed above, the Exchange is proposing to amend the rebate qualifications to require that Members not in Affiliated Member or Affiliated Entity relationships execute 0.05% or greater of Customer Total Consolidated Volume *which adds liquidity* in non-PIM Priority Customer contracts within a month in order to receive the additional rebates in note 3 of Options 7, Section 3.A. The Exchange believes that the proposed changes will incentivize Members to bring greater liquidity adding order flow for execution on the Exchange, which the Exchange believes may result in tighter

spreads, thereby making the Exchange a more attractive trading venue to the benefit of all market participants.

The Exchange believes that the proposed changes to the additional PIM break-up rebate qualifications in note 3 are equitable and not unfairly discriminatory because the changes will apply uniformly to all Priority Customer PIM originating orders that execute with any PIM response. While Priority Customer PIM originating orders will continue to be eligible to receive the additional break-up rebates in note 3, as opposed to other market participants, the Exchange believes that the application of this rebate program is equitable and not unfairly discriminatory because Priority Customer PIM originating order flow enhances liquidity on the Exchange. This, in turn, provides more trading opportunities and attracts other market participants, thus facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants. Moreover, the Exchange has historically provided lower pricing or other incentives to Priority Customer PIM originating orders in order to attract such order flow.

Marketing Fee

The Exchange believes that it is reasonable to set the marketing fee to \$0.00 per contract for Penny and Non-Penny Symbols because the Exchange seeks to limit the cost of transacting in regular orders for Market Makers who are the only market participants that are assessed this fee today. The Exchange believes that the proposed fee change is equitable and not unfairly discriminatory as no Market Makers would be charged a marketing fee under this proposal. Furthermore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to add language in Options 7, Section 5.B as it will make clear that no marketing fees will be assessed for Penny and Non-Penny Symbols with the proposed changes, and that if the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

Technical Amendments

The Exchange believes that the proposed changes to alphabetize the definitions in Options 7, Section 1(c) and to relocate the definition of Total Affiliated Member or Affiliated Entity Priority Customer ADV in Options 7, Section 3 in the manner described above are reasonable, equitable, and not unfairly discriminatory. All of the changes are non-substantive, technical

amendments that will facilitate the use of the Exchange's Pricing Schedule by market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intra-market competition, the Exchange does not believe that the proposed changes will place any category of market participant at a competitive disadvantage. Overall, the Exchange's proposal is designed to incentivize Members to bring additional order flow to the Exchange, and create a more active and quality market in MRX-listed options. Market Makers and Priority Customers would continue to receive favorable pricing by way of lower fees or rebates, as compared to other market participants. As discussed above, Market Makers add value through continuous quoting and are subject to additional requirements and obligations unlike other market participants. Incentivizing Market Makers to increase their participation on the Exchange benefits all market participants through the quality of order interaction. Similarly, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts other market participants, thus facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose

Entities. Furthermore, all eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.

market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁹ and Rule 19b-4(f)(2)³⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MRX-2021-04 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-MRX-2021-04. 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-MRX-2021-04 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-09130 Filed 4-30-21; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16936 and #16937; ALABAMA Disaster Number AL-00120]

Presidential Declaration of a Major Disaster for the State of ALABAMA

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of ALABAMA (FEMA-4596-DR), dated 04/26/2021. Incident: Severe Storm, Straight-line Winds, and Tornadoes. Incident Period: 03/25/2021 through 03/26/2021.

DATES: Issued on 04/26/2021.

Physical Loan Application Deadline Date: 06/25/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 01/26/2022.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/26/2021, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Bibb, Calhoun, Clay, Hale, Jefferson, Perry, Randolph, Shelby.

Contiguous Counties (Economic Injury Loans Only):

Alabama: Blount, Chambers, Cherokee, Chilton, Cleburne, Coosa, Dallas, Etowah, Greene, Marengo, Saint Clair, Talladega, Tallapoosa, Tuscaloosa, Walker.

Georgia: Carroll, Heard, Troup.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	2.500
Homeowners without Credit Available Elsewhere	1.250
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	3.000
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.000
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16936 C and for economic injury is 16937 O.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021-09179 Filed 4-30-21; 8:45 am]

BILLING CODE 8026-03-P

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

³¹ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE**[Delegation of Authority No. 514]****Delegation of Management Authorities of the Secretary Of State**

By virtue of the authority vested in the Secretary of State by the laws of the United States, including 22 U.S.C. 2651a, I hereby delegate to the Under Secretary of State for Management, to the extent authorized by law:

1. All management-related functions and authorities now vested or which in the future may be vested in the Secretary of State or in the head of the Department of State, as well as functions and authorities that arise out of, relate to, or concern the activities of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the Under Secretary has supervision;

2. The authority of the Secretary of State to approve submission of one-time or recurring reports to the Congress. However, this delegation shall not be construed to authorize the Under Secretary to make waivers, certifications, determinations, findings, or other such statutorily required substantive actions that may be called for in connection with the submission of a report. The Under Secretary shall be responsible for referring to the Secretary, the Deputy Secretary, or the Deputy Secretary for Management and Resources any matter on which action would appropriately be taken by such official.

Except for the authority to submit Congressional reports, functions delegated herein may be re-delegated, to the extent authorized by law. The Secretary of State, Deputy Secretary, or Deputy Secretary for Management and Resources may at any time exercise any function delegation herein.

This delegation does not repeal or affect any delegation of authority currently in effect except Delegation of Authority 462, dated January 9, 2019, which is hereby rescinded.

This delegation of authority shall be published in the **Federal Register**.

Dated: April 20, 2021.

Antony J. Blinken,
Secretary of State.

[FR Doc. 2021-09258 Filed 4-30-21; 8:45 am]

BILLING CODE 4710-10-P

ACTION: Notice of Intent; request for comments.

SUMMARY: The Tennessee Valley Authority (TVA) intends to prepare an environmental impact statement (EIS) or environmental assessment (EA) for the purchase of electricity generated by the proposed Moore County Solar Project in Moore County, Tennessee. The EIS or EA will assess the potential environmental effects of constructing, operating, and maintaining the proposed 200-megawatt (MW) alternating current (AC) solar facility. The proposed 200 MW AC solar facility would occupy approximately 2,000 acres of the roughly 3,300-acre Project Study Area. Public comments are invited concerning both the scope of the environmental review and environmental issues that should be addressed in the EIS or EA. TVA is also requesting data, information, and analysis relevant to the proposed action from the public; affected federal, state, tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party.

DATES: To ensure consideration, comments must be postmarked, emailed, or submitted online no later than June 4, 2021.

ADDRESSES: Written comments should be sent to Ashley Pilakowski, NEPA Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902. Comments may be submitted online at: www.tva.gov/nepa, or by email to nepa@tva.gov. Please note that, due to current TVA requirements for many employees to work remotely, comments submitted electronically are encouraged.

FOR FURTHER INFORMATION CONTACT: Ashley Pilakowski by email at aapilakowski@tva.gov, by phone at (865) 632-2256, or by mail at the address above.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations 40 CFR parts 1500 to 1508 (84 FR 43304, July 16, 2020) and TVA's procedures for implementing the National Environmental Policy Act (NEPA) at 18 CFR part 1318, as well as Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations (36 CFR part 800). Following site investigations and a preliminary determination of the anticipated environmental impacts, TVA will decide whether the proposed action will be the subject of an EIS or EA.

TVA is a federal agency and instrumentality of the United States,

created in 1933 by an act of Congress to foster the social and economic well-being of the residents of the Tennessee Valley region. As part of its diversified energy strategy, TVA produces or obtains electricity from a diverse portfolio of energy sources, including solar, hydroelectric, wind, biomass, fossil fuel, and nuclear.

Background

In June 2019, TVA completed the final 2019 Integrated Resource Plan (IRP) and associated EIS. The IRP is a comprehensive study of how TVA will meet the demand for electricity in its service territory over the next 20 years. The 2019 IRP recommends solar expansion and anticipates growth in all scenarios analyzed, with most scenarios anticipating 5,000–8,000 MW and one anticipating up to 14,000 MW by 2038. Customer demand for cleaner energy prompted TVA to release a Request for Proposal (RFP) for renewable energy resources (2020 Renewable RFP). The Moore County Solar Project power purchase agreement (PPA) that resulted from this RFP will help TVA meet immediate needs for additional renewable generating capacity in response to customer demands and fulfill the renewable energy goals established in the 2019 IRP.

TVA has entered into a PPA with Silicon Ranch Corporation to purchase 200 MW AC of power generated by the proposed Moore County Solar Project, hereafter referred to as the project. The proposed 200 MW AC solar facility would occupy approximately 2,000 acres of the roughly 3,300-acre Project Study Area which is located entirely in Moore County, Tennessee. The project site is bisected by State Route 55 and its eastern boundary borders the western city limits of Tullahoma, Tennessee. The project site is mostly forested with areas of wetlands, croplands, and early successional fields. A TVA 161-kilovolt transmission line runs north-south through the site. A map showing the project site is available at www.tva.gov/nepa.

Preliminary Proposed Action and Alternatives

In addition to a No Action Alternative, TVA will evaluate the action alternative of purchasing power from the proposed Moore County Solar Project. In evaluating alternatives, TVA considered other solar proposals, prior to selecting the Moore County site. Part of the screening process included a review of transmission options, including key connection points to TVA's transmission system. The Moore County site stood out as a viable option

TENNESSEE VALLEY AUTHORITY**Moore County Solar Project**

AGENCY: Tennessee Valley Authority.

for connectivity. For the proposed site, the solar developer plans to consider the establishment of a reduced footprint so that impacts to cultural and/or biological resources could be avoided. The EIS or EA will also evaluate ways to mitigate impacts that cannot be avoided. The description and analysis of these alternatives in the EIS or EA will inform decision makers, other agencies, and the public about the potential for environmental impacts associated with the proposed solar facility. TVA solicits comments on whether there are other alternatives that should be assessed in the EIS or EA.

Brief Summary of Expected Impacts

Public scoping is integral to the process for implementing NEPA and ensures that (1) issues are identified early and properly studied, (2) issues of little significance do not consume substantial time and effort, and (3) the analysis of identified issues is thorough and balanced. This EA or EIS will identify the purpose and need of the project and will contain descriptions of the existing environmental and socioeconomic resources within the area that could be affected by the proposed solar facility, including the documented historical, cultural, and environmental resources. Evaluation of potential environmental impacts to these resources will include, but not be limited to, air quality and greenhouse gas emissions, surface water, groundwater, wetlands, floodplains, vegetation, wildlife, threatened and endangered species, land use, natural areas and parks and recreation, geology, soils, prime farmland, visual resources, noise, cultural resources, socioeconomic and environmental justice, solid and hazardous waste, public and occupational health and safety, utilities, and transportation.

Based on a preliminary evaluation of these resources, TVA expects potential impacts to vegetation and wildlife due to the conversion of coniferous and hardwood forests of various ages to early maintained grass-dominated fields. Impacts to water resources would likely be minor with the use of best management practices and avoidance of siting project components in or near streams, wetlands, and riparian areas to the extent feasible. Land use would be impacted by the conversion of the undeveloped site to industrial use and the elimination of current farming and timber operations. This would also result in visual impacts. The current recreational uses of the site, primarily hunting, would also be eliminated. Historic properties could be impacted but would be avoided to the extent

feasible or mitigated in compliance with applicable regulations. Nearly half of the site was once used as an auxiliary training area for the U.S. Army during World War II. The site was deactivated in 1946 and the U.S. Army Corps of Engineers has conducted numerous inspections and remediation efforts on the former Motlow Range to ensure public and occupational health and safety. Beneficial impacts are expected by facilitating the development of renewable energy and thereby increasing local job opportunities, as well as improving regional air quality and reducing carbon emissions. The EIS or EA will analyze measures that would avoid, minimize, or mitigate environmental effects. The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

TVA requests assistance with identifying any new potential alternatives to the proposed action to be considered. TVA also requests assistance with identifying any new potential impacts of the proposed action, identifying the activity and the potential impact that should be analyzed. Information interested parties possess which would assist in the analysis of resources issues is also appreciated. TVA is particularly interested in public input on other reasonable alternatives that should be considered in the EIS or EA. The preliminary identification of reasonable alternatives, information, and analyses relevant to the proposed action in this notice is not meant to be exhaustive or final.

Public Participation

The public is invited to submit comments on the scope of this EA or EIS no later than the date identified in the **DATES** section of this notice. Federal, state, and local agencies and Native American Tribes are also invited to provide comments. Information about this project is available on the TVA web page at www.tva.gov/nepa, including a link to an online public comment page. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection. After consideration of comments received during the scoping period, TVA will develop and distribute a scoping document that will summarize public and agency comments that were

received and identify the schedule for completing the EIS or EA process. Following analysis of the issues, TVA will prepare the draft EIS or EA for public review and comment; expected to be released late 2021 or early 2022. TVA anticipates the final EIS or EA in summer of 2022. In finalizing the EIS or EA and in making its final decision, TVA will consider the comments that it receives on the draft.

Rebecca Tolene,

Vice President, Environment.

[FR Doc. 2021-09223 Filed 4-30-21; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Women in Aviation Advisory Board; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Women in Aviation Advisory Board (the Board).

DATES: The meeting will be held on May 25, 2021, from 9 a.m.—3:30 p.m. EDT. Requests for accommodations to a disability must be received by May 11, 2021. Requests to submit written materials to be reviewed during the meeting must be received no later than May 11, 2021.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the virtual meeting may access the event live on the FAA's Twitter, Facebook and YouTube channels. For copies of meeting minutes along with all other information, please visit the WIAAB internet website at <https://www.faa.gov/regulations/policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/817>.

FOR FURTHER INFORMATION CONTACT: Ms. Aliah Duckett, Federal Aviation Administration, at S612WomenAdvisoryBoard@faa.gov. Any committee related request should be sent to the person listed in this section or by phone at 202-267-8361.

SUPPLEMENTARY INFORMATION:

I. Background

WIAAB was created under the Federal Advisory Committee Act (FACA), in accordance with Section 612 of the FAA Reauthorization Act of 2018 (Pub. L. 115-254) to encourage women and girls to enter the field of aviation with the

objective of promoting organizations and programs that are providing education, training, mentorship, outreach, and recruitment of women in the aviation industry.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Official Statement of the Designated Federal Officer
- Welcome/Opening Remarks
- Approval of Previous Meeting Minutes
- Subcommittee Presentations
- Review of Action Items
- Closing Remarks

A detailed agenda will be posted on the WIAAB internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting. Copies of the meeting minutes will also be available on the WIAAB internet website.

III. Public Participation

The meeting will be open to the public and livestreamed. Members of the public who wish to observe the virtual meeting can access the livestream on the FAA social media platforms listed in the **ADDRESSES** section on the day of the event.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. However, the public may present written statements to the Board by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. 2021-09200 Filed 4-30-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2020-0936]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Survey of Industry's Response to Safety Alert for Operators (SAFO) 17007

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 for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 8, 2020. The collection involves survey responses from U.S. air carrier (Part 121 and Part 135) employees who lead departments responsible for Operations and Standards, Training, and Safety to understand how industry has addressed recommendations from SAFO 17007 and to inform future guidance on manual flight skill proficiency in future en-route and terminal environments. This information collection is necessary, as no other information sources have been identified that would provide the required information. Operator policies and procedures are not publicly shared; therefore, this is the only reliable method to gather anonymous information from a representative industry sample.

DATES: Written comments should be submitted by June 2, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oira_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Victor Quach by email at: victor.k.quach@faa.gov; phone: 202-267-3585, NextGen Human Factors Division, ANG-C1; 800 Independence Ave. SW, Washington, DC 20591.

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-XXXX.

Title: Survey of Industry's Response to Safety Alert for Operators (SAFO) 17007.

Form Numbers: Not applicable.

Type of Review: New information collection

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 8, 2020 (85 FR 6364). The Federal Aviation Administration (FAA) is developing guidance materials on maintaining manual flight skill proficiency in future en-route and terminal environments where pilots will have less opportunities to practice manual flight knowledge, skills, and abilities (KSAs) in a highly automated environment. The FAA is conducting this survey of U.S. air carriers (Part 121 and Part 135) to determine how the organizations have incorporated the recommendations in SAFO 17007 into line operations and training. SAFO 17007 (linked below) encourages the development of training and line-operations policies to ensure that proficiency in manual flight operations is developed and maintained for air carrier pilots. https://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safo/media/2017/SAFO17007.pdf

An invitation to complete a one-time electronic survey will be sent to U.S. air carrier (Part 121 and Part 135) employees who lead departments responsible for Operations and Standards, Training, and Safety. These personnel are responsible for implementing the SAFO's recommendations into line operations and training. All data provided will be kept private to the extent possible by law. To preclude the identification of individual responses, all respondents will be given a participant code that does not identify them or their organization. Only the project leaders will have access to the coding key, which will be destroyed after data

analyses are complete. Only analyses and reports of aggregate data will be produced and released.

Failure to collect data on industry incorporation of SAFO 17007 recommendations will impact the quality of future FAA guidance provided to address manual flight operations. As such, it may also jeopardize future manual flight operations in an increasingly automated environment. SAFO 17007 encourages operators to practice manual flight in an operational environment; however, increased use of flight deck automation from NextGen National Airspace improvements will limit practice opportunities resulting in an increased need to make other improvement, which may be addressed through future FAA guidance.

Changes from 60-day **Federal Register** Notice (FRN): The 60-day FRN listed 1,224 employees of U.S. Part 121 and Part 135 operators as the potential number of respondents, 30 minutes for the average burden per response, and 621 total burden hours. The 30-day FRN revises the respondent universe to 972 employees due to an examination of DOT and FAA records of Part 121 and Part 135 operators and a decision to limit the respondent universe of Part 135 operators to those operating 3 or more turbo-jet aircraft. Average burden per response was corrected to 20 minutes to reflect the average completion time instead of the upper estimate. This results in a new total burden estimate of 321 hours.

Respondents: 972 employees of U.S. Part 121 and Part 135 operators who lead departments responsible for Operations and Standards, Training, and Safety.

Frequency: One time.

Estimated Average Burden per Response: 20 minutes.

Estimated Total Annual Burden: 20 minutes per respondent, 321 total burden hours.

Victor Quach,

Scientific and Technical Advisor, Federal Aviation Administration.

[FR Doc. 2021-09201 Filed 4-30-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2020-1061]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Advanced Qualification Program (AQP)

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 **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 16, 2020. The Advanced Qualification Program uses data driven quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

DATES: Written comments should be submitted by June 2, 2021.

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.

FOR FURTHER INFORMATION CONTACT:

Ryan Rachfalski by email at: Ryan.P.Rachfalski@faa.gov; phone: 303-342-1951.

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.

OMB Control Number: 2120-0701.

Title: Advanced Qualification Program (AQP) Subpart Y to 14 CFR 121.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 16, 2020 (85 FR 73124). One comment was received, however it was political in nature and does not relate to this information collection. Under Special Federal Aviation Regulation No. 58, Advanced Qualification Program (AQP), the FAA provides certificated air carriers, as well as training centers they employ, with a regulatory alternative for training, checking, qualifying, and certifying aircrew personnel subject to the requirements of 14 CFR parts 121 and 135. Data collection and analysis processes ensure that the certificate holder provides performance information on its crewmembers, flight instructors, and evaluators that will enable them and the FAA to determine whether the form and content of training and evaluation activities are satisfactorily accomplishing the overall objectives of the curriculum.

Respondents: 25 Respondents with approved Advanced Qualification Programs.

Frequency: Monthly.

Estimated Average Burden per Response: 7 Hours.

Estimated Total Annual Burden: 2, 100 Hours.

Issued in Washington, DC, on April 28, 2021.

Sheri A. Martin,

Management and Program Analyst, FAA, Air Transportation Division, AFS-200.

[FR Doc. 2021-09232 Filed 4-30-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Aviation Administration Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: This notice announces a meeting of the ARAC.

DATES: The meeting will be held on Thursday, June 17, 2021, from 1:00 p.m. to 4:00 p.m. Eastern Daylight Time.

Requests to attend the meeting must be received by Tuesday, June 1, 2021.

Requests for accommodations to a disability must be received by Tuesday, June 1, 2021.

Requests to submit written materials to be reviewed during the meeting must

be received no later than Tuesday, June 1, 2021.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the meeting must RSVP by emailing 9-awa-arac@faa.gov. General committee information including copies of the meeting minutes will be available on the FAA Committee website at https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.

FOR FURTHER INFORMATION CONTACT: Lakisha Pearson, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267-4191; email 9-awa-arac@faa.gov. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

ARAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide advice and recommendations to the FAA concerning rulemaking activities, such as aircraft operations, airman and air agency certification, airworthiness standards and certification, airports, maintenance, noise, and training.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Status Report from the FAA
- Status Updates:
 - Active Working Groups
 - Transport Airplane and Engine (TAE) Subcommittee
- Recommendation Reports
- Any Other Business

The detailed agenda will be posted on the FAA Committee website address listed in the **ADDRESSES** section at least one week in advance of the meeting.

III. Public Participation

This virtual meeting will be open to the public on a first-come, first-served basis. Members of the public who wish to attend are asked to register via email by submitting the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation, to the email listed in the **ADDRESSES** section. When registration is confirmed, registrants will be provided the virtual meeting information/teleconference call-in number and passcode. Callers are responsible for paying associated long-distance charges.

The U.S. Department of Transportation is committed to providing equal access to this meeting

for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Any member of the public may present a written statement to the committee at any time. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on April 27, 2021.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2021-09198 Filed 4-30-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (the SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions

programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

On April 26, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. ALEJOS CAMBARA, Gustavo Adolfo (a.k.a. ALEJOS CAMBARA, Gustavo), Guatemala; DOB 25 Oct 1966; POB Guatemala; nationality Guatemala; Gender Male; Passport 00728220K (Guatemala) expires 26 Jul 2009 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. ALEJOS LORENZANA, Felipe (a.k.a. ALEJOS, Felipe), Guatemala; DOB 03 Oct 1984; POB Guatemala; nationality Guatemala; Gender Male; Passport 157297144 (Guatemala) expires 09 May 2023; alt. Passport 157297148 (Guatemala) expires 20 Apr 2017 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

Dated: April 26, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021-09034 Filed 4-30-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before June 2, 2021.

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.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Molly Stasko by emailing PRA@treasury.gov, calling (202) 622-8922, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. *Title:* Affordable Care Act Internal Claims and Appeals and External Revenue Disclosures.

OMB Control Number: 1545-2182.

Type of Review: Extension of a currently approved collection.

Description: Section 2719 of the Public Health Service Act, incorporated into Code section 9815 by section 1563(f) of the Patient Protection and Affordable Care Act, Public Law 111-148, requires group health plans and issuers of group health insurance coverage, in connection with internal appeals of claims denials, to provide claimants free of charge with any evidence relied upon in deciding the appeal that was not relied on in making the initial denial of the claim. This is a third-party disclosure requirement. Individuals appealing a denial of a claim should be able to respond to any new evidence the plan or issuer relies on in the appeal, and this disclosure requirement is essential so that the claimant knows of the new evidence.

Regulation Project Number: REG-125592-10 (TD 9494).

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,769,264.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 278,413.

Estimated Total Annual Burden Hours: 2,271 hours.

2. *Title:* PTIN Supplemental Application for U.S. Citizens Without A Social Security Number Due To Conscientious Religious Objection.

OMB Control Number: 1545-2188.

Type of Review: Extension of a currently approved collection.

Description: Form 8945 is used by U.S. citizens who are members of certain recognized religious groups that want to prepare tax returns for compensation. Most individuals applying for a Preparer Tax Identification Number (PTIN) will have a social security number, which will be used to help establish their identity. However, there exists a population of U.S. residents that are religious objectors and do not have social security numbers. Form 8945 was created to assist that population in establishing their identity while applying for a PTIN.

Form Number: IRS Form 8945.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 500.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: 7 hours, 11 minutes.

Estimated Total Annual Burden Hours: 3,590 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: April 27, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021-09183 Filed 4-30-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) will meet via videoconference on Wednesday, June 2, 2021 from 12:30 p.m.–3:30 p.m. Eastern Time. The meeting is open to the public. The FACI provides non-binding recommendation and advice to the Federal Insurance Office (FIO) in the U.S. Department of Treasury.

DATES: The meeting will be held via videoconference on Wednesday, June 2, 2021, from 12:30 p.m.–3:30 p.m. Eastern Time.

ADDRESSES: *Attendance:* The meeting will be held via videoconference and is

open to the public. The public can attend remotely via live webcast at www.yorkcast.com/treasury/events/2021/06/02/FACI. The webcast will also be available through the FACI's website at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci>. Please refer to the FACI website for up-to-date information on this meeting. Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Mariam G. Harvey, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622-0316, or mariam.harvey@do.treas.gov.

FOR FURTHER INFORMATION CONTACT:

Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622-3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 10(a)(2), through implementing regulations at 41 CFR 102-3.150.

Public Comment: Members of the public wishing to comment on the business of the FACI are invited to submit written statements by either of the following methods:

Electronic Statements

- Send electronic comments to faci@treasury.gov.

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220. In general, the Department of the Treasury will make submitted comments available upon request without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. Requests for public comments can be submitted via email to faci@treasury.gov. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of

10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622-2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This will be the second FOCI meeting of 2021. In this meeting, the Subcommittee Addressing the Protection Gap Through Public-Private Partnerships and Other Mechanisms will lead discussions related to wildfire risk and related topics, and the Preparedness Workstream of the Subcommittee on COVID-19 will lead an ongoing discussion on topics related to preparing for future pandemics. The FOCI will also receive status updates from each of its subcommittees and an update from FIO on its activities and consider any new business.

Dated: April 28, 2021.

Stephanie Schmelz,
Deputy Director, Federal Insurance Office.

[FR Doc. 2021-09248 Filed 4-30-21; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF VETERANS AFFAIRS

Dependency and Indemnity Compensation Cost of Living Adjustments

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice of Cost-of-Living Adjustments (COLA) in certain benefit rates. These COLAs affect the Dependency and Indemnity Compensation (DIC) Program. The rate of the adjustment is tied to the increase in Social Security benefits effective December 1, 2020, as announced by the Social Security Administration (SSA). SSA has announced an increase of 1.3%.

DATES: The increases in amounts became effective December 1, 2020.

FOR FURTHER INFORMATION CONTACT: Terrence Minyard, Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, Telephone (202) 632-8862. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under the provisions of Public Law 116-178 "Veterans' Compensation Cost-of-Living

Adjustment Act of 2020," VA is required to increase, effective December 1, 2020, the benefit rates of DIC programs by the same percentage as increases in the benefit amounts payable under title II of the Social Security Act. VA is required to publish notice of the increased rates in the **Federal Register**.

SSA has announced a 1.3% COLA increase in Social Security benefits effective December 1, 2020. Therefore, applying the same percentage, the following increased rates and income limitations for the DIC program became effective December 1, 2020:

Dependency and Indemnity Compensation Monthly Payment Rates

DIC Payable to a Surviving Spouse—Veteran Death On or After January 1, 1993

Basic Monthly Rate: \$1,357.56

If at the time of the Veteran's death, the Veteran was in receipt of or entitled to receive compensation for a service-connected disability rated totally disabling (including a rating based on individual unemployability) for a continuous period of at least 8 years immediately preceding death AND the surviving spouse was married to the Veteran for those same 8 years, add: \$288.27.

For each dependent child under the age of 18, add: \$336.32.

If the surviving spouse is entitled to Aid and Attendance benefits, add \$336.32.

If the surviving spouse is entitled to Housebound benefits, add \$157.55.

If the surviving spouse has one or more children under the age of 18 on the award per 38 U.S.C. 1311(f), add the 2-year transitional benefit of \$289.00.

DIC Payable to a Surviving Spouse—Veteran Death Prior to January 1, 1993

Veteran paygrade	Amount payable
E-1(f)	\$1,357.56
E-2(f)	1,357.56
E-3(a,f)	1,357.56
E-4(f)	1,357.56
E-5(f)	1,357.56
E-6(f)	1,357.56
E-7(g)	1,404.49
E-8(g)	1,482.72
E-9(g)	1,546.40
E-9(b)	1,669.31
W-1(g)	1,433.56
W-2(g)	1,490.53
W-3(g)	1,534.11
W-4(g)	1,623.49
O-1(g)	1,433.56
O-2(g)	1,482.72
O-3(g)	1,584.38
O-4	1,679.35
O-5	1,848.08
O-6	2,083.85

Veteran paygrade	Amount payable
O-7	2,249.19
O-8	2,470.44
O-9	2,642.50
O-10	2,898.37
O-10(c)	3,110.67

(a) Surviving spouse of Aviation Cadet or other service not covered by this table is paid the DIC rate for enlisted E-3.

(b) Veteran who served as Sgt. Major of the Army or Marine Corps, Senior Enlisted Advisor of the Navy, Chief Master Sgt. of the Air Force, or Commandant of the Marine Corps, or as Commandant of the Coast Guard.

(c) Veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army or Air Force, Chief of Naval Operations, Commandant of the Marine Corps, or as Commandant of the Coast Guard.

(d) If surviving spouse entitled to aid and attendance, add \$336.32; if entitled to housebound, add \$157.55.

(e) Add \$336.32 for each child under 18.

(f) Add \$288.27 if Veteran rated totally disabled for eight continuous years prior to death and surviving spouse was married to Veteran those same eight years.

(g) Base rate is \$1,645.84 if Veteran rated totally disabled eight continuous years prior to death and surviving spouse was married to Veteran those same eight years.

DIC Payable to Children

Surviving Spouse Entitled

For each child over the age of 18 who is attending an approved course of education, the rate is \$284.93.

For each child over the age of 18 who is helpless, the rate is \$573.20.

No Surviving Spouse Entitled

Number of children	Total payable	Each child's share
1	\$573.20	\$573.20
2	824.59	412.30
3	1,076.01	358.67

For each additional child, add \$204.48 to the total payable amount to be paid in equal shares to each child.

For each additional helpless child over 18, add \$336.32 to the amount payable to the helpless child.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on April 27, 2021, 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.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2021–09212 Filed 4–30–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Tribal and Indian Affairs; Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs hereby gives notice of the establishment of the Advisory Committee on Tribal and Indian Affairs. The Advisory Committee on Tribal and Indian Affairs (Committee) is a statutory committee established as required by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Pub. L. 116–315) and 38 U.S.C. 547. The Committee operates in accordance with provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2.

The Committee provides advice and guidance to the Secretary of Veterans Affairs on all matters relating to Indian tribes, tribal organizations, Native Hawaiian organizations and Native American Veterans.

The Committee shall be comprised of 15 voting Members selected by the Secretary from among individuals nominated as specified under the subsection below and shall be designated as Special Government Employees:

A. Appointment Authority:

i. At least one member should come from each of the 12 service areas identified by Indian Health Service and said member must be nominated by Indian tribes or tribal organization from that service area.

ii. At least one member of the Committee represents the Native Hawaiian Veteran community nominated by a Native Hawaiian Organization.

iii. At least one member of the Committee represents urban Indian organizations nominated by a national urban Indian organization.

iv. Not fewer than half of the members are Veterans, unless the Secretary determines that an insufficient number of qualified Veterans were nominated.

v. No member of the Committee may be an employee of the Federal Government.

B. Terms/Vacancies: A member of the Committee shall be appointed for a term of two years. If a vacancy occurs, it shall be filled in the same manner as the original appointment within 180 days. Additionally, a member may be reappointed for one additional term at the Secretary's discretion.

Any member of the public seeking additional information should contact David C. Ward, Designated Federal Officer (DFO), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC, via email at David.Ward@va.gov, or (202) 461–7445.

Dated: April 26, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–09010 Filed 4–30–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0530]

Agency Information Collection Activity: 36.4350-Servicing Procedures for Holders

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs. **ACTION:** Notice. **SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to “OMB Control No. 2900–0530.”

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please

refer to “OMB Control No. 2900–0530” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Collection of Information Under 38 CFR 36.4350.

OMB Control Number: OMB 2900–0530.

Type of Review: Reinstatement.

Abstract: The Department of Veterans Affairs (VA) Loan Guaranty program guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. Under 38 CFR 36.4350, a holder of a loan guaranteed or insured by the VA is required to develop and maintain a loan servicing program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 11840 on February 26, 2021, page 11840.

Affected Public: Individuals (employees of servicers making applications).

Estimated Annual Burden: 63 hours.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: One-time.

Estimated Number of Respondents: 427.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–09105 Filed 4–30–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2., that the Veterans' Advisory Committee on Education (the Committee) will meet virtually using Microsoft Teams June 9, 2021–June 10, 2021 from 11:00 a.m. to 5:00 p.m., EST. The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for Veterans, Service members, Reservists, and Dependents of Veterans including programs under

Chapters 30, 32, 33, 35, and 36 of title 38, and Chapter 1606 of title 10, United States Code.

The purpose of the meeting is for the Committee to receive updates on Education Service initiatives, reports from three subcommittees (Modernization, On-the-Job Training/Apprenticeship and Distance Learning), and discuss progress thus far. This discussion will form the basis for recommendations to be further refined and finalized after the Committee's fall meeting.

Interested persons may attend. The meeting will be conducted using Microsoft Teams. Please email EDUSTAENG.VBAVACO@va.gov for an invitation link prior to June 8, 2021 or dial-in by phone (for audio only) 1-872-701-0185 United States, Chicago (Toll), Conference ID: 181 152 238#.

Although no time will be allotted for receiving oral presentations from the public, individuals wishing to share information with the Committee may submit written statements for the Committee's review to Mr. Joseph Maltby, Designated Federal Official, Department of Veterans Affairs, by email at EDUSTAENG.VBAVACO@va.gov. Comments will be accepted until close of business on Monday, June 7, 2021. In the communication, the writers must identify themselves and state the organization or association they represent for inclusion in the official record. Any member of the public wishing to participate or seeking additional information should contact Joseph Maltby at EDUSTAENG.VBAVACO@va.gov not later than June 8, 2021.

Dated: April 27, 2021.

Jelessa M. Burney,
Federal Advisory Committee Management Officer.

[FR Doc. 2021-09101 Filed 4-30-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0115]

Agency Information Collection Activity under OMB Review: Supporting Statement Regarding Marriage

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration

(VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to "OMB Control No. 2900-0115."

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to "OMB Control No. 2900-0115" in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 103.

Title: Supporting Statement Regarding Marriage (VA Form 21P-4171).

OMB Control Number: 2900-0115.

Type of Review: Reinstatement without change of a previously approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. VBA utilizes VA Form 21P-4171 to collect information from third parties regarding claimed common-law marriage between Veterans and spouse/surviving spouses. VBA used this the information collected to determine whether or not the claimed common-law marriage is valid under the laws of the state/territory where the parties resided at the time of marriage or the laws of the state/territory where the parties resided when the right to benefits accrued, in accordance with 38 CFR 3.1(j) and pay monetary benefits. In an effort to safeguard Veterans and their beneficiaries from financial exploitation, the instructions on 21P-4171 were amended to include information regarding VA-accredited

attorneys or agents charging fees in connection with a proceeding before the Department of Veterans Affairs with respect to a claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 35 on February 24, 2021, page 11385.

Affected Public: Individuals or Households.

Estimated Annual Burden: 800 Hours.

Estimated Average Burden per

Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,400.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-09128 Filed 4-30-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0270]

Agency Information Collection Activity Under OMB Review: Financial Counseling Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to "OMB Control No. 2900-0270."

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise

and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900-0270” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: Financial Counseling Statement, VA Form 26-8844.

OMB Control Number: 2900-0270.

Type of Review: Extension of a currently approved collection.

Abstract: This form was developed under 38 U.S.C. 3732. VA Form 26-8844 provides for recording comprehensive financial information concerning the borrower's net income, total expenditures, net worth, suggested areas for which expenses can be reduced or income increased, the arrangement of a family budget and recommendations for the terms of any repayment agreement on the defaulted loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 11055 on February 23, 2021, pages 11055-11056.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,750 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000 per year.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-09217 Filed 4-30-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0830]

Agency Information Collection Activity Under OMB Review: Claim for Reimbursement of Travel Expenses

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to “OMB Control No. 2900-0830”.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise

and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900-0830” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 111.

Title: Claim for Reimbursement of Travel Expenses.

OMB Control Number: 2900-0830.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28-0968 is used to gather the necessary information to determine eligibility for mileage reimbursement. Without this information, mileage reimbursement would not be possible to grant the benefit under 38 U.S.C. 111 and 38 U.S.C 501(a).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: 86 FR 34.

Affected Public: Individuals or Households.

Estimated Annual Burden: 9,417 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 113,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021-09104 Filed 4-30-21; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

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May 3, 2021

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 510

Medicare Program: Comprehensive Care for Joint Replacement Model
Three Year Extension and Changes to Episode Definition and Pricing;
Medicare and Medicaid Programs; Policies and Regulatory Revisions in
Response to the COVID-19 Public Health Emergency; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 510

[CMS–5529–F]

RIN 0938–AU01

Medicare Program: Comprehensive Care for Joint Replacement Model Three-Year Extension and Changes to Episode Definition and Pricing; Medicare and Medicaid Programs; Policies and Regulatory Revisions in Response to the COVID–19 Public Health Emergency

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule extends the length of the Comprehensive Care for Joint Replacement (CJR) model through December 31, 2024 by adding an additional 3 performance years (PYs). PY 6 will begin on October 1, 2021 and end on December 31, 2022; PY 7 will begin on January 1, 2023 and end on December 31, 2023; and PY 8 will begin on January 1, 2024 and end on December 31, 2024. In addition, this final rule revises certain aspects of the CJR model including the episode of care definition, the target price calculation, the reconciliation process, the beneficiary notice requirements, and the appeals process. In addition, for PY 6 through 8, this final rule eliminates the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments for certain recipients. This final rule extends the additional flexibilities provided to participant hospitals related to certain Medicare program rules consistent with the revised episode of care definition.

DATES: These final regulations are effective July 2, 2021.

FOR FURTHER INFORMATION CONTACT: Bobbie Knickman, (410) 786–4161. Heather Holsey, (410) 786–0028.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose

The Comprehensive Care for Joint Replacement (CJR) model, which was implemented via notice-and-comment rulemaking and began 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. While initial evaluation results for the first, second, and third year of the CJR model,¹ as well as an independent study in the New England Journal of Medicine,² indicate that the CJR model is having a positive impact on lowering episode costs when CJR participant hospitals are compared to non-CJR participant hospitals (with no negative impacts on quality of care), changes in Medicare program payment policy and national care delivery patterns have occurred since the CJR model began. In order to update the CJR model to address recent policy changes and improve the model's ability to demonstrate savings, we issued a proposed rule titled “Medicare Program: Comprehensive Care for Joint Replacement Model Three-Year Extension and Changes to Episode Definition and Pricing”, which appeared in the February 24, 2020 **Federal Register** (85 FR 10516). In this rule, we proposed to change and extend the CJR model for an additional 3 performance years. We proposed to change the definition of a CJR model episode in order to address changes to the inpatient-only (IPO) list, which is a list published annually in the Outpatient Prospective Payment System (OPPS) rule and which contains procedure codes that will only be paid by Medicare when performed in the inpatient setting. Specifically, in response to the change in the calendar year (CY) 2018 OPPS rule (65 FR 18455), which removed the Total Knee Arthroplasty (TKA) procedure code from the IPO list, and the change in the CY 2020 OPPS rule (84 FR 61353), which removed the Total Hip Arthroplasty (THA) procedure code from the IPO list, we proposed to change the definition of an episode of care to include outpatient procedures for TKAs and to include outpatient procedures for THAs.

In addition to updating for changes in a hospital setting, the model also needed a more accurate and adaptable

payment methodology that can sustain adjustments in practice and payment systems over time. Therefore, we proposed to make a number of changes to the target price calculation to improve sustainability and accuracy. Specifically, we proposed to change the basis for the target price from 3 years of claims data to the most recent 1 year of claims data to make the target price more representative of recent practice patterns, particularly post-acute care. We proposed to remove the national update factor and twice yearly update to the target prices and replace them with a retrospective trend factor at reconciliation to create greater consistency in the payment methodology with underlying practice and Medicare fee-for-service (FFS) payment system changes. We proposed to remove anchor factors and weights because they are no longer necessary and generate complexity.

Additionally, we proposed a number of changes to the reconciliation process with similar goals of sustainability and payment accuracy. We proposed to move from two reconciliation periods (conducted 2 and 14 months after the close of each performance year) to one reconciliation period that would be conducted six months after the close of each performance year to reduce hospital burden and for ease of administration. We proposed to add an additional episode-level risk adjustment beyond fracture status for greater payment accuracy. We proposed to change the high episode spending cap calculation methodology as the current methodology inaccurately capped high cost cases. We also proposed to change the quality (effective or applicable) discount factors applicable to participants with excellent and good quality scores to better recognize high quality care.

Since we proposed to change the definition of an episode of care to include procedures performed in the hospital outpatient department, for which the beneficiary would not be admitted as an inpatient to the participant hospital, we also proposed a change to the beneficiary notification requirements (which are currently tied to inpatient admission) such that CJR participant hospitals are also required to notify the beneficiary of his or her inclusion in the CJR model if the procedure takes place in a hospital outpatient department setting. We also proposed to make changes to the dates of publicly reported data used for quality measures and patient-reported outcomes (PRO) for the 3 additional performance years to accommodate the extension period. In addition, we

¹ See evaluation reports section posted on the CJR model website at: <https://innovation.cms.gov/initiatives/cjr>.

² Barnett, Wilcock, McWilliams, Epstein, et al. “Two-Year Evaluation of Mandatory Bundled Payments for Joint Replacement” see <https://www.nejm.org/doi/10.1056/NEJMsa1809010>.

proposed to advance the Complications measure and Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) measure performance periods to add additional collection for PYs 6–8 in alignment with the performance periods used for PYs 1 through 5. For PRO, we proposed to advance the performance periods in alignment with previous performance periods as well as increase the thresholds for successful submission to add additional collection for PYs 6–8. Additionally, for the 3 additional performance years, we proposed to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments is a physician, non-physician practitioner, physician group practice (PGP), or non-physician practitioner group practice (NPPGP) consistent with updates to other Innovation Center models. We also proposed to make changes to the appeals process in order to clarify the reconsideration review (second level appeal) process. Finally, in conjunction with the proposed change to include specific outpatient procedures in the CJR model episode definition, we also proposed to extend the waiver of the skilled nursing facility (SNF) 3-day rule and the waiver of direct supervision requirements for certain post-discharge home visits for participant hospitals furnishing services to CJR beneficiaries in the outpatient setting as well. As outlined in section II.D.1. of this final rule we are extending the model for 3 performance years to generate the necessary evaluation findings under a revised payment methodology for the agency to consider expansion of the model.

As further outlined in section II.D.2. of this final rule, we proposed that the extension of the CJR model would only apply to participant hospitals located in the 34 mandatory metropolitan statistical areas (MSAs) for whom participation has been mandatory since the beginning of the model in 2016. This proposal excludes rural and low-volume hospitals in the 34 mandatory MSAs and any voluntary hospitals in 33 voluntary MSAs that have opted into the model for PYs 3 through 5. The model currently enrolls 139 voluntary, rural, and low-volume hospitals. Excluding rural, low-volume, and voluntary hospitals from the model results in 330 hospitals in the 34 mandatory MSAs participating in PYs 6 to 8. We proposed conforming changes to the CJR model regulations at 42 CFR part 510.

This final rule also finalizes policies in two interim final rules with comment

(IFCs). Specifically, the IFC titled, Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency,³ implemented a 3 month extension to CJR PY 5 such that the model would end on March 31, 2021, rather than ending on December 31, 2020, and provided an adjustment to the extreme and uncontrollable circumstances policy to account for the COVID–19 pandemic. The second IFC titled, Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency,⁴ further extended PY 5 through September 30, 2021, created an episode-based extreme and uncontrollable circumstances COVID–19 policy, provided two reconciliation periods for PY 5, and added Medicare Severity-Diagnostic Related Groupings (MS-DRGs) 521 and 522 for hip and knee procedures.

B. Summary of Costs and Benefits

As shown in our impact analysis in section IV. of this final rule, we estimate that the CJR model changes we proposed will save the Medicare program approximately \$217 million over the additional 3 model years. We note that our impact analysis has some degree of uncertainty and makes assumptions as further discussed in section IV. In addition to these estimated impacts, the goal of CMS' Center for Medicare and Medicaid Innovation (Innovation Center) models is to reduce program expenditures while preserving or enhancing the quality of care. Our evaluation results document that many participant hospitals are attempting to enhance their infrastructure to support better care management and to reduce costs. We anticipate there will continue to be a broader focus on care coordination and quality improvement through the CJR model among participant hospitals and other providers and suppliers within the Medicare program that may lead to better care management and improved quality of care for beneficiaries.

C. Statutory Authority and Background

Under the authority of section 1115A of the Social Security Act (the Act), through notice-and-comment 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” that appeared in the November 24, 2015

Federal Register (80 FR 73274) (referred to in this final rule as the “November 2015 final rule”). The CJR model is a Medicare Part A and B payment model in which acute care hospitals in certain selected geographic areas receive retrospective bundled payments for episodes of care for lower extremity joint replacement or reattachment of a lower extremity (collectively referred to as LEJR). The CJR model holds participant hospitals financially accountable for the quality and cost of a CJR model episode of care and incentivizes increased coordination of care among hospitals, physicians, and post-acute care providers. 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. The first CJR model performance period began April 1, 2016. At that time, the CJR model required hospitals located in the 67 MSAs selected for 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 initiative ended.

We issued a final rule titled “Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services; Corrections and Correcting Amendments,” which appeared in the March 4, 2016 **Federal Register** (81 FR 11449), to correct a limited number of technical and typographical errors identified in the November 2015 final rule. We issued a final rule, which appeared in the January 3, 2017 **Federal Register** (82 FR 180), titled “Medicare Program; Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model (CJR)” (referred to as the “January 2017 final rule”), to implement the creation and testing of three EPMs and to make certain refinements to better align the CJR model with the new EPMs, to make minor technical improvements to the CJR model and to create an Advanced Alternative Payment Model (Advanced APM) track within the CJR model. We

³ 85 FR 19230.

⁴ 85 FR 71142.

issued a final rule, which appeared in the May 19, 2017 **Federal Register** (82 FR 22895), titled “Medicare Program; Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model (CJR); Delay of Effective Date,” which finalized May 20, 2017 as the effective date of the January 2017 final rule (82 FR 180) (referred to as the “May 2017 final rule”). The May 2017 final rule also finalized a delay to the effective date of certain CJR model regulations from July 1, 2017 to January 1, 2018. We issued another final rule, which appeared in the December 1, 2017 **Federal Register** (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 further 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 MSAs 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). The December 2017 final rule also finalized further technical refinements and clarifications for certain payment, reconciliation and quality provisions, and implemented a change to increase the pool of eligible clinicians that qualify as affiliated practitioners under the Advanced APM track. 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) that appeared 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.”

We issued the proposed rule, which appeared in the February 24, 2020

Federal Register (85 FR 10516), 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”). In addition, in the April 24, 2020 **Federal Register** (85 FR 22728), we published a document extending the public comment period of the February 2020 proposed rule for an additional 60 days (until June 23, 2020).

We issued an IFC, which appeared in the April 6, 2020 **Federal Register** (85 FR 19230), 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”). The April 2020 IFC (85 FR 19230) accounted for the impact of the COVID–19 public health emergency (PHE) on CJR participant hospitals. We extended PY5 through March 31, 2021 and adjusted the extreme and uncontrollable circumstances policy to account for the COVID–19 PHE 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, CMS issued a proposed rule, which appeared in the May 29, 2020 **Federal Register** (85 FR 32460) 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 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.

We issued another IFC, which appeared in the November 6, 2020 **Federal Register** (85 FR 71142), titled “Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency” (hereinafter referred to as the “November 2020 IFC”). In the November 2020 IFC, we

implemented four changes to the CJR model. First, we extended PY5 an additional 6 months, so PY5 ends on September 30, 2021. Second, we made changes to the reconciliation process for PY5 to allow two subsets of PY5 to be reconciled separately. Third, we made a technical change to include MS–DRGs 521 and 522 in the CJR episode definition, retroactive to inpatient discharges beginning on or after October 1, 2020, to ensure that the model continues to include the same inpatient LEJR procedures, despite the adoption of new MS–DRGs 521 and 522 to describe those procedures. Lastly, we made changes to the extreme and uncontrollable circumstances policy for the COVID–19 PHE to adapt to an increase in CJR episode volume and renewal of the PHE, while providing protection against financial consequences of the COVID–19 PHE after the extreme and uncontrollable circumstances policy no longer applies.

II. Provisions of the Proposed Rule, Summary of and Responses to Public Comments, and Provisions of the Final Regulations

In response to the publication of the February 2020 proposed rule, we received approximately 66 timely pieces of correspondence. Contained within these 66 pieces of correspondence were approximately 810 discrete comments concerning the extension of the CJR model by 3 years, the CJR model episode of care definition, the target price calculation, the reconciliation process, the elimination of the 50 percent cap on gainsharing, the beneficiary notice requirements and discharge planning notice, program waivers, the appeals process, evaluation, and regulatory impact. Additionally, we received many comments regarding our request for comment on new LEJR focused models that would include ASCs. These comments were from groups representing medical societies, hospital associations, hospitals, and medical centers. The remaining comments were from individual physicians and individual commenters.

We received several comments that were in general agreement with the proposed rule as well as several comments that were in general disagreement with the proposed rule. Summaries of these comments and our responses are discussed later in this section. Finally, we received several comments that are considered out of scope. Although comments that are out of the scope of this rule are not addressed with the policy responses in this final rule, we are taking each

comment into consideration and may address these comments in future rulemaking as warranted. Summaries of the public comments that are within the scope of the proposed rule and our responses to those public comments are set forth in the various sections of this final rule under the appropriate heading.

Comment: A commenter stated that the extension of the CJR model continues to raise concerns about CMS' authority to implement a mandatory model, contending that it is an unconstitutional delegation of legislative authority and unfairly targets one-fifth of hospitals and one type of procedure and medical specialty. Another commenter stated that after 5 years of mandatory participation in the CJR model, the extension provides CMS the opportunity to transition CJR to a voluntary model for PYs 6–8. The commenter contended that a mandatory requirement violates the Innovation Center's authority.

Response: For the reasons we discussed in the CJR model's November 2015 and the December 2017 final rules, we continue to believe that section 1115A of the Act and the Health and Human Services (HHS) Secretary's existing authority to operate the Medicare program authorize the CJR model, including an extension of its duration as well as its mandatory nature. Specifically, sections 1102 and 1871 of the Act give the Secretary the authority to implement regulations as necessary to administer Medicare, including testing these Medicare payment and service delivery models as was done in the November 2015 and the December 2017 final rules.

The extension we are finalizing in this final rule does not impose any permanent changes to the Medicare program; rather, as discussed elsewhere in this rule, we are extending the performance period of model test in order to evaluate the impact of changes to the model that address changes in program payment policy and national care delivery patterns. This authority also allows the Secretary to test different methods for delivering services under Medicare to determine the effectiveness of these methods. We disagree with the commenter that contended that PYs 6 to 8 should be voluntary and that mandatory participation in the extension violates the Innovation Center's authority. As outlined in the CJR model November 2015 final rule, we believe that both section 1115A of the Act and the Secretary's existing authority to operate the Medicare program authorize the CJR model extension as we have proposed and are

finalizing in this final rule. Section 1115A of the Act authorizes the Secretary to test payment and service delivery models intended to reduce Medicare expenditures while preserving or enhancing quality. The statute does not require that models be voluntary, but rather gives the Secretary broad discretion to design and test models that meet certain requirements as to spending and quality. Under this authority, re-evaluation of policies and programs, as well as revisions through rulemaking, are within an agency's discretion. Accordingly, the agency has authority to modify a mandatory model, as was done in the December 2017 final rule.

As further discussed in section II.D.2. of this final rule, narrowing participation for hospitals in the 34 mandatory MSAs during the 3-year extension will allow CMS to minimize selection bias while evaluating the impact of the changes in this rule. Additionally, the cost to evaluate the small voluntary arm of the model for PYs 6 through 8 is costly relative to the information that would be gained from the small sample size. For these reasons, we decline to adopt the commenter's suggestion to make PYs 6 through 8 voluntary.

Comment: A commenter stated that there exists a significant administrative and management burden for providers associated with participating in multiple bundled payment initiatives simultaneously (for example, those that participate in both the BPCI Advanced model and CJR model at the same time). This commenter stated that managing multiple bundles across both models subjects participants to two different sets of financial specifications, reporting, and other measures, which is resource intensive. The commenter urged CMS to consider this burden by better aligning requirements for its various episode-based payment initiatives, including CJR and BPCI Advanced. They stated a possible solution to the administrative challenges of participating in both BPCI Advanced and CJR is to allow CJR participants the ability to participate in the lower joint Clinical Episode under BPCI Advanced rather than being required to participate in CJR.

Response: We acknowledge the commenter's suggestion to allow hospitals currently participating in both the CJR model and the BPCI Advanced model to participate in BPCI Advanced only going forward; however, we disagree that participation in both models at the same time creates too much burden on participant hospitals, because the CJR model consists of only

one type of episode of care, LEJR. BPCI Advanced on the other hand has various types of clinical episodes, one of which is the Major Joint Replacement of the Lower Extremity (MJRLE). For practical purposes, LEJR and MJRLE are referring to the same type of episode composed of MS-DRGs 469 and 470. The BPCI Advanced Participation Agreement states that if a participant or, if applicable, a Downstream Episode Initiator (for example, an acute care hospital) is also participating in an Innovation Center model implemented via regulation, such as the CJR model, the participant will not be held accountable for any clinical episodes included in that model for purposes of BPCI Advanced. This means that any LEJR episodes that are triggered by a hospital participating in both BPCI Advanced and CJR models would be reconciled under the CJR model and not the BPCI Advanced model. This approach has helped reduce the risk of inconsistent requirements across the two initiatives, thereby reducing burden on participants participating in both initiatives.

CJR participant hospitals have had several years of experience with LEJR episodes focusing on quality and efficiency in the CJR model. CMS believes that participant hospital experience in the CJR model should alleviate issues with operational burden since CMS provides educational resources through the CJR Learning System and CJR Connect to assist CJR participant hospitals with managing operational processes. Moreover, CMS is committed to providing guidance regarding the changes made in this final rule relative to the previous CJR model requirements and will continue to provide educational resources during the extension for model participants.

Finally, we note that while the BPCI Advanced model and the CJR model differ in various ways, the broad goals of the models are the same: Improving quality of care while reducing overall costs during an episode of care. We believe it is reasonable for model participant hospitals in both models and Downstream Episode Initiators in the BPCI Advanced model to engage in care redesign strategies targeted at LEJR episodes, regardless of the model under which the LEJR episode is reconciled. As such, we are finalizing the extension under which certain CJR participant hospitals are required to continue to participate in the CJR model, even if they are concurrently participating in BPCI Advanced and accountable under BPCI Advanced for non-LEJR episodes.

Comment: Another commenter expressed support for proposed policies

that promote consistency across model years, support investment in quality of care, and reduce operational burdens for CJR participants. This commenter specifically stated that moving to one reconciliation period, retaining current quality measures and removing gainsharing caps under the CJR model will help minimize burden on hospitals participating in CJR and BPCI Advanced while increasing consistency between CJR and BPCI Advanced.

Response: CMS agrees with the commenter and believes that our efforts to decrease operational burden, such as moving to one reconciliation period, retaining current quality measures and, as we discuss in section II.G. of this rule, eliminating the 50 percent gainsharing cap will help to improve consistency between both models (CJR and BPCI Advanced).

Comment: Although several commenters expressed support for the model's increased focus on decreasing costs, MedPAC argued that the proposed changes do not go far enough to generate savings for the Medicare program after accounting for reconciliation payments to providers. MedPAC suggested that the model be expanded nationally to help improve cost savings and improve Medicare's sustainability. MedPAC stated that evidence shows these changes would generate more savings for the model if it was expanded nationwide to increase the number of participant hospitals.

Response: We appreciate this comment, but disagree that this model needs to be expanded nationwide for PY6 through PY8. Section 1115A(c) of the Act authorizes the HHS Secretary to expand a model, but only after taking into consideration the evaluation and after certain findings that CMS has not yet made. The model is still being evaluated for its ability to generate cost savings.

Comment: Multiple commenters expressed their support for CMS' efforts to incentivize coordinated care and improve APMs. The improvements mentioned in these comments range from improved cost savings, quality measures, and outcomes for Medicare beneficiaries. A large number of commenters discussed their support for these listed goals and many others stated it as the primary reason for supporting this final rule. Other commenters expressed the need to continue to improve these areas and other areas of healthcare delivery.

Response: We acknowledge and appreciate the commenters' remarks.

Comment: Although several commenters expressed support for the changes to the CJR model, they listed

several recommendations for CMS to consider when developing models in the future. A few commenters listed that there should be an increased focus on cost savings in future models. Although no specific adjustments were suggested, the commenters believed that the Innovation Center should prioritize cost savings more to improve the long term sustainability of the Medicare program.

A significant portion of the commenters also discussed other areas of improvements for current and future models. Their suggestions included expanding the scope of the models to include services not just confined to services that are paid for by Medicare, allowing providers besides hospitals and physicians to lead models, and increasing financial incentives.

Response: We thank the commenters for taking the time to provide input on future models. As the Innovation Center continues to develop more models we are always willing to accept input from various sources.

A. Episode Definition

1. Background

The CJR model began on April 1, 2016. The CJR model is currently in its fifth performance year. The fifth performance year, which was extended to include all episodes ending on or after January 1, 2020 and on or before September 30, 2021, would necessarily incorporate episodes that began before January 1, 2020. As previously discussed in section I.C. of this final rule, the CJR model was created to bundle care for beneficiaries of Medicare Part A and Part B undergoing LEJR procedures, and in so doing, to decrease the cost and improve the quality of that care (80 FR 73274).

When the CJR model was initially established in the November 2015 final rule, the LEJR procedures on which the model is focused, specifically, those procedures for TKA, THA, and Total Ankle Replacement (TAR), were all listed on the IPO list. This meant that Medicare would only pay hospitals for these procedures when they were performed in the inpatient setting and billed through the Inpatient Prospective Payment System (IPPS). For this reason, CJR model episodes were defined to include inpatient procedures only. These TKA, THA, and TAR procedures all mapped to either Medicare Severity-Diagnosis Related Group (MS-DRG) 469 (Major Joint Replacement or Reattachment of Lower Extremity with Major Complications and/or Comorbidities (MCC)) or MS-DRG 470 (Major Joint Replacement or Reattachment of Lower Extremity

without MCC). Subsequently, in acknowledgement of the fact that the data analysis performed demonstrated TAR procedures are almost always more complex and expensive to perform than TKAs or THAs, CMS finalized a policy in the FY 2018 IPPS/LTCH PPS final rule (82 FR 38028 through 38029) to ensure that inpatient TAR procedures would always map to the higher severity MS-DRG 469 and made corresponding changes to the MS-DRG titles (MS-DRG 469 became Major Hip and Knee Joint Replacement or Reattachment of Lower Extremity with MCC or Total Ankle Replacement; MS-DRG 470 became Major Hip and Knee Joint Replacement or Reattachment of Lower Extremity without MCC).

In the FY 2021 IPPS/LTCH PPS final rule (85 FR 58491 through 58502), CMS finalized two new MS-DRGs, 521 (Hip replacement with Principal Diagnosis of Hip Fracture, with MCC) and 522 (Hip replacement with Principal Diagnosis of Hip Fracture, without MCC) that encompassed a subset of hip replacement procedures that had previously mapped to MS-DRGs 469 and 470 regardless of whether or not a principal diagnosis of hip fracture was present. We modified the CJR model episode definition in the November 2020 IFC to include MS-DRGs 521 and 522, with discharges on or after October 1, 2020, in order to accommodate this change in MS-DRGs and ensure that the subset of hip replacement episodes that included a principal diagnosis of hip fracture was not dropped from the CJR model during PY 5.

When the TKA procedure described by Current Procedural Terminology (CPT) Code 27447 was removed from the IPO list in the CY 2018 OPPS final rule (82 FR 59382) effective January 1, 2018, Medicare beneficiaries undergoing outpatient TKA procedures were, by default, excluded from the CJR model. When the change to the IPO list to remove TKA procedures was proposed, CJR participant hospitals raised concerns that the less complex TKA cases would move to the outpatient setting and the remaining inpatient population would represent a more complex and costly case mix than the population used to calculate the target price. As such, many commenters on the proposed OPPS 2018 rule (82 FR 59384) expressed their concern that the target prices for the remaining inpatient CJR model episodes would be too low and would not reflect the shift in the inpatient patient population. While we noted the commenters' concerns, due to the lack of historical outpatient episode spending claims data on which to base a target price, we were not able to

recalculate target prices to reflect the movement of procedures from the inpatient to the outpatient setting at that time. We stated in the CY 2018 OPPS final rule with comment period (82 FR 59384) that we did not expect a significant volume of TKA cases that would previously have been performed in the hospital inpatient setting to shift to the hospital outpatient setting as a result of removing TKA from the IPO list. However, we also acknowledged that as providers' knowledge and experience in the delivery of hospital outpatient TKA treatment developed, there could be a greater migration of cases over time to the hospital outpatient setting. We further stated our intention to monitor the overall volume and intensity of TKA cases performed in the hospital outpatient department to determine whether any future refinements to the CJR model would be warranted.

As of May 2019, since TKAs had been performed in the outpatient setting for the full calendar year of 2018, we had 1 full year of national spending data (including time for claims run out) with which to assess the early impact of TKAs being offered to Medicare beneficiaries in the outpatient setting. Our analysis of this 2018 claims data showed that approximately 25 percent of TKAs were being performed in the outpatient setting, annually. These data also allowed us to explore spending differences between the least resource-intensive inpatient episodes and episodes based on an outpatient procedure. We used resource-intensity of inpatient episodes, as indicated by MS-DRG, as a proxy for identifying which patients may have been appropriate candidates for outpatient TKA, since the clinical information physicians use to make this judgment (for example, the patient's body mass index, smoking history, blood pressure among other clinical information) is not available on claims. Since we expected that the outpatient TKA procedures would only be performed on relatively healthy patients without complications or comorbidities and would have mapped to the MS-DRG 470 without hip fracture category had they been performed in the inpatient setting, we compared spending patterns between inpatient MS-DRG 470 without hip fracture episodes and outpatient TKA episodes (created using the same criteria as CJR model episodes, with the exception that they would have been triggered by the outpatient TKA [CPT code 27447]). Given that inpatient TKA procedures receive an MS-DRG payment while outpatient TKA

procedures are paid at a lower rate as part of payment for the Ambulatory Payment Classification (APC) to which they are assigned, we removed the payments associated with the episode initiating MS-DRG and/or CPT code for TKA, specifically CPT code 27447, and focused on the remaining episode costs for any post-acute spending for these patients who we expected to be clinically similar. As we expected, post-acute spending patterns were highly similar between the inpatient MS-DRG 470/no fracture episodes and the outpatient TKA episodes, with average SNF costs of \$9,229 and \$9,252, and average home health costs of \$3,070 and \$3,074, respectively. Subsequent analysis of 2019 claims data showed similar results, with average SNF costs of \$9,468 and \$9,894, and average home health costs \$3,060 and \$3,029, respectively. This supported our belief that the outpatient TKA episodes were sufficiently comparable to MS-DRG 470/no fracture inpatient CJR model episodes that we should find a way to change the existing CJR model episode definition to encompass outpatient LEJR episodes as well as inpatient LEJR episodes.

2. Changes to Episode Definition To Include Outpatient TKA/THA

Given stakeholders' interest in opportunities to treat LEJR patients in the outpatient setting as part of a bundled payment model, we explored ways to integrate outpatient TKA into the CJR model, as well as THA, in light of the change in the CY 2020 OPPS/ Ambulatory Surgical Center (ASC) final rule to remove THA from the IPO list (84 FR 61353). (We remind readers that the removal of any procedure from the IPO list does not mandate that all cases be performed on an outpatient basis. Rather, such removal allows for Medicare payment to be made to the hospital when the procedure is performed in the hospital outpatient department setting. The decision to admit a patient is a complex medical judgment that is made by the treating physician.)

However, in the case of TKA and THA, if we continued to exclude outpatient TKAs and outpatient THAs from the CJR model and did not allow CJR participant hospitals the incentive to coordinate and improve care for these outpatient episodes, it is possible that this policy decision could create an unintentional financial incentive to perform a proportion of these procedures in a more expensive inpatient setting than would otherwise be medically necessary, thereby increasing costs to the Medicare

program. Continuing to exclude outpatient TKAs and outpatient THAs would also potentially reduce the generalizability of future results from the CJR model evaluation, as CJR participant hospitals would be less comparable to control group non-CJR participant hospitals that did not have the same incentive to keep TKA and THA episodes in the inpatient setting, rather than moving appropriate episodes into the outpatient setting. Therefore, to ensure that our evaluation findings are as robust and generalizable as possible, we aim to incorporate outpatient LEJR procedures in such a way that we do not incentivize participants to choose a setting based on financial considerations rather than a given patient's particular level of need.

One of CMS' recent goals has been to move toward site neutrality in pricing. For example, in the CY 2019 OPPS final rule (83 FR 58818) we finalized our policy to pay for clinic visits furnished at excepted off-campus provider-based hospital departments at an amount equal to the site-specific physician fee schedule payment rate for the clinic visit service furnished by a non-excepted off-campus provider-based hospital department. This goal was also reflected in the CY 2020 OPPS final rule (84 FR 61365), where we continued the 2-year phase-in of this site-neutral payment policy. Consistent with our goal for site neutrality, we do not want to create separate prices for inpatient and outpatient CJR model episodes. We also want to be consistent with the BPCI Advanced voluntary bundled payment model, which offers a site-neutral LEJR episode and began January 1, 2020. These considerations, in conjunction with our finding that post-acute care costs were markedly similar for inpatient short stay TKAs, identified as those DRG 470 claims with lengths of stay of 2 or fewer days, and outpatient TKAs, with much of the difference in overall episode prices accounted for by the MS-DRG payment for inpatient episodes versus the outpatient procedure rate paid through OPPS, supported our belief that we could create a site-neutral episode that would include both outpatient TKAs and the least complicated, short stay inpatient TKAs, which would group to the MS-DRG 470 without hip fracture category. However, given the remaining difference in post-acute spending, as well as the higher amount paid by Medicare for an inpatient procedure billed under the IPPS as opposed to an outpatient procedure billed under the OPPS, we recognize that simply providing the same target price for both

inpatient TKA episodes and outpatient TKA episodes, based on historical spending for the two episode types blended together, would mean that the single blended target price could potentially underestimate spending on some inpatient episodes and likewise, could potentially overestimate spending on some outpatient episodes. This would theoretically average out across all MS-DRG 470 without hip fracture episodes at the regional level during reconciliation, but given the fact that hospitals' ratio of inpatient-to-outpatient cases will vary, we believe an additional episode-specific risk adjustment to the target price is needed to account for beneficiary-specific factors other than the presence of a hip fracture. We discuss our proposal to risk adjust episodes in more detail in section II.C.4. of this final rule. We believe that our episode-specific risk adjustment methodology will incentivize clinicians to continue performing LEJR procedures in the appropriate clinical setting, particularly since performing these procedures on sicker patients in the outpatient setting could increase the risk of post-acute complications and lead to higher overall episode spending.

Therefore, beginning with our proposed PY6, we proposed to revise the definition of an episode of care in the CJR model to include permitted outpatient TKA/THA procedures. This revised definition would have applied to episodes initiated by an anchor procedure furnished on or after October 4, 2020, because the 90-day episode would end on or after January 1, 2021, which would have been the first day of PY6. We note that, due to the extension of PY5, the revised definition would now apply to episodes initiated by an anchor procedure furnished on or after July 4, 2021, because the 90-day episode would end on or after October 1, 2021. Further, we proposed to group the outpatient TKA procedures together with the MS-DRG 470 without hip fracture historical episodes in order to calculate a single, site-neutral target price for this category of episodes, given that spending on outpatient TKA episodes most closely resembles spending on MS-DRG 470 without hip fracture episodes. We proposed that prices for the other three categories (MS-DRG 469 with hip fracture, MS-DRG 469 without hip fracture, and MS-DRG 470 with hip fracture) would continue to be calculated based on historical inpatient episodes only (with the exception of outpatient THA with hip fracture, which we would expect to happen rarely if at all, as described in this section). Since MS-DRGs 521 and

522 were introduced after the proposed rule was published, and subsequently incorporated into the CJR episode definition in the November 2020 IFC, effective as of October 1, 2020, we note that the comparable groupings using the updated MS-DRGs are as follows: MS-DRG 469 without hip fracture is now MS-DRG 469, MS-DRG 469 with hip fracture is now MS-DRG 521, MS-DRG 470 without hip fracture is now MS-DRG 470, and MS-DRG 470 with hip fracture is now MS-DRG 522.

Since the proposal to remove THAs from the IPO list had recently been finalized at the time of our February 24, 2020 proposed rule, we also proposed to include outpatient THA procedures with MS-DRG 470 episodes in order to calculate a target price. Although we did not have Medicare claims data for outpatient THA at that time, as we did for outpatient TKA, we noted that the costs for TKA and THA tend to be similar, which is why the inpatient procedures are priced together in MS-DRGs 469 and 470. Outpatient THAs have been assigned to the same Comprehensive Ambulatory Payment System (C-APC) 5115 (Level 5 Musculoskeletal Procedure) as outpatient TKA (84 FR 61253). Since the display of the proposed rule, we were able to analyze episode spending for selected 2020 claims data for TKA and THA episodes performed in the hospital outpatient department. We examined average episode costs for episodes initiated between July 1 and September 30 of 2020. We chose the third quarter because volume better approximated pre-COVID-19 PHE levels than earlier quarters in 2020 when many outpatient TKA and THA procedures were suspended. Further, it was the most recent available quarter of data with completed 90-day episodes after allowing time for claims runoff. We observed that average total costs for outpatient THA episodes (\$14,925) and outpatient TKA episodes (\$15,286) were quite similar.

Therefore, we believed that the site-neutral MS-DRG 470 price that we proposed to calculate (which would be based on a blend of inpatient TKA, inpatient THA, outpatient TKA, and outpatient THA episodes) would also be appropriate for outpatient THA episodes. However, in the case of THA, we would include any outpatient THA episodes without hip fractures in the MS-DRG 470 without hip fracture (now MS-DRG 470) episode pricing and we would include any outpatient THA episodes with hip fractures in the MS-DRG 470 with hip fracture (now MS-DRG 522) episode pricing. Compared to TKAs, which we would not expect to be

performed on an outpatient basis in the presence of a hip fracture due to the added complexity of treating the hip fracture while performing the TKA, we believe that THAs with hip fractures would be somewhat more likely to be performed on an outpatient basis, since the THA could be treatment for the hip fracture. We note that most hip fracture cases involving a THA surgery typically present emergently and involve an inpatient admission, so we anticipate that few, if any, outpatient THA cases will involve hip fractures. However, we acknowledge the possibility that medical advances in the next 3 years could cause this to change. Therefore, we believe it is appropriate to separate outpatient THA into with and without hip fracture episodes that would be grouped into MS-DRG 522 and MS-DRG 470 episodes, respectively, because we expect that spending for outpatient THA with hip fracture and without hip fracture episodes would resemble spending for MS-DRG 522 and MS-DRG 470 episodes, respectively.

Given that we proposed that outpatient TKA and THA could initiate CJR model episodes, we similarly proposed that an outpatient TKA or THA, if furnished at a participant hospital during an ongoing 90-day CJR model episode, would cancel the ongoing episode and initiate a new episode. When an episode is cancelled, this means that the services associated with the cancelled episode continue to be paid under Medicare FFS, but the cancelled episode is not included in the annual reconciliation calculation. This is consistent with our current policy that inpatient hospitalizations for MS-DRGs 469, 470, 521, or 522 that occur at a participating hospital during an ongoing CJR model episode cancel the ongoing episode and initiate a new episode. We proposed to extend that policy to outpatient TKA and THA episodes.

In conclusion, an active CJR model episode initiated by a prior admission to an acute care hospital for DRG 469, 470, 521, or 522 would be cancelled, and a new CJR model episode would be initiated, if either an inpatient LEJR procedure or an outpatient TKA or THA were furnished to an eligible beneficiary at a participating hospital during the ongoing episode initiated by the first joint procedure hospitalization. Similarly, a CJR model episode initiated by a first anchor procedure (outpatient TKA or THA) would be cancelled, and a new CJR model episode would be initiated, if either an inpatient LEJR procedure or an outpatient TKA or THA were furnished to an eligible beneficiary at a participating hospital during the

ongoing episode initiated by the first anchor procedure.

Since the publication of the February 24, 2020 proposed rule, CMS finalized phasing out the IPO list entirely over a 3-year period in the CY 2021 OPPS/ASC final rule with comment period (85 FR 85866 through 86305). TAR was among the procedures removed from the IPO list for CY 2021. This means that, as of January 2021, Medicare will pay each of the procedures included in the CJR model (TKA, THA, and TAR) when performed in an outpatient department of the hospital. Unlike THA and TKA, we do not expect that TAR will be widely performed in the hospital outpatient department. The procedure is much more complex than TKA or THA. In the absence of an MCC, both TKA and THA are typically paid through the less expensive MS-DRG 470, as discussed. However, Medicare always pays for TAR through the more expensive MS-DRG 469, in recognition of TAR's higher complexity and resource-intensity. We expect less complex patients to be eligible for treatment in the hospital outpatient department. Further, TAR is significantly less common than TKA and THA, comprising only 0.8 percent of all CJR episodes in 2020. For this reason, we are not incorporating outpatient TAR into the CJR episode definition. We will monitor data on TAR and consider future adjustments to the CJR episode definition, if warranted, through notice-and-comment rulemaking.

The following is a summary of the comments received and our responses.

Comment: Several commenters supported CMS' proposal to incorporate outpatient TKA and outpatient THA into the CJR model episode definition. A commenter stated they view this change as allowing the model to keep pace with the changing standards of care and clinical practices across the country. Multiple commenters stated that since CMS has authorized TKA and THA surgery to be performed in the outpatient hospital setting under the Medicare program, it is appropriate to include these procedures in the CJR model to encourage hospitals, physicians, and post-acute care providers to work together to improve the quality and coordination of care for patients in this setting. A commenter stated that they commended CMS for taking steps to align the CJR model with other value-based care initiatives, namely the BPCI Advanced model, which includes both inpatient and outpatient LEJR episodes. A commenter stated their agreement with our proposal to distinguish between outpatient THA

cases with and without hip fracture, even though hip fracture cases involving THA surgery typically would involve an inpatient admission.

Response: We appreciate the commenters' support for our proposal to revise the CJR model episode definition to include outpatient TKA and THA. We agree that this change will encourage increased quality of care and care coordination across a wider range of treatment settings. We further appreciate that commenters supported our effort to better align the CJR model with BPCI Advanced, as well as our decision to distinguish between outpatient THA with and without hip fracture.

Comment: Multiple commenters recommended that CMS add a definition at § 510.2 to specify that for the CJR model purposes, "outpatient setting" means the hospital outpatient department (HOPD). These commenters pointed out that this would distinguish HOPDs from other alternatives to inpatient care, such as an ASC.

Response: We appreciate the commenters' suggestion, which we believe pertains to the definition of anchor procedure and its use of the term "outpatient setting." We agree that the definition should be revised to clarify that by outpatient setting we mean a hospital outpatient department. We have made this change to the regulatory definition of "anchor procedure" at § 510.2.

Comment: A few commenters requested clarification as to how outpatient episodes and their associated costs will be identified. A commenter asked whether outpatient episodes would be identified based on the presence of CPT codes 27447 or 27130 on the claim. Another commenter noted that when a patient has outpatient surgery for joint replacement, they often spend a night in the hospital and are seen by other physicians, such as hospitalists, to manage medical issues. The commenter asked whether the services of these physicians, which would be billed to Part B using CPT codes 99201–99215, would be included in the bundle as costs. Another commenter requested clarification on whether the episode would begin on the day of surgery as reported on the claim form, and, given that the 3-day payment rule does not apply to outpatient procedures, whether any pre-operative services in the 3 days prior to surgery would be included in the episode.

Response: We appreciate the opportunity to provide clarifying details as to how outpatient TKA and THA episodes will be determined. Outpatient episodes will be identified by the

presence of CPT codes 27447 (TKA) or 27130 (THA) on an outpatient claim (specifically, a hospital's institutional claim for an outpatient TKA or THA billed through the OPPS). The episode begins on the day of the anchor procedure, which will also be considered the discharge date, (that is, it would be considered day 1 of the 90-day post-acute portion of the episode).

In response to the commenter who referenced the 3-day payment rule (75 FR 50346), we note that this refers to the policy that states that a hospital (or an entity that is wholly owned or wholly operated by the hospital) must include on the claim for a beneficiary's inpatient stay, the diagnoses, procedures, and charges for all outpatient diagnostic services and admission-related outpatient non-diagnostic services that are furnished to the beneficiary during the 3-day (or 1-day) payment window. This means that such services are included under the MS-DRG payment, rather than billed separately, and in that way are reflected in the CJR model episode, even if they occur prior to the day of inpatient admission. We note that outpatient CJR model episodes will not have a comparable policy, so services provided prior to the day of the outpatient procedure will not be included in episode costs.

Our decision not to include a 3-day lookback for outpatient episodes is consistent with our decision in the November 2015 final rule to only include Part B claims for services on or after the date of admission in inpatient episode spending (80 FR 73315). Although we acknowledged at that time that there may be opportunities for care redesign and improved efficiency prior to the inpatient hospitalization, we stated our belief that these opportunities would be limited for an episode payment model focused on a surgical procedure and the associated recovery, as opposed to a different type of model that focused on decision-making and management of an underlying clinical condition itself (such as osteoarthritis). We also stated our belief that beginning the episode too far in advance of the LEJR surgery would make it difficult to avoid bundling unrelated items, and starting the episode prior to hospital admission would be more likely to encompass costs that vary widely among beneficiaries, which would make the episode more difficult to price appropriately. (80 FR 73316).

However, since TKA was removed from the IPO list in 2018, we have discovered that the Part B claim for the surgeon's professional services is occasionally missing from CJR episode spending for inpatient episodes

associated with an inpatient TKA procedure. This was an extremely rare occurrence when all LEJR procedures were performed on an inpatient basis (0.2 percent of episodes in both PY1 and PY2), because the LEJR procedure would always be associated with an inpatient stay with a date of admission on or before the procedure itself, since it would not be paid for by Medicare if performed in the outpatient setting. Now that LEJR procedures can be performed on either an inpatient or outpatient basis, meaning that the LEJR procedure itself may or may not be associated with an inpatient stay, the decision of whether or not to admit the patient for an inpatient stay does not necessarily need to be made on the day of the procedure.

Since the removal of TKA from the IPO list, the frequency of CJR episodes (all of which, by definition, have been associated with an inpatient stay) that have been missing the surgeon's Part B professional claim has increased ten-fold (2.1 percent in PY3, and 2.8 percent in PY4). This omission has occurred because the date of the procedure was prior to the date of the inpatient admission. We believe that in most of these cases, the surgery is performed on an outpatient basis under the assumption that the patient will not require an inpatient admission, but the patient is subsequently determined to need more acute care and is admitted as an inpatient within 3 days. In such a case, the institutional charge for the procedure, which originally would have been billed through the OPPI, would instead be billed through the IPPS. Had the subsequent inpatient admission not occurred, the procedure would have been considered an outpatient procedure for purposes of the CJR episode definition, and it would not have triggered a CJR episode. However, as a result of the subsequent inpatient admission, the procedure would instead be associated with an institutional charge billed through the IPPS, and therefore would trigger a CJR episode even though the procedure itself predated the inpatient admission.

In the case of the subsequent inpatient admission after an outpatient LEJR procedure, most costs associated with the inpatient hospitalization would still be included in the MS-DRG payment due to the 3-day lookback period that already applies to inpatient hospitalizations, but the surgeon's professional claim (dated within 3 days prior to the date of admission in 98 percent of these cases), would not be included in CJR episode spending because it would be billed as a Part B professional claim with a date of service

prior to the date of the inpatient admission. Given our clearly stated intention to include claims for Part B professional services on the date of the surgery, we are making a technical change to the services included in a CJR episode, which in PYs 6–8 will begin on the date of admission for episodes initiated by an inpatient hospitalization (that is, an anchor hospitalization) or the date of the procedure for episodes initiated by an outpatient procedure (that is, an anchor procedure). This change will only apply to episodes initiated by an inpatient anchor hospitalization that do not include a surgeon's Part B professional claim for the LEJR procedure itself because the procedure occurred prior to the inpatient admission date.

Beginning in PY6, in these cases only, we will perform a 3-day lookback to identify the surgeon's Part B professional claim and include it in episode spending. The episode start date will continue to be the date of admission on the IPPS claim associated with the anchor hospitalization that triggered the episode, rather than the procedure itself being treated as an anchor procedure and triggering the episode. To clarify the fact that the procedure would not be considered an anchor procedure in this situation, we have amended the definition of anchor hospitalization to specify that an anchor hospitalization would be initiated upon admission to an inpatient hospital stay within 3 days after an outpatient TKA or outpatient THA procedure and amended the definition of anchor procedure to specifically exclude such situations. The 3-day lookback policy for episodes triggered by an anchor hospitalization that are missing the surgeon's Part B professional claim will be specifically limited to the surgeon's Part B professional claim, such that no other claims during that 3-day period prior to the date of the inpatient admission will be pulled into the episode spending total. We have made this technical change to the regulation text at § 510.200(b)(15).

Comment: A commenter requested that we provide outpatient cost data to participant hospitals, as participant hospitals currently do not have access to the full cost of care for Medicare beneficiaries in the outpatient setting. They stated their belief that this information would help providers better understand beneficiaries' needs and how to meet those needs more cost effectively, whereas without the cost data, it would be difficult to understand the impact of the variable case mix on cost.

Response: We agree that as a result of the revised episode definition, participant hospitals will need additional data for episodes that are initiated in the outpatient setting to facilitate their success in the CJR model. We will provide participant hospitals with monthly claims data for outpatient episodes that are comparable to what they currently receive for inpatient episodes. They will have timely access to claims data across all treatment settings included in the episodes, which will allow them to better understand beneficiaries' needs and how to meet those needs in the most cost effective way while maintaining care quality.

Comment: Multiple commenters supported the proposal to create a site-neutral target price for inpatient and outpatient episodes. MedPAC stated that it supports adding LEJR procedures performed in outpatient hospital departments to the CJR model and setting site-neutral target prices for inpatient and outpatient episodes. MedPAC further stated that it agrees with CMS's proposal to base the target price for MS-DRG 470 without hip fracture on a blend of historic spending for outpatient TKA episodes, outpatient THA episodes without hip fracture, and inpatient episodes for MS-DRG 470 without hip fracture because of the cost similarity of these episodes. Another commenter stated their belief that the proposed addition of outpatient procedures as a blended, site-neutral payment adequately captures episodes that are triggered in hospital-based outpatient departments, and that the addition of hospital outpatient procedures to the CJR model will aid CMS in driving efficiency in these settings. Another commenter stated their support for including outpatient procedures in the CJR model because it decreases the incentive to perform these procedures in the inpatient setting unnecessarily on otherwise healthy patients who lack complications or comorbidities, particularly in light of the similar cost considerations for post-acute care for both inpatient and outpatient procedures.

Response: We appreciate the commenters' support for our creation of a site-neutral target price for inpatient and outpatient episodes.

Comment: A commenter stated that they support site neutral target prices, but stated that this support was contingent on the quality of the surgical care and medically necessary follow-up rehabilitation care being maintained. Another commenter similarly stated that they support site neutral target prices, but expressed concern about the potential for a site neutral inpatient/

outpatient target price to drive higher risk patients to the lower cost outpatient setting. This commenter stated their concern that hospitals would overrule the decision-making of the physician and patient as to the most appropriate setting for the patient's surgery, such that a patient who, based on the clinician's judgment and/or the patient's preference, should receive a TKA or THA on an inpatient basis would instead receive the procedure on an outpatient basis. They urged CMS to regularly analyze utilization data and monitor for significant shifts in procedure setting and/or negative outcomes, and make results from these analyses publicly available through peer-reviewed literature and CMMI model evaluation reports.

Response: We appreciate the commenters' support for our creation of a site-neutral target price for inpatient and outpatient episodes. We also acknowledge their concern about unintended consequences, where a provider might choose to steer certain patients to the outpatient setting when it is not in the best interest of, or is against the preferences of, the patient. We note that, since the IPO list was established in 2000, we have consistently stated that regardless of how a procedure is classified for purposes of payment, we expect that in every case the surgeon and the hospital will assess the risk of a procedure or service to the individual patient, taking site of service into account, and will act in that patient's best interest (65 FR 18456). We have reiterated this sentiment in rulemaking several times over the years, including the removal of TKA from the IPO list in the CY 2018 OPPI/ASC final rule with comment period (82 FR 59383), removing THA from the IPO list in the CY 2020 OPPI/ASC final rule with comment period (84 FR 61142), and most recently in phasing out the IPO list in the CY 2021 OPPI/ASC final rule with comment period (85 FR 86083). The decision regarding the most appropriate care setting for a given surgical procedure is a complex medical judgment made by the physician based on the beneficiary's individual clinical needs and preferences and on the general coverage rules requiring that any procedure be reasonable and necessary (84 FR 61354). We expect hospitals to respect the decision of the physician and patient.

Additionally, as we stated in the February 2020 proposed rule, a provider who treats a patient in the outpatient setting when the inpatient setting would be more appropriate risks the patient developing complications and requiring costlier care to recover from those

complications than would have been necessary if the patient's procedure had taken place in the more appropriate inpatient setting. Our episode-level risk adjustment (described in Section II.C.4) is designed to incentivize the provision of care in the appropriate setting, by increasing the episode target price for beneficiaries who are likely to require more resources and be costlier to treat, due to the complexity of their condition, and lowering the episode target price for beneficiaries who are likely to require a lower degree of care. We believe this methodology will greatly reduce the likelihood of a participant treating a beneficiary in a setting that is not concordant with the beneficiary's actual care needs.

Finally, we will continue the monitoring practices that we have had in place throughout the CJR model to identify patterns of inappropriate care, which includes monitoring the proportion of patients who are treated in the outpatient setting by CJR participant hospitals in comparison to non-CJR participant hospitals. If we see that certain hospitals are treating patients in the outpatient setting at a rate that is different from their peers and cannot be explained by aspects of the hospital's patient population such as average age, count of CMS-HCC conditions, and area-level socioeconomic factors, then we have multiple options for remediation as described in the November 2015 final rule, which include requiring the participant hospital to develop a corrective action plan and reducing or eliminating a participant hospital's reconciliation payment (§ 510.410(b)(2)). We will also continue to share changes in practice patterns and trends we identify through evaluation reports and other means.

Comment: Many commenters stated that they do not believe the episode definition should be changed at this point in time. They suggested either postponing the inclusion of outpatient episodes in the CJR model, or maintaining separate cost target categories for outpatient TKA and outpatient THA, rather than grouping them with DRG 470. A few commenters expressed their concern that the safety of outpatient TKA and outpatient THA has not been established, and that CMS does not have enough experience with these episodes to incorporate them into the CJR model.

Response: We acknowledge that, at the time that the February 2020 proposed rule was published, both TKA and THA had been removed from the IPO list relatively recently, and we appreciate the commenters' concerns about patient safety. However, the

extension of PY5 through September 30, 2021 means that by the time outpatient TKA and outpatient THA episodes are incorporated into the CJR model, participant hospitals will have had just under 4 calendar years of experience with outpatient TKA and just under 2 calendar years of experience with outpatient THA. Prior to CMS' recommendation to postpone elective surgeries between March and April of 2020 due to COVID-19 PHE, the percentage of outpatient TKA episodes had been steadily increasing since outpatient TKA was removed from the IPO list as of January 2018. In February 2020, 43 percent of TKA procedures at CJR participant hospitals were performed in the outpatient setting. This suggests that hospitals had the experience of treating a substantial number of outpatient TKA patients during the two years prior to the temporary suspension of elective surgeries. The number of outpatient THA procedures beginning in January 2020 showed a similar pattern to outpatient TKA, suggesting that hospitals had a similar level of confidence in their ability to manage outpatient THA patients. After a steep decline in outpatient TKA/THA volume during the months of March and April of 2020, elective surgeries resumed in May and showed monthly volume increases through the summer of 2020, although we acknowledge that some hospitals have since chosen to postpone elective surgeries for varying periods of time due to local COVID-19 resurgences. Given the degree to which we expect outpatient TKA and outpatient THA to return to their previous volumes as a result of decreased COVID-19 hospitalizations and due to the national COVID-19 vaccination campaign currently underway, we believe that by the time PY6 begins and outpatient TKA and outpatient THA are incorporated into the CJR episode definition, hospitals will have had the opportunity to perform enough of these outpatient procedures to have gained considerable expertise in their outpatient episode management.

Regarding patient safety, we note that State and local regulations, accreditation requirements, hospital conditions of participation (CoPs), medical malpractice laws, and other CMS initiatives will continue to ensure the safety of beneficiaries receiving TKA or THA in both the inpatient and outpatient settings, so we believe that further delay is not necessary before incorporating outpatient TKA and THA into the CJR model episode definition.

In particular, the CoPs are regulations that are focused by statute almost exclusively on protecting the health and safety of all patients and are intended to be the baseline health and safety requirements on which hospitals, accreditation organizations, States and localities, and professional organizations can add and build upon with more specific and more stringent requirements. We note that the CoPs already require hospitals to be in compliance with applicable Federal laws related to the health and safety of patients (42 CFR 482.11). Additionally, there are numerous regulatory standards and provisions in the hospital CoPs at 42 CFR 482 that provide extensive patient safeguards and that provide enough room and flexibility so as to ensure that hospitals can follow nationally recognized standards of practice and of care where they are applicable and can adapt if those standards change over time through innovative new practices. We discussed these patient safeguards in more detail in the CY 2021 OPPI/ASC final rule with comment period (85 FR 86084).

As indicated in the 2020 Quality Strategy, CMS has continued to develop safety measures and tools, like the Outpatient and Ambulatory Surgery Consumer Assessment of Healthcare Providers and Systems Survey (OMB Control Number: 0938–1240), to help determine the safety and quality of the performance of procedures in the outpatient setting, to alleviate concerns about the safety and quality of more varied, complex procedures performed in the outpatient setting. Additionally, if a beneficiary communicates a concern about the quality of their care to the Medicare Beneficiary Ombudsman (MBO), that communication will be relayed to the beneficiary's CMS Regional Office and the CJR team for further investigation. The CJR team also regularly monitors episode claims data to identify patterns that suggest inappropriate practices on the part of a CJR participant hospital. Therefore, given CMS' developing ability to measure the safety of procedures performed in the outpatient setting and to monitor the quality of care, we do not believe a delay in incorporating outpatient TKA and THA into CJR is needed.

Comment: Multiple commenters stated their concern about introducing multiple changes to the CJR model at this time, in light of the COVID–19 PHE. They stated that the introduction of outpatient episodes with a blended inpatient/outpatient target price and new risk adjustment methodology was too much change for participant

hospitals to adapt to while they are still dealing with the impacts of the COVID–19 PHE.

Response: We appreciate the commenters' concerns, and we recognize that the COVID–19 PHE has created many challenges for participant hospitals and the healthcare system as a whole. In order to support continuity of model operations and ensure that participants would not unfairly suffer financial consequences of the COVID–19 PHE due to their participation in the CJR model, we first extended PY5 by 3 months in the April 2020 IFC. Many commenters on the April 2020 IFC requested that PY5 be further extended, for a total of a 12-month extension. In the November 2020 IFC we extended PY5 by an additional 6 months for a total extension of 9 months. Although not the full 12-month extension that commenters requested, we believe that this 9-month extension will provide participant hospitals adequate time to adapt to both the COVID–19 PHE and TKA/THAs being removed from the IPO list. We reiterate that the extension of PY5 through September 30, 2021 means that by the time outpatient TKA and outpatient THA episodes are incorporated into the CJR model, participant hospitals will have had just under four calendar years of experience with outpatient TKA and just under 2 calendar years of experience with outpatient THA. As stated previously, we expect outpatient TKA and outpatient THA to return to previous volumes as a result of decreased COVID–19 hospitalizations and due to the national COVID–19 vaccination campaign currently underway by the time PY6 begins and outpatient TKA and outpatient THA are incorporated into the CJR episode definition. In February of 2020, there were approximately 13,000 TKA and 5,500 THA performed in the outpatient setting. Although the number decreased dramatically in March 2020, by June 2020 the frequency of outpatient TKA had nearly returned to pre-COVID 19 PHE levels and outpatient THA exceeded previous levels, with approximately 11,500 TKA and 6,500 THA performed in the outpatient setting that month. Therefore we believe that hospitals will have had the opportunity to perform enough of these outpatient procedures to have gained considerable expertise in their outpatient episode management and they will be able to adapt to the changes to the CJR model when they are introduced for PY6.

Comment: A commenter stated that, while they understood that CMS cited its primary reason for the extension was to test the impact of Medicare paying for

TKA and THA in the hospital outpatient setting, there are a number of factors that would prove problematic for testing that episode under the CJR model. For example, they stated their belief that it would be difficult, if not impossible, to generalize any future findings from the CJR model that occur over the next several years, as these evaluation results would be confounded by the impact of the COVID–19 PHE.

Response: We acknowledge the commenter's concern about the generalizability of results due to the COVID–19 PHE. However, given the extension of PY5 through September 30, 2021 and the expectation that COVID–19's impact on participant hospitals will be greatly mitigated by an aggressive COVID–19 vaccination initiative through the first 3 quarters of 2021, we believe that the experience of CJR participant hospitals under the modified methodology will largely reflect the post-COVID–19 realities of the healthcare system that will continue for the foreseeable future. Therefore we believe that the results will be sufficiently generalizable to test the impact of CJR methodology on outpatient TKA and outpatient THA episodes.

Comment: Multiple commenters suggested that CMS create separate cost target categories for outpatient TKA and outpatient THA in the CJR model due to their assertion that the episode-level risk adjustment methodology would not sufficiently mitigate the cost differential between inpatient and outpatient episodes. They pointed out that patients who fall into a low risk category may prefer to be treated in the inpatient setting for a variety of reasons that are not captured in the risk adjustment. Other commenters stated their concern that some hospitals may be disadvantaged by a blended target price due to factors beyond the hospital's control, which are not accounted for in the risk adjustment methodology. A commenter pointed out that, while the number of TKAs and THAs performed in the outpatient setting has increased overall, the increase varies widely across hospitals, driven by a number of factors including beneficiary demographics and prevalence of comorbidities in the local market, surgeon experience and preferences, the capabilities of hospitals of various sizes, the availability of multidisciplinary care coordination and discharge planning teams, the types of post-acute care resources present within a region, population dispersion, and rurality within a hospital's referral region.

Response: We acknowledge the commenters' concerns, but we note that

the episode level risk adjustment methodology is designed specifically to address the concern that some hospitals may perform a higher percentage of inpatient episodes due to the age, health, and socioeconomic status of the surrounding patient population. For instance, if the patient population for a given participant hospital tends to be older than that of other participant hospitals, the episode level risk adjustment would adjust the target price upward (assuming the risk adjustment coefficient were greater than 1), such that a participant hospital with an older population would have a greater increase in their aggregate target price due to risk adjustment than would a participant hospital with a younger population. We further note that, although we originally did not propose to include a variable related to socioeconomic status, in response to comments and our subsequent analyses, we are including dual-eligibility in the final risk adjustment methodology as a proxy for socioeconomic status, along with the previously proposed age group and CJR HCC count (described in section II.C.4 of this final rule). Participant hospitals that treat an older, sicker, or socioeconomically disadvantaged population will have their episode target prices adjusted upwards accordingly. Our decision to remove rural and low-volume hospitals from the extension will also reduce the variation between the remaining participant hospitals in PY6–8 in terms of size, population dispersion, and rurality within participant hospitals' referral regions.

Comment: A few commenters stated concerns related to the calculations underlying our proposed changes to the target price calculation methodology and the information we provided in the proposed rule to allow commenters to understand and comment on our proposed methodology. A commenter stated their concern that CMS did not provide further information about how we analyzed the impact of the mix of inpatient versus outpatient procedures on site-neutral pricing. This commenter also stated their belief that CMS's proposal to revise the existing MS–DRG 470 without hip fracture pricing category to include both outpatient TKA and outpatient THA appeared to be based on limited data and simulated cost comparisons, and that CMS did not provide an adequate description of the methodology or access to data for independent analysis. Another commenter stated that, due to the fact that MS–DRG weights are calculated using data with a 2-year lag, the current

MS–DRG 470 payment is based on costs for an overall healthier pool of patients, because healthier patients had not yet begun shifting to the outpatient setting at that time. This commenter stated their belief that the payment for MS–DRG 470 was therefore inadequate and should not be used as the basis for target prices in a mandatory model.

Response: We disagree with commenters who stated that the analyses underlying our decision to calculate a blended inpatient/outpatient target price were insufficient due to the use of simulated episode data. Although we acknowledge that actual episode data are preferable, we believe that multiple aspects of our target price methodology (for example, the use of the most recent 1 year of baseline data, risk adjustment, and the retrospective market trend adjustment) will allow for the adjustment of target prices to the extent that data from actual outpatient episodes (with TKA beginning in 2018 and THA beginning in 2020) differ from the simulated episode data we used to design the methodology. We built this flexibility into the target price methodology specifically to address the fact that patterns of care and spending can evolve over time. We note that we did not calculate a specific factor to determine the impact of site on the target price, because outpatient episodes constituted a relatively small percentage of all TKA/THAs at the time we performed our analyses, and we could not assume that such a factor would give a meaningful estimate of the impact of site on the target price over time. We further note that we have updated our analyses using 2019 claims data, which include a full year of actual outpatient TKA episodes, and the results have been consistent with those we reported based on simulated episodes from previous years (see Tables 3a and 4a in section II.C.4 of this final rule). For more specific data on the blended target price, we point commenters to Table 2a of this final rule in section II.B.2. of this final rule for preliminary regional target prices for PY6. We acknowledge that changes to the Medicare policies determining payment for TKAs/THAs have resulted in shifts in site of service that could impact the cost of episodes, but we point out that the change from using 3 years of data to 1 year of data as a baseline for target prices and our retrospective market trend adjustment are both designed to allow target prices to better reflect changes in both practice patterns and Medicare payment systems. Finally, we note that the fact that we received substantive comments on the blended target price methodology

from the majority of commenters on this topic indicates that we provided an adequate level of information to enable providers to evaluate the methodology. Therefore we believe that we described our data analyses adequately and that our use of simulated episode data, with results later confirmed by analyses of actual episode data, was an appropriate basis for our decision to calculate a blended target price.

Comment: Multiple commenters requested that CMS issue a standard set of criteria to help participants determine which patients are suitable candidates for outpatient surgery. A commenter stated his or her belief that, taking into consideration the proper patient assignment and providers' clinical judgment, it would be beneficial to many CJR participant hospitals if CMS provided directional criteria for outpatient THA/TKA versus inpatient total joint replacements. They stated that a standard set of criteria would benefit many hospitals when it comes to the clinical pathways adoption rate. Other commenters pointed to the October 2018 "Position Statement on Outpatient Joint Replacement," jointly issued by the American Association of Hip and Knee Surgeons (AAHKS), the American Academy of Orthopaedic Surgeons (AAOS), The Hip Society, and The Knee Society, which includes recommendations for outpatient hip and knee arthroplasty procedures to guide hospitals, surgeons, and institutions in appropriate and safe patient care. These commenters urged CMS to work with these societies to operationalize their recommendations. Another commenter provided a list of medical and psychosocial exclusion criteria that the commenter believes should be applied to outpatient TKA and THA episodes. A commenter suggested that CMS could provide guidance on predictive tools to inform discharge planning to facilitate surgeon/hospital establishment of patient risk profiles. Another commenter requested detailed guidance on the application of the 2-midnight rule to TKA and THA procedures.

Response: We acknowledge these commenters' request, but we note that CMS does not make clinical recommendations for care. We believe that the treating clinician, in partnership with the patient, is best suited to make the judgment of the appropriate clinical setting. Other government agencies, such as the Agency for Healthcare Research and Quality (AHRQ), or professional societies may provide resources to help guide clinical decisions. For guidance on the application of the 2-midnight rule to TKA and THA procedures we

refer commenters to the CY 2020 OPPS/ASC rule (84 FR 61363 through 61365).

Final Decision: After consideration of the public comments received, we are finalizing our proposal to include outpatient TKA and THA in the CJR model episode definition with a blended inpatient/outpatient target price. (The methodology for calculating this blended target price is discussed in section II.B. of this final rule.)

3. Freezing Hip Fracture List and Episode Exclusions List

In the November 2015 final rule we finalized our proposal to establish a sub-regulatory process to update both the hip fracture list (indicating the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) and ICD-10-CM codes that would designate a hip fracture for purposes of risk adjustment in the baseline period and performance period, respectively (80 FR 73544) and the episode exclusions list (indicating which services would be considered unrelated to the episode, and therefore excluded from episode spending totals in both the baseline period and performance period) (80 FR 73305). At that time, Medicare had recently transitioned from the use of ICD-9-CM codes to ICD-10-CM codes (as of October 2015), and the ICD-10-CM code list was being expanded on an annual basis. For this reason, we finalized our proposal to update both the hip fracture list and the exclusions list without rulemaking on at least a yearly basis to reflect annual changes to ICD-CM coding, annual changes to the MS-DRGs under the IPPS, and any other issues that were brought to our attention by the public throughout the course of the model test (80 FR 73305). Our first set of revisions, applicable as of October 1, 2016, added 40 additional codes within the M84 category to the original 1,152 codes on the hip fracture list and 60 additional code categories to the original 574 code categories on the episode exclusions list.

Now that Medicare has used the ICD-10-CM coding system for over five years, the rate of annual coding changes has stabilized, which has resulted in fewer, if any, changes to either the hip fracture or episode exclusions list in recent years of the CJR model. For FY 2018, the hip fracture list remained unchanged, while 28 categories were added to the episode exclusions list. For FY 2019, we did not identify any changes to the ICD-10-CM codes that would impact the hip fracture list or episode exclusions list, so they were not updated. We note that the introduction of the new MS-DRGs 521 and 522 is a

different way for the IPPS grouper to assign an MS-DRG weight to a subset of existing ICD-10-CM codes to reflect a differential in the cost of the associated hospitalization, as opposed to a new category of ICD-10-CM codes that would be considered for the exclusions list. The new MS-DRGs will also mean that the hip fracture list will become irrelevant in most cases, as episodes with hip fracture will be identified by the MS-DRG rather than primary ICD-10-CM code associated with the MS-DRG. (Although the hip fracture list would be used to identify a hip fracture in the case of an outpatient THA, we expect that THA in the presence of a hip fracture will almost always be performed in the inpatient setting.) Given the relative stability of the ICD-10-CM code set used to determine hip fractures and exclusions, we proposed to discontinue our annual sub-regulatory process to update the hip fracture list and episode exclusions list. We sought comment on our proposal and whether there are any circumstances in which updates may still be needed.

Comment: A commenter did not oppose CMS' proposal to freeze the hip fracture and exclusions list.

Response: We appreciate the comment. We note that we did not receive any comments opposing our proposal to freeze the hip fracture and exclusions list.

Final Decision: After consideration of the public comments received, we are finalizing our proposal to freeze the hip fracture list and episode exclusions list.

B. Target Price Calculation

1. Background

Currently in the CJR model, participant hospitals are provided with prospective episode target prices for four MS-DRG/hip fracture combinations (MS-DRG 469 with hip fracture/MS-DRG 521, MS-DRG 469 without hip fracture, MS-DRG 470 with hip fracture/MS-DRG 522, and MS-DRG 470 without hip fracture), based on historical episode spending. Participant hospitals have the opportunity to achieve a reconciliation payment if their performance year spending is below the applicable target price, or they may owe a repayment if their spending is above the applicable target price. More specifically, we finalized in the November 2015 final rule (80 FR 73338) the method for establishing episode target prices based on 3 years of standardized historical episode spending. This historical spending is updated by trending forward the older 2 years of historical data to the most

recent of the 3 years being used to set target prices (80 FR 73342). We calculate and apply different national trend factors for each combination of anchor MS-DRG (469 vs. 470) and hip fracture status (with hip fracture vs. without hip fracture). While the CJR model began with a blend of regional ("region" defined as one of the nine U.S. Census divisions⁵) and hospital-specific spending for PYs 1 through 3, episode target prices were based on 100 percent regional spending beginning in PY4. Under current regulations, high episode spending is capped at 2 standard deviations above the mean regional episode payment, and target prices are trended forward at reconciliation to represent performance period dollars. To increase historical CJR model episode volume and set more stable target prices, CJR model episodes are pooled together and anchored by MS-DRGs 469 and 470 (80 FR 73352) factors calculated at the regional- and hospital-specific levels. Target prices are then prospectively updated to account for ongoing Medicare payment system updates (that is, Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS), Physician Fee Schedule (PFS), IPPS, OPPS, and SNF PPS) to the historical episode data (80 FR 73342). Medicare payment systems do not update their rates at the same time during the year. For example, the IPPS, the IRF PPS, and the SNF PPS apply annual updates to their rates effective October 1, while the hospital OPPS and Medicare PFS apply annual updates effective January 1. To ensure we appropriately account for the different Medicare payment system updates that go into effect on January 1 and October 1, we finalized a policy to update historical episode payments for Medicare payment system updates and calculate target prices separately for episodes initiated between January 1 and September 30 versus October 1 and December 31 of each performance year. After target prices are updated for these system updates, local wage factors are used to convert standardized prices back to actual prices, and a 3 percent discount is applied to represent Medicare savings.

2. Overview of Changes to Target Price Calculation

Since the CJR model was implemented in 2016, both TKA and THA have been removed from the IPO

⁵ There are four census regions—Northeast, Midwest, South, and West. Each of the four census regions is divided into two or more "census divisions." Source: https://www.census.gov/geo/reference/gtc/gtc_census_divreg.html. Accessed on September 27, 2019.

list, as discussed in section II.A. of this final rule. In addition, there have been several other Medicare payment policy changes, such as changes to the SNF payment system to move from Resource Utilization Groups (RUGs) to the Patient Driven Payment Model (PDPM). Additionally, as noted in Table 2 in this final rule, national expenditures for LEJR procedures and associated post-acute care services have been decreasing since 2016. While average episode payments declined for both the CJR

model and control group episodes during the first 2 performance years of the model, payments declined more for the CJR model episodes. Average episode payments decreased by \$997 more for the CJR model episodes than for control group episodes from the baseline to the intervention period ($p < 0.01$). This relative reduction equates to a 3.7 percent decrease in average episode payments for the CJR model episodes from the baseline.⁶

Trend data now shows that the decrease in national expenditures

observed by the CJR model evaluation for the CJR participant hospitals and non-CJR participant hospitals for the first 2 years of the model actually began prior to the implementation of the CJR model and has continued consistently post 2016. This improved efficiency can be seen through shorter hospital stays and lower SNF usage. Table 1 shows the summarized Medicare claims data for LEJR per episode spending outside of the CJR model.

TABLE 1: AVERAGE LEJR SPENDING OUTSIDE OF THE CJR MODEL FROM MEDICARE CLAIMS DATA

Program Year	Average Cost Per Episode	Cost Trend
2014	\$26,444	
2015	\$26,006	-1.7%
2016	\$24,925	-4.2%
2017	\$24,352	-2.3%

Excluding CJR participant hospitals, national per episode costs for hip and knee replacement procedures calculated using Medicare claims data dropped by about eight percent from 2014 to 2017, largely due to reductions in the utilization of post-acute services. In

analyzing Medicare claims data from the CMS Integrated Data Repository (IDR) as of April 2019, we constructed CJR model episode costs for all IPPS providers and looked at average per episode spending by region for 2016, 2017, and 2018. While per episode costs

generally decreased for all regions between 2016 and 2018, most regions had a slight increase in episode spending between 2017 and 2018, as shown in Table 2.

**TABLE 2: AVERAGE PER EPISODE SPENDING FOR MS-DRG 469 and MS-DRG 470 EPISODES IN 2016, 2017 AND 2018
(Includes All IPPS Hospitals, Not Just CJR Participant Hospitals)**

Region	2016 Average Standardized Price Per Episode	2017 Average Standardized Price Per Episode	2018 Average Standardized Price Per Episode	Percent Change in Per Episode Price 2016 to 2017	Percent Change in Per Episode Price 2017 to 2018	Percent Change in Per Episode Price 2016 to 2018
New England	\$23,627	\$22,770	\$22,525	-3.6%	-1.1%	-4.7%
Middle Atlantic	\$23,971	\$22,889	\$22,922	-4.5%	0.1%	-4.4%
East North Central	\$22,856	\$21,968	\$22,155	-3.9%	0.9%	-3.1%
West North Central	\$22,280	\$21,524	\$21,692	-3.4%	0.8%	-2.6%
South Atlantic	\$22,859	\$22,029	\$22,275	-3.6%	1.1%	-2.6%
East South Central	\$23,649	\$23,262	\$23,105	-1.6%	-0.7%	-2.3%
West South Central	\$25,037	\$24,354	\$24,649	-2.7%	1.2%	-1.5%
Mountain	\$21,766	\$20,954	\$21,151	-3.7%	0.9%	-2.8%
Pacific	\$22,158	\$21,487	\$21,891	-3.0%	1.9%	-1.2%
National	\$23,118	\$22,316	\$22,482	-3.5%	0.7%	-2.8%

Although the CJR model target price methodology currently includes a DRG/

hip fracture specific national trend update factor and twice yearly updates

for changes in the Medicare prospective payment systems and fee schedules,

⁶ See pg. 3 of the CJR Second Annual Report available on: <https://innovation.cms.gov/Files/reports/cjr-secondannrpt.pdf>

those updates do not capture shifts in spending between the target price and the model performance year and consequently, the current target prices have not accounted for nationwide reductions in LEJR spending from shifting care settings and more efficient care delivery. Therefore, we proposed to change the target price update methodology to use region/MS-DRG/hip fracture specific retrospective trend adjustments to ensure that target prices better capture spending trends and changes. We note that in considering proposed changes to the target price structure for the CJR model, we did consider an option of setting prices at the national, rather than regional level. While we did not elect to model this proposal and instead proposed to continue the regional pricing approach, we sought comment on the appropriateness of moving to national pricing approach in future years of the CJR model with the goal of removing price variation due to differences in regional care delivery patterns.

CJR model target prices are set based on 3 years of baseline data, with the 3-year baseline data updated every other year. When this policy was established we were concerned that we would not have enough claim volume in 1 or 2 years of data to set reasonably accurate hospital-specific prices, especially for smaller hospitals. Our proposed approach to target price calculation differs from the current approach as it involves setting target prices based on 1 year (the most recently available year) of baseline claims data. The baseline claims data used to establish target prices would be updated each year.

We proposed this change because our initial concern of insufficient episode volume stemmed from the fact that we incorporated hospital-specific pricing for the first 3 years of the CJR model. At this point in time, that concern has been mitigated as the baseline data used for target price calculations has moved from a blend of regional and historical baseline data (PYs 1 through 3) to 100 percent regional pricing (PYs 4 and 5). Additionally, since we proposed to include outpatient TKA/THA procedures as well as inpatient admissions for MS-DRG 469 or 470 in the CJR model episode definition (which as of October 1, 2020 has also included MS-DRG 521 and 522), we have determined that the most recently available 1 year of data will in fact be a more appropriate baseline period on which to set target prices as it contains both inpatient and outpatient LEJR claims.

As described in section II.C.6 of this final rule, a trend factor adjustment

applied during reconciliation would account for shifts in the trend of national per episode spending. To the extent that the trend, which is the percent difference between 2 years of data, decreases (as illustrated in Table 2 for 2016 relative to 2018), target prices would decrease. However, if the percent difference shows an increase (as illustrated in Table 2 for 2017 relative to 2018), target prices would increase. Using 1 year of data (rather than 3) removes the need for the national trend update factor we previously used to trend forward the older 2 years of historical data to the most recent of the 3 being used to set target prices (80 FR 73342); we therefore proposed to remove the national trend update factor. We also proposed not to update the target prices twice a year for changes to Medicare Prospective Payment Systems and Fee Schedules, as we believe the new reconciliation trend factor adjustment we proposed would capture any payment changes in addition to any spending trend shifts.

Acknowledging the proposed episode definition changes described in section II.A.2 of this final rule, for the purpose of calculating CJR model episode target prices for PY6 through 8 we proposed that Part A and B Medicare claims data for beneficiaries with CJR model episodes (that is, beneficiaries with a claim for an MS-DRG 470, 469, 522 or 521 or a permitted outpatient TKA/THA procedure billed by a CJR participant hospital) would be grouped into one of the following types of CJR model episodes:

- MS-DRG 470 with hip fracture (now MS-DRG 522), which would include outpatient THA episodes with hip fracture.
- MS-DRG 470 without hip fracture (now MS-DRG 470), which would include outpatient TKA episodes and outpatient THA episodes without hip fracture.
- MS-DRG 469 with hip fracture (now MS-DRG 521).
- MS-DRG 469 without hip fracture (now MS-DRG 469).

We note that, due to the addition of MS-DRGs 521 and 522 to the CJR episode definition, we will make the following adjustment to the baseline episodes used to calculate target prices for PY6 only, because that will be the only year when the baseline data (2019) will not include the new MS-DRGs, while the performance year data will include the new MS-DRGs. For PY6 only, since target prices will be based on the original MS-DRGs but apply to performance period episodes with the new MS-DRGs, we will adjust the IPPS payment in baseline episodes with hip

fracture, multiplying the baseline IPPS payment by the ratio of the new MS-DRG weights for 521 and 522 in the performance period to the MS-DRG weights for 469 and 470 in the baseline period, which will result in target prices that more accurately reflect the methodology we proposed in the February 2020 proposed rule. Our methodology assumed that the IPPS portion of TKA and THA episodes would differ only by the presence or absence of MCC, regardless of hip fracture status. That is, although we calculated target prices separately for episodes with and without hip fracture due to higher post-acute care costs for episodes with a hip fracture, the IPPS payment for MS-DRG 469 with and without hip fracture was based on a single MS-DRG weight, as was the IPPS payment for MS-DRG 470 with and without hip fracture. The introduction of separate MS-DRGs based on hip fracture status means that IPPS payments for TKA and THA episodes, which would have reflected one of two different MS-DRG weights based on MCC in the baseline, would reflect one of four different MS-DRG weights based on both MCC and hip fracture status in the performance period. For instance, in FY 2019, the weight assigned to MS-DRG 470, which included both hip fracture and non-hip fracture episodes without MCC, was 1.9898 (<https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/FY2019-CMS-1694-FR-Table-5.zip>). In FY 2021, the year that MS-DRGs 521 and 522 became effective, the weight assigned to MS-DRG 470, which only included non-hip fracture episodes without MCC, was 1.8999, while the weight assigned to MS-DRG 522, which only included hip fracture episodes without MCC, was 2.1891 (<https://www.cms.gov/files/zip/fy-2021-ipp-s-fr-table-5.zip>). As we expect that FY 2022 weights for these MS-DRGs will similarly reflect greater resource utilization associated with MS-DRG 522 as compared to MS-DRG 470, using 2019 data without adjusting for the change in the MS-DRG weights could potentially cause us to overestimate the cost of appropriate care for MS-DRG 470 episodes and underestimate the cost of appropriate care for MS-DRG 522 episodes during the performance period. By overestimating or underestimating target prices in this way, we could inadvertently reduce savings for Medicare when the target price was overestimated and incentivize stinting of care when the target price was underestimated. Post-acute spending for

these episodes will be subject to the market trend factor. For PY7 through 8 target prices, both the baseline and performance period will include MS-DRG 521 and 522, so the MS-DRG adjustment will no longer be necessary, and all costs for all episodes will be subject to the market trend factor.

To then calculate target prices for PYs 6 through 8, baseline episodes would be stratified into the applicable nine geographic regions, where regional assignment for a given episode would be based on the region to which the MSA for the hospital maps under the CJR model. This would result in 36 separate episode groups, as there would be one group for each region, and MS-DRG. Within each of the 36 groups, we would then array the episode costs, and, consistent with our proposed new methodology for deriving the high episode spending cap amount, we would cap episode costs at the 99th percentile amount within each region/MS-DRG combination. We note that the proposed methodology of capping high episode spending at the 99th percentile would replace the current high episode spending cap methodology, which sets the cap at 2 standard deviations above the mean regional episode payment. We would then calculate the mean episode cost within each group of capped episodes, resulting in 36 average regional target prices. Starting in PY6, at the beginning of each performance year, these average regional target prices would be posted on the CJR model website.

Finally, we note that we proposed to remove the use of an anchor factor and

regional- and hospital-specific anchor weights from the target price calculation that we established in the original November 2015 final rule (80 FR 73273). We originally included this step in the target price calculation to set more stable target prices using a greater volume of CJR model episode data, which was more of a concern when the model began due to the hospital-specific pricing component in PY1 to PY3. During PY1 through PY3, CJR model episodes anchored by MS-DRGs 469 and 470 were pooled together during target price calculations to have a greater historical CJR model episode volume and set more stable target prices, noting that the hospital-specific pooled calculations are later “unpooled.” Specifically, we set the MS-DRG 470 anchored episode target price equal to the target price resulting from the pooled calculations. We then multiplied that MS-DRG 470 target price by the anchor factor to produce the MS-DRG 469 anchored target prices. The calculation of the hospital weights and the hospital-specific pooled historical average episode payments is comparable to how case mix indices are used to generate case mix-adjusted Medicare payments. The hospital weight essentially counts each MS-DRG 469 triggered episode as more than one episode (assuming MS-DRG 469 anchored episodes have higher average payments than MS-DRG 470 anchored episodes) so that the pooled historical average episode payment, and subsequently the target price, is not skewed by the hospital’s relative

breakdown of MS-DRG 469 versus MS-DRG 470 anchored historical episodes. However, since PY4 and PY5 use only regional episode spending data to calculate target prices, and since we proposed for PYs 6 through 8 to continue to use only regional episode spending data to calculate target prices and to utilize only the most recently available year of episode data for target price calculations, we do not believe volume issues will be a concern and thus we do not believe it is necessary to continue to perform these steps. Therefore, we proposed to no longer use the regional and hospital anchor weighting steps from the original CJR model target price calculation methodology.

At the time the proposed rule was published, CMS did not have the necessary data (for example, outpatient data) to calculate and provide sample target prices reflecting the proposed changes to the target price methodology. However, we are including a sample of these target prices for PY6 in Table 2a in this final rule. While these target prices reflect the target price methodology changes described in this section, they will not be the exact target prices used for PY6. As stated in section II.B.2 of this final rule, we will post official PY6 target prices on the CMS website in June 2021. The target prices described in Table 2a of this final rule are meant to serve as an example; we will update the 2019 baseline data again before calculating the official PY6 target prices to ensure completeness of the 2019 data.

TABLE 2a: SAMPLE CJR MODEL TARGET PRICES FOR PERFORMANCE YEAR 6*

CJR Model Region	MS-DRG 469/521	MS-DRG 469	MS-DRG 522/470	MS-DRG 470
	With Fracture	No Fracture	With Fracture	No Fracture
1	\$47,819	\$34,516	\$33,694	\$18,116
2	\$50,173	\$32,856	\$35,903	\$18,418
3	\$46,744	\$31,508	\$34,086	\$17,152
4	\$45,193	\$31,275	\$34,238	\$17,097
5	\$47,519	\$31,900	\$33,999	\$17,241
6	\$47,180	\$32,953	\$33,877	\$17,466
7	\$52,137	\$33,989	\$38,471	\$18,695
8	\$46,127	\$28,806	\$33,304	\$16,557
9	\$46,251	\$31,092	\$32,959	\$17,002

*Sample target prices are not risk-adjusted, normalized, or trend-adjusted.

The preliminary MS-DRG 470 target prices described in this table were

calculated using the blended inpatient/outpatient target prices, as described in

section II.A.2 of this final rule. We further note that the IPPS payment for

episodes with hip fracture in the baseline initiated by MS-DRGs 469 and 470 with hip fracture in 2019 will be adjusted as described in section II.B.4 of this rule so that they will be comparable to episodes initiated by the new MS-DRGs 521 and 522 during the performance year.

The following is a summary of the comments received and our responses.

Comment: Commenters in general were supportive of the proposed changes to the target price methodology but noted concern and considerations about certain changes. A commenter stated that for target price calculations, CMS should consider whether the size of the regions need to be modified based on previous years' findings or if there is significant market variability within a single region. A commenter urged CMS to evaluate the impact of the transition to regional only target pricing on safety-net hospitals that do not compete on a regional basis and that might otherwise value the predictability of target prices based on hospital-specific data.

Response: The CJR model shifted to regional only pricing starting in PY4, and final reconciliation results from PY4 are not complete at this time. However, we continue to believe that this transition to using regional only data for target price calculations will provide valuable information regarding potential pricing strategies for successful episode payment models to reduce variation in LEJR episode payments and reward hospitals for reducing payments below their regional peers. We have no evidence to date suggesting significant variation within a single region that would lead us to consider alternative geographic regions. While safety-net hospitals may value predictability of target prices based on hospital-specific data, we are committed to continuing to test the regional only approach for CJR participant hospitals, including safety-net hospitals, which could strengthen the generalizability of the evaluation results. We also consider that the proposed risk adjustment methodology, which we are adopting with modification as described in section II.C.4 of this rule, will ensure that participant hospitals treating a higher proportion of complex patients are adequately provided upward risk adjustments to their target prices as a result of those costlier patients. Additionally, since all participant hospitals participating in PY6 through PY8 will have already participated in at least one of the performance years PY1 through PY5 of the CJR model, we anticipate these hospitals will be familiar with the CJR model approach to target price calculations based on

regional only data and a regression back to hospital-specific data could be confusing.

Comment: MedPAC suggested CMS move to national target prices, which should be adjusted to reflect local or regional input costs, stating this would incentivize providers in high-cost areas to reduce post-surgical service use and would reward providers in low-cost areas with larger shared savings payments than providers in high-cost areas.

Response: We understand that moving to target prices calculated from national data may enhance the incentive for some areas to reduce episode costs compared to higher cost areas, but we proposed to maintain regional only pricing to ensure stability for existing CJR model participants that will only have experience with target prices calculated from regional-only data for 2 performance years in the CJR model before PY6 begins. Due to the addition of outpatient procedures to the CJR model episode definition, we also expect that regional data is more appropriate to use for target pricing in PYs 6 through 8 given the potential variation in outpatient utilization nationally, similar to the substantial regional variation in utilization for episodes involving LEJR procedures, as referenced in the November 2015 final rule.⁷ CMS appreciates MedPAC's suggestions to generate additional savings for the Medicare program by increasing the discount factor or increasing the stop-loss limit. Many of the changes CMS proposed to the CJR model payment methodology for PYs 6 through 8 are intended to be improvements to the original methodology that will increase the probability for model savings. While CMS could design a payment methodology that attributed a much larger portion of savings to the Medicare program, we must also balance the administrative burden and investments needed by participating hospitals to be successful under the model, and thus proposed a methodology—intended to ensure that CJR participant hospitals are still capable of achieving a certain level of savings for themselves in the model.

Comment: A few commenters requested that CMS ensure that any changes to the CJR model payment methodology in general account for the range of patient complexity and underlying operating costs for sites treating more complex patients in order

to avoid unnecessarily penalizing high quality providers caring for complex patients.

Response: We understand the commenters' requests for a payment methodology that attempts to accurately account for variation in episode costs related to patient complexity. The CJR model initially provided risk adjustment for MS-DRG 470 and MS-DRG 469 patients with the presence of a hip fracture during PYs 1 through 5 in recognition that these patients had higher episode costs compared to non-fracture patients. We also chose that risk adjustment method to protect small and rural participants that may disproportionately have more emergent surgeries, such as hip fractures, in those low-volume settings. The proposed additional risk adjustment variables, as described in section II.C.4. of this final rule, were proposed with these same goals in mind and are meant to further increase the accuracy of target price risk adjustments for PYs 6 through 8. We also recognize that without risk adjustment the addition of outpatient TKA/THA to the CJR model episode definition, as described in section II.A.2 of this final rule, could create pressure for clinicians to recommend the lower cost outpatient setting to minimize total episode costs. The objective of the risk adjustment methodology for PYs 6 through 8 is to incentivize clinicians to continue performing LEJR procedures in the most appropriate clinical setting based on their assessment of each patients' complexity, and we appreciate that this aligns with commenters' requests for a methodology that accounts for the range of patient complexity and costs associated with treating more complex patients.

Comment: A commenter noted that in comparison to the concept of bundles in the commercial insurance market, the payment methodology in the CJR model does not include consideration of such costs and market indicators like innovation, inflation, and an increasingly expensive labor market given the lowering of unemployment. The commenter asserted that under this payment methodology, there will be a point where there will only be losses in offering THA/TKA procedures to Medicare patients leading to loss of access to these procedures.

Response: CMS notes the CJR model was specifically designed for implementation in the Medicare program, where hospitals and beneficiaries are faced with different considerations and choices in the commercial insurance market, such as payment rates and beneficiary benefits. The retrospective market trend factor

⁷ Hussey PS, Huckfeldt P, Hirshman S, Mehrotra A. Hospital and regional variation in Medicare payment for inpatient episodes of care [published online April 13, 2015]. JAMA Intern Med. doi:10.1001/jamainternmed.2015.0674.

and risk adjustment components of the proposed payment methodology are intended to produce accurate target prices that reflect the average regional costs. While the market trend factor may have the effect of decreasing target prices as a result of lower performance period average costs compared to baseline costs, as we note in section II.C.6. of this final rule, the market trend factor could also have the effect of increasing target prices to reflect higher performance period average costs, including market conditions such as inflation and labor costs. We do not believe the target price methodology will have the effect of decreasing access to THA and TKA procedures given the proposed market trend factor and 1 calendar year of baseline data that should appropriately align performance period spending with baseline spending.

Comment: A few commenters stated that CMS provided insufficient data and did not fully describe the proposed target price methods and results of the simulated comparisons to allow independent analyses by stakeholders. In particular, a commenter requested that CMS make available all of the relevant data, along with a complete description of the analytic methodologies used in constructing the four target pricing episode categories, as well as sample site-neutral target prices for the nine census regions, and that the comment period be extended 60 days from the day on which the data and methodology details are provided.

Response: We recognize the commenters' interest in obtaining the data CMS used to develop the changes to the CJR model target price methodology and creating simulated comparisons of that methodology. In the February 2020 proposed rule, we provided information and data regarding our target price methodology decision making, such as our decision to adopt a blended target price for outpatient procedures given the clinical rationale to combine those episode types (that is, outpatient and inpatient episodes). In particular, we recognize the risk adjustment methodology, described in section II.C.4 of this final rule, represents a significant change in how target prices will be calculated and how episodes will be reconciled in PYs 6 through 8. We described our rationale for choosing the risk adjustment variables we are adopting in this final rule, including the analytic methodologies to calculate the risk adjustment coefficients and the exact dates of claims data used to perform the analysis. We also included a discussion in that section about our consideration

for alternative analytic methodologies and our decision to employ logarithmic transformation in the exponential model used to calculate risk adjustment coefficients. Additionally, we are adding detail in that section of this final rule regarding the decision to calculate risk adjustment coefficients nationally rather than regionally. Our approach is similar, both in terms of rationale and level of detail of the analytic methods and considerations, to what we provided in November 2015 rule (80 FR 73273), and for this reason, we believe that the information we provided in the proposed rule was sufficient.

However, since some components of the target price methodology for PYs 6 to 8 are identical to the methodology used for PYs 1 to 5 and are described in depth in the final rule establishing the CJR model (80 FR 73273), such as the length of an episode or use of regional only data (recognizing use of regional data began in PY4), so we did not repeat those components in detail in the proposed rule. While CMS recognizes there is a degree of uncertainty regarding the effect of the retrospective market trend factor or other components of the target price methodology, we believe the data and information we provided in the proposed rule and this final rule are sufficient to inform stakeholders of the changes we are adopting in this final rule. Similar to the original CJR model, we intend to conduct webinars detailing the payment methodology, in addition to making available other learning on the CMS website. As stated in section II.B.2. of this final rule, we will also post applicable (site-neutral) regional target prices for each of the four episode types, as well as the risk adjustment coefficients on the CMS website prior to the start of each performance year. In this final rule, we include sample site-neutral PY6 target prices, which can be found in Table 2a of section II.B.2 of this final rule. We also posted updated PY6 risk adjustment coefficients, including the addition of the dual-eligible status risk variable, in Table 3a and Table 4a in section II.C.4 of this final rule. Since the 2019 claims data used to calculate these sample target prices and risk adjustment coefficients were unavailable at the time the proposed rule was published, we were unable to include that information in the proposed rule. We anticipate posting final PY6 site-neutral target prices and final PY6 risk adjustment coefficients on the CMS website in June 2021.

Comment: A commenter requested that CMS provide target price estimates calculated from Medicare claims data for bundles that include the status quo

(current model), the proposed episode targets, and the targets if inpatient and outpatient episodes were priced separately.

Response: For a sample of the site-neutral PY6 target prices calculated using the proposed changes to the target prices methodology, we direct the reader to Table 2a in this final rule. As stated in section II.B.2 and section II.C.4 of this final rule, we will also post applicable (site-neutral) regional target prices for each of the four episode types as well as the risk adjustment coefficients on the CMS website prior to the start of each performance year. We anticipate posting PY6 site-neutral target prices and PY6 risk adjustment coefficients on the CMS website in June 2021. For an analysis of the proposed payment methodology, including the effect of excluding outpatient episodes from the episode definition, we direct readers to Table 6a and the related discussion in section IV.C. of this final rule.

Comment: A commenter requested that CMS provide clear and specific guidance on the impacts of payment adjustment changes and overlap across initiatives for organizations that participate in multiple value-based care models or programs, like the CJR model, BPCI Advanced, the Medicare Shared Savings Program (Shared Savings Program), and others.

Response: The CJR model overlap policies that applied during PYs 1 through 4 and each subset of PY5 will be applied when possible for PYs 6 through 8. However, we have determined that certain overlap policies that we proposed to apply to PYs 6 through 8 will not be feasible due to having only one reconciliation at six months after the end of the performance year, and we will no longer have a second reconciliation at 14 months after the end of the performance year. Therefore, although we are finalizing the changes to § 510.305(j)(1) that we adopted in the November 2020 IFC, which apply the provisions of that section to the subsets of PY5, we are not finalizing the changes to § 510.305(j)(1) that we proposed in the February 2020 proposed rule, which would have applied to PYs 6 through 8 our current policy of adjusting for shared savings payments when a CJR participant hospital is also a participant or provider/supplier in certain Accountable Care Organization (ACO) models or programs to which a CJR beneficiary is aligned. Those adjustments will no longer be feasible for PYs 6 through 8 because, as a result of the shorter time period between the end of the performance period and the

reconciliation calculation, we will not have access to the reconciliation data from ACO initiatives that would be necessary to allow us to perform the those adjustments.

Although not all of our proposed policies related to overlap can be maintained in PYs 6 through 8, we are maintaining the policy described at § 510.200(d)(4)(iii), which excludes certain per beneficiary per month (PBPM) payments under models tested under section 1115A of the Act. We are finalizing our proposal at § 510.200(d)(4) to extend this exclusion to episodes triggered by an anchor procedure, in addition to those triggered by an anchor hospitalization for PYs 6 through 8. In this final rule, we are also revising the list of ACO models or programs for which a prospectively aligned beneficiary is excluded from initiating a CJR episode in order to continue applying the policy specified at § 510.205(a)(6) in PYs 6 through 8. Specifically, we are replacing the reference to a Shared Savings Program ACO in Track 3 in § 510.205(a)(6)(iii) with a reference to a Shared Savings Program ACO in the ENHANCED track. Although we did not propose this change, we believe it is appropriate to include it in this final rule as a conforming change because the ENHANCED track of the Shared Savings Program is the successor of Track 3, as noted in § 425.600(a)(3), and our intention is to maintain this overlap exclusion policy.

Additionally, we are clarifying in this final rule that the overlap policies described at § 510.305(i)(1), which account for episode cancellations due to overlap between the CJR model and other CMS models and programs or for other reasons as specified in § 510.210(b), will occur at the single reconciliation during PYs 6 through 8. As described in the November 2015 final rule establishing the CJR model, we reserved these policies for the subsequent reconciliation (which takes place 14 months after the end of the performance year) to provide additional time beyond the initial reconciliation (which takes place 2 months after the end of the performance year) for claims run-out after an episode ended and to gather data about beneficiary alignment with other CMS models and programs. While we do not expect to have access to ACO reconciliation data that would allow us to perform the overlap adjustment described at § 510.305(j)(1) during PYs 6 through 8, as described previously, we do expect that ACO beneficiary alignment data will be available at the single reconciliation for PYs 6 through 8 (which will take place

6 months after the end of the PY) in order to identify episodes that are canceled in accordance with § 510.210(b). In this final rule, we are adding regulation text at § 510.305(m)(1)(v) to describe how this policy will be applied during PYs 6 through 8.

Lastly, regarding BPCI Advanced, we note the BPCI Advanced Participation Agreement (available at: <https://innovation.cms.gov/files/x/bpciadvanced-my3-am-restated-participation-agmt.pdf>) states “In the event that a Participant or, if applicable, a Downstream Episode Initiator is also participating in an Innovation Center model implemented via regulation (for example, the Comprehensive Care for Joint Replacement (CJR) model), the Participant will not be held accountable for any Clinical Episodes included in that model for purposes of BPCI Advanced. Furthermore, in the event the Participant is located in one or more Metropolitan Statistical Areas included in an Innovation Center model implemented via regulation (for example, the CJR Model), CMS will exclude from the BPCI Advanced Reconciliation calculation all clinical episodes included in that model.”

Final Decision: After consideration of public comments we received, we are finalizing overlaps policies with some modifications. We are not finalizing the overlaps policy described in our proposed amendments to § 510.305(j)(1) because this proposal sought to continue into PYs 6 through 8 a particular overlaps adjustment calculation that is conducted during the subsequent reconciliation for which we will not have the required data available at the time of the single reconciliation for PYs 6 through 8. We are finalizing our proposal at § 510.200(d)(4) that applies the exclusion specified in § 510.200(d)(4)(iii) to episodes triggered by an anchor procedure, and we are making a conforming change to the regulation text at § 510.205(a)(6)(iii) to continue applying that overlap exclusion policy to the successor to Track 3 of the Shared Savings Program, which is the ENHANCED track. Finally, we are adding regulation text at § 510.305(m)(1)(v) to clarify how the overlaps policies described in § 510.305(i)(1) will be applied during the single reconciliation in PYs 6 through 8.

3. Change to One Year of Baseline Data

The CJR model currently uses 3 years of baseline data to calculate initial target prices, with the 3-year baseline data updated every other year. As we stated when we finalized this policy, we chose

3 years because we wanted to ensure that we would have sufficient historical episode volume to reliably calculate target prices (80 FR 73340). We stated that our purpose for updating the baseline every other year was to achieve a balance between using the most recently available data to reflect changes in utilization and minimizing uncertainty in pricing for participant hospitals.

When we chose to use 3 years of historical data we were specifically concerned that some hospitals might not have a sufficient volume of episodes to create a reliable target price, particularly for the less frequent MS-DRG 469 episodes, because target prices in PYs 1 through 3 incorporated hospital-specific data into target prices. Hospital-specific data was incorporated into target prices to more heavily weight a hospital's historical episode data in the first 2 years of the model (two-thirds hospital-specific, one-third regional) and provide a reasonable incentive for both historically efficient and less efficient hospitals to deliver high quality and efficient care in the early stages of model implementation. Therefore, it was important in the first 3 performance years to have 3 years of historical data to ensure that individual hospitals had an adequate volume of historical episode data upon which to base target prices. However, target prices beginning with PY4 are based entirely on aggregated regional episode spending data, rather than a blend of both regional- and hospital-specific data. Our concerns relating to an adequate volume of historical episode data are therefore mitigated. We also note that we proposed additional tools meant to ensure accuracy of target pricing, specifically, the trend factor discussed in section II.C.6. of this final rule and risk adjustment discussed in section II.C.4 of this final rule, which further mitigates our concerns regarding target pricing uncertainty. Therefore, we believe that for the proposed CJR model extension, 1 year of data will be sufficient to calculate target prices for all participant hospitals.

Furthermore, given the removal of TKA from the IPO list, along with the national shift in LEJR spending, we have determined that the most recently available 1 year of data will in fact be a more appropriate baseline period on which to set target prices. Specifically, the removal of TKA from the IPO list, which has led us to propose to allow outpatient TKA procedures to trigger CJR model episodes (see section II.A of this final rule), only became effective in CY 2018. As a result, CY 2018 is the earliest year for which we will have

available data that includes both inpatient and outpatient TKAs, which will be needed to calculate a target price for a blended inpatient/outpatient TKA episode within the category of MS-DRG 470.

Therefore, for PYs 6 through 8, we proposed to use the most recently available 1 year of data prior to the start of the performance year to calculate target prices rather than the 3 years of data currently used. Under the current methodology, target prices for PYs 1 and 2 were calculated with baseline data from 2012 to 2014, PYs 3 and 4 were calculated with baseline data from 2014 to 2016, and PY5 is calculated with baseline data from 2016 to 2018. We proposed to base PY6 target prices on episode baseline data from 2019, PY7 target prices on episode baseline data from 2020, and PY8 target prices on episode baseline data from 2021. We proposed that by using only 2019 data for PY6 target prices, we would be able to capture spending patterns associated with the movement of TKA into the outpatient setting, as well as other practice trends during that year. Therefore, we stated our belief that using only the most recently available 1 calendar year of baseline data and updating that 1 year of baseline data annually will provide the best available picture of spending patterns we would expect to see during the performance period, which will allow us to calculate more accurate target prices. We sought comment on this proposal.

The following is a summary of the comments received and our responses.

Comment: Some commenters were in support of the proposed change to use 1 year of baseline data, with a few commenters stating that 1 calendar year of baseline data is sufficient in supporting the 100 percent regional pricing methodology as the volume of episodes is large enough to provide stability with pricing from a single year's worth of data. A commenter noted that 1 year of baseline data will more effectively capture Medicare payment policy changes over the last year, ensuring that the target price methodology is not an unintentional disincentive for the system of care due to not capturing appropriate costs. A commenter supported the use of 1 year of baseline data, but without the addition of outpatient TKA and THA procedures.

Response: CMS agrees with commenters that regional episode volume enables CJR model target prices to be calculated based on 1 calendar year of baseline data and that using the most recently available calendar year of data will more effectively capture

Medicare payment policy changes compared to the PY1 through PY5 method that utilized 3 years of baseline data. As noted in section II.A.2 of this final rule, we are adopting the inclusion of outpatient TKA and THA procedures in the CJR model episode definition for the 3-year extension to test the model in a broader population of beneficiaries than just those in the inpatient setting. Additionally, as noted in that same section of this final rule, given stakeholders' interest in opportunities to treat LEJR patients in the outpatient setting as part of a bundled payment model, we continue to believe this is important to the model test.

Comment: Many commenters expressed concern that due to the COVID-19 PHE, baseline data from 2020 and 2021 will be inappropriate to utilize for PY7 and PY8 target price calculations without adjustment to the proposed payment methodology. In particular, a few commenters expressed concern with using only 1 year of data and noted that if some areas in a region experience a surge in COVID-19 cases while other areas do not, the regional pricing model CMS is proposing would be a less valid way to adjust target pricing. A commenter noted that CMS should use 2019 as the baseline year for PY6 hold it constant for PYs 7 and 8, updated annually based on a trend factor that CMS would develop that holds providers harmless for the 2020 performance year due to the increased expenditures associated with COVID-19. A commenter noted that CMS should work with stakeholders as it develops a method for using 2020 as a base year for target price calculation in the future. Another commenter noted that moving to a 1 year baseline period would allow for a better comparison between baseline periods in which no THA procedures were performed on an outpatient basis to performance periods in which THA was removed from the IPO list; however, this commenter also noted that CMS should postpone implementing a 1 year baseline period given the COVID-19 pandemic.

Response: CMS recognizes the concern expressed by commenters of using 2020 and 2021 baseline data for calculating target prices for PYs 7 and 8 and the potential effect of the COVID-19 PHE on that data. However, we continue to believe that using the most recently available 1 calendar year of baseline data (with the modification discussed later in this section) will more accurately capture recent trends in the LEJR market than the previous use of 3 years of data, specifically regarding the migration to outpatient procedures than using 3 years of data, given the pace of

changes in practice trends. If the migration to the outpatient setting for these procedures is accelerated during PY6 as a result of the COVID-19 PHE and other changes to the LEJR market, we believe the use of 1 year of baseline data is important to more timely reflect changes in episode spending patterns and the case mix of patients receiving a procedure in the outpatient or inpatient setting. Specifically, if we relied on the original CJR model methodology of using 3 years of baseline data to calculate target prices for PY6, we would use data from 2016–2018. Using the averages over 3 years of claims data to calculate target prices instead of using 1 year (that is, calendar year 2019 claims data for PY6) could create inaccurate target prices for outpatient episodes since the data would only contain 1 year of TKA outpatient data (that is, 2018), and it would not sufficiently capture the effect of the quickly evolving trends in the LEJR space noted in section II.A.2 of this final rule. The goal of the changes and extension of the CJR model adopted in this final rule are meant to inform the design of a future LEJR model that could be certified and expanded nationally, and we continue to believe using 1 calendar year of baseline data is critical and appropriate for that future model.

We also understand and agree with commenters that baseline data from 2020 will likely not be as reflective of true market conditions as if the COVID-19 PHE had not occurred, and agree with commenters that modifications must be made to avoid using baseline data from 2020. As described in section II.D.1. of this final rule, we are finalizing the start and end dates for PYs 6 through 8 as follows: PY6 will be October 1, 2021 to December 31, 2022; PY7 will be January 1, 2023 to December 31, 2023; and PY8 will be January 1, 2024 to December 31, 2024. Given the new start and end dates of PYs 6 through 8, our model timeline is essentially shifting forward 12 months, such that PY7 will now begin with episodes ending on or after January 1, 2023. Given the timeline shift, we will now have access to 2021 calendar year claims data prior to the start of PY7. Using 2021 claims data to calculate target prices for the new PY7 timeline aligns with our intention to use the most recently available calendar year of baseline data, described in section II.B.3 of this final rule, and allows for the omission of 2020 calendar year claims data. Therefore, to accommodate commenters' suggestions of avoiding the utilization of 2020 claims data for target price calculation and to incorporate the

revised time frames for PYs 6 through 8, we are adopting the proposed methodology for PY6 but modifying the proposed methodology in § 510.300(b)(1)(v) so the date range of claims data used to calculate target prices for PY7 is January 1, 2021 to December 31, 2021. We are also modifying § 510.300(b)(1)(vi), which specifies the date range of claims data used to calculate target prices for PY8 to be January 1, 2022 to December 31, 2022 to accommodate the shift in PY7. We agree with commenters that 2020 data could be especially difficult to use for PY7 target price calculations. While 2021 data could also have similar distortions, we anticipate the corrective mechanisms of PYs 6 through 8 payment methodology, in particular the market trend factors, will reduce this distortion. For example, the market trend factors will reduce the potential variation caused by the COVID-19 PHE in average episode costs calculated from calendar year 2021 data compared to PY7 average episode costs. Since the market trend factors are calculated at the regional- and episode type-level, we anticipate they will accurately account for the potentially distorting effect of the COVID-19 PHE. As 2020 claims data are finalized, and 2021 data become available, we will monitor the potentially distorting effects of the COVID-19 PHE on that data and determine if any adjustment is needed regarding use of the 2021 data for PY7 target prices calculations.

Similarly, we are also finalizing corresponding changes to the timing of the data used to calculate the risk adjustment factors, described further in section II.C.4 of this final rule.

Comment: Many commenters stated that 1 calendar year of baseline data would result in target prices that would be too variable, unpredictable, or susceptible to unexpected disruptions in the market compared to the 3 years of baseline data used previously. In particular, some of these commenters noted that more than 1 year of baseline data is necessary given the shift of TKA procedures to the outpatient setting in 2019, and because 2020 will be the first year of related Recovery Audit Contractor (RAC) audits and the first year THA procedures are payable in the outpatient setting. A commenter also noted that using 3 years of baseline data at the regional level creates additional stability in pricing due to the number of procedures included in the regional average compared to using a single year.

Response: CMS continues to believe the most recently available 1 calendar year of baseline data is sufficient and in fact preferred given the shift of TKA and

THA procedures to the outpatient setting and other changes in the LEJR market environment, as described in section II.A.2 of this final rule. As noted previously, the timeline shift for PY7 in this final rule enables CMS to utilize 2021 calendar year claims data for PY7 target price calculations, which we anticipate will more accurately capture recent trends, such as the shift of TKA procedures to the outpatient setting, than 2020 calendar year claims data. Regarding the potential for using data from the first year of RAC audits of TKA procedures, we note that these reviews began in calendar year 2020 and, as described in section II.B.3 of this final rule, we will calculate PY6 target prices using calendar year 2019 data and PY7 target prices using calendar year 2021 data, which will omit the first year of related RAC audits (that is, calendar year 2020) for which the commenter expressed concern of use for PY7 target price calculations. We anticipate that using only the most recent year of regional data, as well as incorporating the market trend factor discussed in section II.C.6 of this final rule, target prices will be more reflective of current spending patterns than using 3 years of data. We note that although the previous CJR model method of calculating target prices utilized 3 years of baseline data, the data was trended forward by a national growth factor and would still be susceptible, albeit to a lesser degree than simply 1 year of baseline data, to unexpected disruptions in the market. We recognized this potential susceptibility and proposed the market trend factor to mitigate its potential effects. While the retrospective nature of the market trend factor will change initial target prices at the subsequent reconciliation for each performance year, we note the risk adjustment coefficients posted on the CMS website prior to the start of each performance year will be the same coefficients applied at reconciliation each year. This is meant to increase the financial predictability for participants by holding constant the coefficients that are posted on the CMS website and used for reconciliation each performance year. Lastly, since target prices in PYs 6 through 8 will not be calculated with hospital specific data, we continue to believe there is little risk that a policy of using the most recent calendar year of data would result in insufficient volume of data related to certain episode types. We understand this risk from insufficient volume is greater as a result of the effect of the COVID-19 PHE on the 2020 data and are finalizing, as described in section II.B.3. and section

II.C.4. of this final rule, the policy that 2020 claims data will not be used for target price or risk adjustment coefficient calculations, respectively. As noted previously, we also believe that using the most recent calendar year of baseline data for PY6 (that is, 2019 baseline data) will generate more accurate prices for the inclusion of outpatient procedures than the previous methodology that would have used baseline data from 2016 to 2018.

Comment: Commenters noted that the CJR model's previous use of 3 years of baseline data ensured that participant hospitals, in particular high performing hospitals, would not be penalized for their own improvements in cost.

Response: We understand the concern that if the CJR model target prices were calculated with 1 year of hospital-specific baseline data alone it could be interpreted that a hospital's own improvements would inhibit their ability to achieve savings in later years of the model. However, the policy we are adopting in this final rule to use 1 year of regional only baseline data for target prices proposed for PYs 6 through 8 will consider a participant hospital's performance relative to its regional peers (instead of the hospital's own historical performance) and will incentivize participants who are already delivering high quality and efficient care while still incentivizing historically less efficient providers to improve compared to their regional peers. Additionally, as we note in section II.C.4. of this final rule, the application of coefficients from the risk adjustment methodology is intended to also have the effect of rewarding hospitals that are able to provide care to certain beneficiaries (that is, those that trigger the application of the risk adjustment coefficients, such as patients with a CJR HCC count of three) at a lower cost compared to their peers.

Comment: Another commenter stated concern that 2018–2020 national unadjusted CMS payment rates for TKA show a significant increase in the outpatient procedure payment and that this increase was overlooked by CMS.

Response: We appreciate the suggestion by the commenter to consider the recent increase in payment rates for TKA procedures. As described in section II.B.3. of this final rule regarding the use of 1 year of baseline data, and in section II.C.6. of this final rule regarding the market trend factor, we anticipate both of those factors will ensure that annual variations in average episode costs are accurately adjusted in the updated CJR model payment methodology.

Comment: A commenter recommended that CMS use 2019 data for baseline purposes to avoid continuous annual rebasing, other than to account for site of service shifts.

Response: We proposed shifting the baseline data forward for each PY to ensure the target price methodology would effectively capture trends in the LEJR market. These trends include changes in payment systems and utilization of certain services, which would not be accounted for if we used the same year of baseline data for all 3 years of the extension and only included an adjustment for site of service shifts. In particular, 2019 baseline data will not reflect the migration to the outpatient setting for THA procedures that has occurred in 2020. We do believe that 2019 data will be an adequate baseline for calculating PY6 target prices in spite of the lack of outpatient THA data, given the similarity of average episode costs between outpatient TKA and outpatient THA episodes. We believe that it is preferable for PYs 7 and 8 target prices to be based on data that includes outpatient THA episodes, and we plan to use 2021 and 2022 data, since that data will be newly available. As noted previously, we continue to believe using the most recent year of baseline data, as opposed to an adjustment we would develop each year, will more accurately capture spending trends related to site of service shifts or other market changes and is more transparent.

Comment: A few commenters recommended CMS exclude beneficiaries from the baseline that were part of other APMs, such as the CJR model, BPCI Advanced, and Medicare ACOs.

Response: The proliferation of APMs nationally represents a positive evolution in CMS' efforts to support better and more efficient care for beneficiaries. However, it also creates difficulties in discerning the effects of one APM vs. another. While the CJR model has certain overlap and beneficiary exclusion policies to ensure appropriate episode attribution during a performance year and at reconciliation, as noted in § 510.305(i) for PYs 1 through 5 and in section II.B.2 of this final rule for PYs 6 through 8, we do not exclude these beneficiaries from baseline spending because, given the increasing reach and effect of APMs, it would be less reflective of actual average costs if the costs from those beneficiaries were excluded from the CJR model target price baseline data.

Final Decision: After consideration of the public comments we received, we are finalizing as proposed that PY6

target prices will be based on episode baseline data from 2019. We are finalizing our proposal with modification to the baseline years used for PYs 7 and 8 target prices. Specifically, PY7 target prices will be based on episode baseline data from 2021, and PY8 target prices will be based on episode baseline data from 2022. These policies are finalized at 42 CFR 510.300(b)(1)(iv) through (vi).

4. Removal of Anchor Factor and Weights and Removal of the Prospective Payment System Target Pricing Updates

Since the CJR model target prices during PYs 1 through 3 were calculated using a blend of historical and regional episode costs, the primary intent of using anchor weights in the target price calculation was to increase the volume of data for statistical predictability purposes, particularly for MS-DRG 469 episodes, and to limit the degree to which a certain participant hospital's ratio of MS-DRG 469 episodes to 470 episodes would skew the pooled historical average episode payment, and subsequently the target price. We aimed to incentivize participant hospitals based on their hospital-specific inpatient and post-acute care (PAC) delivery practices for LEJR episodes. However, to incentivize both historically efficient and less efficient hospitals to furnish high quality, efficient care in all years of the model, we transitioned from primarily hospital-specific to completely regional pricing over the course of the 5 performance years (80 FR 73337).

Since we proposed for PY6 through 8 to use regional episode spending data only (no hospital-specific data) to calculate target prices, we no longer have the concern that a lack of volume of data for certain participant hospitals may limit the predictability of the target price calculation, as we did when hospital-specific data were incorporated into the target price calculation. Additionally, we no longer have the concern that a participant hospital's ratio of MS-DRG 469 to 470 episodes would skew the pooled historical average episode payment, because for PY4 and 5 we removed hospital-specific ratios of MS-DRG 469 to 470 episodes from the target price calculation. We proposed to continue this in PY6 through 8. Given that we no longer have these concerns, we also proposed to stop using the national anchor factor calculation and the subsequent regional and hospital weighting steps in the CJR model target price calculation method for PY6 through 8. Additionally, we proposed not to continue the annual updates to the target prices that account

for changes in the Medicare prospective payment systems and fee schedule rates. Since we proposed (as discussed in section II.C.6. of this final rule) to add a market trend adjustment to the target prices at the time of reconciliation, which will adjust for the 2-year percent change in prices at the regional/MS-DRG level, we do not believe that the at least twice annual updates to the target prices continue to be necessary. To the extent that changes to these Medicare prospective payment systems and fee schedule rates influence episode costs, the percent difference in episode costs would account for that influence and therefore the annual updates would no longer be necessary. We sought comment on this proposal.

The following is a summary of the comments received and our responses.

Comment: A few commenters commented on the proposal to remove the anchor factor and weights and updates to the target prices as a result of prospective payment system changes, with most comments concerning the effect of other aspects of the proposed target price methodology, such as the market trend factor. Commenters stated that the existing update methodology appropriately accounts for target price changes using OPPS and IPPS updates and the CMS discount is sufficient for CMS to receive guaranteed savings. A few commenters recommended that the CJR model adopt BPCI Advanced's methodology to adjust prospective target prices for SNF and other payment system updates.

Response: As noted in the discussion before Table 6a in section IV.C. of this final rule, we proposed to remove the anchor factors and weights and updates to CJR model target prices as a result of prospective payment system changes from the CJR model payment methodology for the 3 years of the extension because they do not always account for all payment system changes. Instead of prescribing exactly how the CJR model might adjust baseline data for certain payment system changes, similar to the original CJR model and BPCI Advanced methodologies, we proposed to instead rely on the market trend factor to ensure consistency with performance year and baseline costs. We anticipate this method will be simpler than the anchor factors and weights and less burdensome to monitor than the twice annual updates testing in the CJR model PYs 1 through 5. We maintain that the proposed market trend factor will adequately account for these factors, weights, and updates.

Final Decision: After consideration of the comments we received, we are finalizing our proposal to remove the

anchor factor and weights and updates to the target prices as a result of prospective payment system changes.

5. Changes to Methodology for Determining the High Episode Spending Cap Amount in Initial Target Price Calculation

The high episode spending cap policy was designed to prevent participant hospitals from being held responsible for catastrophic episode spending amounts that they could not reasonably have been expected to prevent, by capping the costs for those episodes. At the time the CJR model was implemented, we proposed and finalized a policy to set this high cost episode cap at 2 standard deviations above the regional mean episode price, both for calculating the target price and for comparing actual episode payments during the performance year to the target prices. When comparing actual episode payments during the performance year to the target prices at reconciliation, episode costs exceeding the 2 standard deviation high episode spending cap are not included as actual episode payments in the calculation. For example, if the high episode cap was set at \$30,000, an episode that had an actual episode cost of \$45,000 would have its costs, for purposes of the model, reduced by \$15,000 when the cap was applied and therefore, the cost for that episode would be held at \$30,000. Consequently, assuming the target price applicable to the episode was \$25,000, the provider would be responsible for repaying a specific percentage portion of a \$5,000 difference rather than for repaying a specific percentage portion of a \$20,000 difference (where difference is assessed by the cost, or capped cost, for the actual episode compared to the target price). When we established this policy, we assumed that the episode costs in the CJR model would be normally distributed (80 FR 73335). With a normal distribution of costs, 95 percent of episodes would have costs that are within 2 standard deviations of the mean cost. Under this assumption, episodes with costs exceeding 2 standard deviations from the mean, would qualify as statistical outliers for high episode spending and we therefore set our high episode spending cap at 2 standard deviations above the regional mean episode price.

However, in reviewing data from our CJR model experience thus far, we have observed three challenges that have limited the ability of our current 2 standard deviation methodology to appropriately cap high episode spending. First, we have observed that

TKA and THA episode costs in the CJR model are not normally distributed; as such, less than 95 percent of episodes have costs that fall within 2 standard deviations of the mean. This means that TKA and THA episodes in the CJR model exceed the 2 standard deviation amount in their cost more often than other clinical episode costs that are distributed approximately normally. Second, given the reliance on only regional data for target price calculations in PY4, each subset of PY5, and proposed PY6 through 8, a participant hospital with higher-cost episodes relative to its region will benefit more from this capping method since there will be a higher probability that its episodes will be capped. This effect was not as much of a concern during PYs 1 through 3 since target prices were calculated using a blend of hospital-specific and regional costs. However, since many of the participant hospitals now participating in the CJR model (especially mandatory participants) have higher-cost episodes relative to their regions, and target prices are derived from regional-only episode data, their performance period episode costs would likely exceed the 2 standard deviation high episode spending cap amount more often than intended. In other words, assuming a normal distribution, we would expect 95 percent of episode costs to be within 2 standard deviations of the mean episode cost. As we discussed in the CJR model November 2015 final rule (80 FR 73336), our original intent in establishing the high cost episode capping policy was to mitigate the hospital responsibility for episodes with very high Medicare spending during the post-discharge 90-day episode period. However, as noted previously, TKA and THA episode prices are not normally distributed, and more than 2.5 percent of episode costs exceed the 2 standard deviation maximum threshold. Third, and similar to the first challenge that TKA and THA episode costs in the CJR model are not normally distributed or otherwise similar to other clinical episodes, CJR participant hospital performance period episode costs are not normally or otherwise similarly distributed compared to the costs used to derive the CJR model target prices. Specifically, while episode costs are closer to a normal distribution during the initial target price calculation as a result of the larger volume of data in the national summary of episode costs (that is, the episode data includes non-CJR participating hospitals), the episode costs are not normally distributed during reconciliation since episode

costs at reconciliation are derived from only performance period episode costs (that is, only CJR participant hospitals).

Therefore, the current CJR model methodology that establishes a high episode spending cost cap at 2 standard deviations above the mean has not reliably produced an episode cost ceiling that applies only to very high cost episodes; rather, as a result of the episode distribution, the current methodology may result in the inappropriate capping of some episode costs. An internal analysis of CJR model episode data by CMS showed that in 2016 and 2017 respectively 70 and 83 percent of CJR participant hospitals had at least one episode capped at the high cost episode cap. While we continue to want to protect participant hospitals from exposure to very high cost episodes, we need to balance that goal with the overarching goal of the CJR model to lower costs and increase quality for LEJR procedures.

As a result, we proposed to change the methodology used in deriving the high episode spending cap amount during reconciliation, described further in section II.C.5. of this final rule. Since the current CJR model high episode spending cost capping methodology used during initial target price calculation is the same methodology used during reconciliation, we also proposed to change the methodology used in deriving the high episode spending cap amount during the initial target price calculation to match the proposed methodology used during reconciliation. Specifically, we proposed to change our method of deriving the high episode spending cap amount applied to initial target prices by setting the high episode spending cap at the 99th percentile of historical costs. Similar to the current methodology, the high episode spending cap calculation would utilize the national summary of episode data to calculate the 99th percentile of each MS-DRG and hip fracture combination for each region. Total episode costs above the 99th percentile would be capped at the 99th percentile amount prior to calculating target prices for each MS-DRG and hip fracture combination for each region. We expect that this method of calculation will result in high episode spending caps that more accurately represent the cost of infrequent and potentially non-preventable complications for each category of episode, which the participant hospital could not have reasonably controlled and for which we do not want to penalize the participant hospital. We sought comment on this approach.

We did not receive comments about the proposed policy to use the 99th percentile when capping episodes prior to calculating the target prices. We are finalizing this provision without modification.

C. Reconciliation

1. Background

Currently, for PY1 through 4 and for each subset of PY5, CJR model payments are reconciled twice after the close of a performance year. At reconciliation, performance year episode costs are computed for each participant hospital for each MS-DRG and hip fracture combination and these costs are then capped at 2 standard deviations above the regional mean episode price. Each participant hospital's composite quality score for combined performance on the CJR model quality measures, specifically, the total hip arthroplasty/total knee arthroplasty (THA/TKA) Complications measure and HCAHPS Survey measure, and voluntary submission of patient-reported outcomes and limited risk variable data, is then calculated. While all participant hospitals in the CJR model are assigned a target price with a quality discount factor of 3 percent, the quality discount applicable to a specific participant hospital at reconciliation may be lowered to 2 percent in instances where the hospital earns a quality category of good, or 1.5 percent in instances where the hospital earns a quality category of excellent. Based on reconciliation results from the first 2 performance years of CJR, roughly 18 percent of CJR participant hospitals achieved quality scores of 'Excellent,' around 60 percent achieved 'Good,' around 12 percent achieved 'Acceptable' and less than 10 percent were deemed 'Below Acceptable.' An initial reconciliation is performed using claims data available 2 months after the end of the performance year, and a final reconciliation is performed 1 year later, using claims data available 14 months after the end of the performance year.

At reconciliation, all participant hospitals that achieved LEJR actual spending below the target price and achieved a minimum composite quality score were eligible to earn up to 5 percent of the difference between their target price and their actual episode costs in PYs 1 and 2; 10 percent of this difference in PY3; and 20 percent in PY4 and each subset of PY5. The limits are referred to as "stop-gain limits" (80 FR 73401). Any net payment reconciliation amount (NPRA) greater than the proposed stop-gain limit would be capped at the stop-gain limit.

Conversely, participant hospitals with LEJR episode spending that exceeds the target price at reconciliation are financially responsible for the difference to Medicare up to a specified repayment, or a "stop-loss limit." For most participant hospitals, the stop-loss limit was 5 percent of the difference between their target price and their actual episode costs in PY2; 10 percent for PY3; and 20 percent for both PY4 and each subset of PY5. For participant hospitals that are rural hospitals, Medicare-dependent hospitals, rural referral centers, and sole community hospitals, the stop-loss limit was 3 percent for PY2; and 5 percent for PY3 through PY4, and each subset of PY5. Any reconciliation repayment amount that exceeds the proposed stop-loss limit would be capped at the stop-loss limit.

We implemented a parallel approach for the stop-gain and stop-loss limits to provide proportionately similar protections to CMS and to participant hospitals, as well as to protect the health of beneficiaries. We believe it is appropriate that as participant hospitals increase their financial responsibility, they can similarly increase their opportunity for additional payments under this model. We also believe that these changes facilitate participants' ability to be successful under this model and allow for a more gradual transition to financial responsibility under the model.

2. Overview of Changes to Reconciliation Process

In the proposed rule, we proposed changes to the CJR model reconciliation process that are intended to reduce administrative burden, to adjust target prices for beneficiary-specific risk elements, to better recognize participant providers with good and excellent composite quality scores, and to improve our ability to account for changes in payment policy and market trends in utilization. Additionally, we proposed changes to the reconciliation process that parallel the changes we propose to the target price calculations discussed in section II.B. of this final rule.

Beginning with PY6, we proposed to conduct one reconciliation per CJR model performance year, which would be initiated 6 months following the end of a CJR model performance period. This change is intended to reduce the administrative burden of a second reconciliation for Medicare and CJR participant hospitals, and it is driven by internal analyses, discussed in section II.C.3. of this final rule, that indicate the 6 months after an episode ends is

sufficient time period to capture episode spending data. However, we proposed that the current CJR model post-episode spending policy, codified at § 510.305(j)(2) and § 510.2, would still apply during PY6 through 8. Additionally, we proposed conforming changes to § 510.305 such that the PY4 and 5 stop-loss limits and stop-gain limits of 20 percent would continue in place for each of PY6 through 8.

Additionally, in an effort to recognize the greater needs of certain beneficiaries that are beyond a participant hospital's control, we proposed to incorporate a risk adjustment factor for each episode's target price during reconciliation for PY6 through 8. Specifically, as discussed in section II.C.4. of this final rule, we would adjust the target price at reconciliation using two patient-level risk factors, the CJR HCC count risk adjustment factor and the age bracket risk adjustment factor.

Further, as mentioned in section II.B.5. of this final rule, we proposed to change the methodology used in deriving the high episode spending cap amount during reconciliation. For PY6 through 8 of the proposed extension, at reconciliation we would determine the high episode spending cap amount by calculating the 99th percentile of regional mean episode spending and cap episodes at that amount, in order to remove the effect of high-cost statistical outliers on average costs. We proposed this change since we have observed that CJR model episode costs are not normally distributed, as discussed in section II.B.5. of this final rule, and a greater number of CJR model episodes have exceeded the high episode spending cap amount than we intended.

We also proposed to add a market trend factor to adjust for recent variations in the underlying structure of the market. Specifically, we proposed that the market trend factor would be the regional/MS-DRG mean cost for episodes occurring during the performance year divided by the regional/MS-DRG mean cost for episodes occurring during the target price base year. For example, at the reconciliation for PY6 which will occur at the end of June of 2023 after allowing for 6 months of claims runout, we will compute the regional/MS-DRG mean cost for episodes occurring during the performance year (October 1, 2021 through December 31, 2022) and would divide that by the regional/MS-DRG mean cost for episodes that occurred during calendar year 2019 as the target prices for PY6 will be set using 2019 data. We note that we will make a minor adjustment to this methodology when we calculate PY6 target prices for MS—

DRGs 521 and 522, in order to align the methodology we proposed in the February 2020 rule with the addition of these new MS-DRGs to the CJR episode definition in the November 2020 IFC. In those instances only we will adjust the IPPS portion of episode costs for baseline episodes initiated by MS-DRG 469 and 470 with fracture, as described in section II.A.2. of this final rule. This adjustment will consist of multiplying those IPPS costs by the ratio of the MS-DRG 521 and 522 weights (which are applicable to performance period episodes) to the MS-DRG 469 and 470 weights that were applicable in the baseline period. We will make this adjustment prior to the application of the market trend factor for PY6 target prices for episodes initiated by MS-DRGs 521 and 522. This adjustment will result in target prices that more accurately reflect the methodology we proposed in the February 2020 proposed rule, which assumed that the target price for the MS-DRG and fracture status of each episode in the performance period would be based on baseline episodes with the same MS-DRG and fracture status.

Lastly, we proposed changes to the effective discount factor and applicable discount factor in § 510.315, to better recognize participant providers in the 'Good' and 'Excellent' CJR model composite quality score categories. For PY6 through 8, we proposed to continue to use 3 percentage points as the discount factor applied during calculation of regional target prices. However, we proposed to increase an individual participant hospital's potential quality incentive payment; that is, we proposed a larger reduction in the discount factor based on the composite quality score. The opportunity for this larger reduction in the discount factor was proposed because we anticipate that the proposed changes to the target price methodology, discussed in section II.B. of this final rule, will better align the target prices with actual spending during a performance year. While more accurate initial target prices will enhance stability for participant hospitals at reconciliation, it also means the quality adjusted target price and actual episode spending will align more closely over time and we want to ensure that we continue to recognize high quality participant hospitals by giving them a larger portion of the achieved savings. As a result, for PY6 through 8, we proposed a 1.5 percentage point reduction to the applicable discount factor for participant hospitals with "good" quality performance and a 3-

percentage point reduction to the applicable discount factor for participant hospitals with "excellent" quality performance.

The following is a summary of the comments received and our responses.

Comment: A commenter provided general feedback on the proposed changes to the reconciliation process and supported CMS' proposed policy to maintain the 20 percent stop-loss and stop-gain limit amounts from PYs 1 through 5 of the CJR model, noting that this policy is consistent across other models and will assist in the model evaluation process.

Response: We recognize consistent policies across CMS APMs can aid model participants as well as CMS evaluators and we have adopted policies that align with other APMs, such as the policy in this final rule to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments, where possible and appropriate. We appreciate the commenters' support for the CJR model stop-loss and stop-gains policy amounts that align with the amounts with other models, such as the BCPI Advance model.

Comment: MedPAC suggested that CMS should focus on changes to the model that could generate net savings for the Medicare program instead of redistributing all of them back to providers, such as increasing the percentage of losses for which hospitals are responsible.

Response: CMS appreciates MedPAC's suggestions to generate additional savings for the Medicare program by increasing the stop-loss limit. Many of the changes CMS proposed to the CJR model payment methodology for PY6 through 8 are intended to be improvements to the original methodology that will increase the probability for model savings. While CMS could design a payment methodology that attributed a much larger portion of savings to the Medicare program by increasing the stop-loss limit amount, we must also balance the administrative burden and investments needed by participating hospitals to be successful under the model, and thus proposed to continue the stop-loss limit from PYs 1 through 5 for PYs 6 through 8 that is intended to ensure that CJR participant hospitals are still capable of achieving a certain level of savings for themselves in the model.

3. Changes to Frequency and Timing of Reconciliation

As noted in section II.B.1. of this final rule, following the completion of performance years 1 through 4 and each

subset of performance year 5, participant hospitals that achieve episode spending below the applicable target price and achieved a minimum composite quality score have been eligible to earn a reconciliation payment from Medicare for the difference between the target price and actual episode spending, up to a specified cap (see 80 FR 73337 for a detailed discussion of CJR model episode pricing). The retrospective process reconciles a participant hospital's actual episode payments against the target price 2 months after the end of each of performance years 1 through 4 and the first subset of performance year 5. More specifically, we use claims data that is available 2 months after the end of a performance year and carry out the NPRA calculation described in § 510.305 to make a reconciliation payment or repayment amount, as applicable. Fourteen months after the end of each of performance years 1 through 4 and performance year subset 5.1, CMS performs an additional calculation, using claims data available at that time, to account for final claims run-out and any additional episode cancellations due to overlap between the CJR model and other CMS models and programs, or for other reasons as specified in § 510.210(b). The subsequent reconciliation calculation is applied to the previous calculation of NPRA for a performance year to ensure the stop-loss and stop-gain limits are not exceeded for a given performance year. The difference between the initial and final reconciliation amount from this calculation, if different from zero, is calculated and added to the NPRA for the subsequent performance year in order to determine the net reconciliation payment or repayment amount. CMS performs these same calculations for performance year subset 5.2. However, with the initial reconciliation occurring 5 months after the end of performance year subset 5.2 and the final reconciliation occurring 17 months after the end of performance year subset 5.2.

When we first adopted the process to perform a reconciliation calculation 2 months after the conclusion of a performance year, with a subsequent reconciliation calculation 12 months later, the policy reflected the assumption that it was necessary to allow sufficient time for routine monitoring, review, and adjustment (80 FR 73386). However, internal analyses and monitoring of CJR model claims data from PYs 1 and 2 indicated that the full 14 months is not necessarily required to sufficiently capture claims run out and overlap with other models.

For example, the number of episodes attributed to PY1 increased by slightly less than 1 percent from the initial to subsequent reconciliation and total reconciliation payments for PY1 decreased by about 6 percent between the initial and subsequent reconciliation. The PY2 subsequent reconciliation process showed a similar trend; that is the attributed episode count increased by about 1 percent and total reconciliation payments decreased by around five percent. While we are not able to accurately predict or quantify the dollar impact shifts between the initial and final reconciliations for individual CJR participant hospitals, anecdotally, based on reconciliations of the first 2 performance years of the CJR model, some CJR participant hospitals owed over \$100,000 because their initial reconciliation payments were too high relative to their final reconciliation payments. Other CJR participant hospitals who ultimately saw their reconciliation payments increase from initial to final reconciliations increased by amounts under \$60,000.

In the proposed rule, we stated that we recognized shifting reconciliation amounts, especially those that result in unanticipated repayments, could be problematic for some providers. By allowing a longer period for claim run out prior to initiating the first and only reconciliation, we stated our belief that we could provide a more predictable and stable reconciliation process for CJR participant hospitals without significantly impacting the accuracy of the reconciliation payment and/or repayment amounts. Regarding the impact of this change on other models and programs that use CJR reconciliation data to perform their own overlap calculations, we stated that we did not anticipate that the change to the frequency and timing of the CJR model reconciliation would create new difficulties for CMS Innovation Center models and the Shared Savings Program when they account for overlap with CJR. Specifically, in regards to the Shared Savings Program, we noted that the Shared Savings Program only uses finalized data in its financial reconciliation calculations, and CJR initial reconciliation data are not considered final.

We proposed to conduct one reconciliation for each of PY6 through 8, 6 months following the end of a performance year. For instance, for PY6 (which includes all CJR model episodes ending on or after October 1, 2021 and on or before December 31, 2022), we proposed to reconcile a participant hospital's CJR model actual episode

payments against the applicable target prices one time only, based on claims data available on July 1, 2023. As discussed previously, our internal analyses indicate the timing of this proposed reconciliation methodology will allow enough time to adequately capture episode costs. This methodology would also reduce the administrative burden associated with an extra reconciliation calculation on CMS and participant hospitals. Additionally, we believe this new methodology will enhance participant hospitals' ability to predict the outcome of reconciliation calculations, since they will no longer need to include unanticipated adjustments for prior year performance.

We also proposed that current CJR model post-episode spending policy, codified at § 510.305(j)(2) and § 510.2, would still apply during PYs 6 through 8. Specifically, we proposed that we would maintain the policy that 30-day post-episode spending for episodes attributed to all IPPS hospitals would be calculated to determine the value that is 3 standard deviations greater than the regional average 30-day post-episode spend and to determine if a participant hospital has excessive average 30 day post-episode spending. The spending amount exceeding 3 standard deviations above the regional average post-episode payments for the same performance year is subtracted from the net reconciliation or added to the repayment amount for the subsequent PYs 1 through 4. While this calculation is performed at the subsequent reconciliation for PYs 1 through 4 and each subset of PY5, we note that internal analyses and monitoring of CJR model claims data from PYs 1 and 2 indicate that the full 14 months is not necessarily required to sufficiently capture claims run out. Unlike the high cost episode spending cap policy, the 30-day post-episode spending policy only assesses episode costs 30 days following the end of an episode; this distribution is more "normal" than the high cost episode cap distribution that assesses the full 90-day episode costs. There have been few issues with the post-episode spending methodology to date.

The following is a summary of the comments received and our responses.

Comment: A number of commenters supported the proposal to move from 2 reconciliations, conducted 2 months and 14 months after the end of the performance year, to one reconciliation, conducted 6 months after the end of the performance year. Commenters stated their belief that 6 months was an adequate period of claims run-out to capture episode costs and that the

change to one reconciliation would significantly reduce administrative burdens on hospitals. A commenter estimated that CMS would save \$240,958 by moving to one reconciliation period. A commenter stated that this change would simplify participating hospitals' communication with the physicians with whom they have gainsharing agreements. Another commenter pointed out that this change would reduce the potential for secondary reconciliations that result in a participant owing a repayment, which would provide more certainty for providers.

Response: We appreciate the commenters' support for our proposal to move in PY6 from 2 reconciliations for each performance year to one reconciliation for each performance year. We agree with the commenters that 6 months is an adequate period of claims runout, and that this change will both reduce administrative burden on participants and also eliminate the uncertainty of whether the second reconciliation would result in the participant owing a repayment. We also agree that moving to one reconciliation period would result in a net savings to CMS, as the reconciliation calculation would include only 1 performance year's worth of data which would simplify the reconciliation process.

Comment: Multiple commenters stated that they generally supported the change to one reconciliation, but also had concerns about the change. Multiple commenters requested that we consider strategies to mitigate cash flow issues that could occur during the initial transition. A commenter requested additional clarity on how the transition would occur. Multiple commenters expressed their concern about the lack of a timely feedback loop to providers, stating that there is a long time between the beginning of the performance year and the reconciliation. A commenter requested that CMS develop a tool for participants that would take into account the adjustments CMS makes at reconciliation, such as application of the risk factor multipliers, using the best available data. They stated their belief that this would help participants gauge their performance, with the understanding that the results would be estimates and would vary from the final reconciliation results. Another commenter requested details on our planned approach for claims data sharing.

Response: In response to commenters' concerns about cash flow issues resulting from the change from 2 reconciliations to one reconciliation, we point out that we have historically

conducted one reconciliation process in each performance year, issuing combined results from the initial reconciliation of the most recently completed performance year and the final reconciliation from the previous performance year. Therefore, the frequency of reconciliation processes proposed for PYs 6 through 8 will align with the commenters' experience, but whereas prior reconciliation processes represented 2 different performance years, beginning in PY6 that process will only represent 1 performance year. Additionally, as a result of the extension of PY5 through September 30, 2021 and the division of PY5 into two subsets for purposes of reconciliation (PY5.1 and PY5.2), we will perform both the subsequent reconciliation of PY5.2 and the single reconciliation of PY6 in calendar year 2023. Rather than a transition year when the final reconciliation for the previous performance year is delayed, participants will receive two separate reconciliation reports in the same calendar year, thus mitigating concerns that a delay in reconciliation during the transition year could negatively impact cash flow or prevent timely feedback in their reconciliation report. Finally, we remind commenters that participants in the CJR model continue to bill and be paid through normal Medicare FFS processes throughout the model for Part A and Part B services furnished to beneficiaries during a CJR model episode.

In response to the commenter's general request for clarification about the transition from two reconciliations to one reconciliation, we wish to further clarify how certain policies that were previously applied at the subsequent reconciliation will be applied at the single reconciliation for PYs 6 through 8. As described previously in section II.B.2., certain overlap policies will continue to be applied at the single reconciliation for PYs 6 through 8, but the ACO overlap adjustment calculation, which we proposed in § 510.305(j)(1) to continue applying to PYs 6 through 8, will no longer be feasible because the necessary data will not be available six months after the performance year. For this reason, we are not finalizing our proposed amendments to § 510.305(j)(1) (though we are finalizing the changes we adopted in the November 2020 IFC). However, we will be able to apply the overlap policy described in § 510.305(i)(1), which cancels certain episodes due to overlap between the CJR model and other specified CMS models and programs, at the single

reconciliation, so we have added § 510.305(m)(i)(v) to specify that we will apply that overlap policy at the single performance year reconciliation for each of PYs 6 through 8.

Similarly, we proposed in § 510.305(j)(2) to continue our policy of conducting a post-episode spending calculation in PYs 6 through 8. However, the post-episode spending calculation has previously been conducted at the subsequent reconciliation in order to allow additional time for claims run-out beyond the 2 months that precede the initial reconciliation. For PYs 6 through 8, we believe that the six month interval between the end of the performance year will provide sufficient time for claims run-out, given that the 30-day post-episode spending period for the last episodes in a given performance period will end on January 30 of the following year, leaving five additional months of claims run-out before the single reconciliation. Rather than finalize our proposal to incorporate the post-episode spending policy for PYs 6 through 8 into § 510.305(j)(2), we have instead added § 510.305(m)(i)(vi) to clarify that the post-episode spending calculation will take place at the single reconciliation for PYs 6 through 8.

Since the target price methodology will differ in a number of ways between PY subset 5.2 and PY 6, we are also clarifying how we will treat episodes that begin during PY 5.2 but end, and are therefore reconciled, in PY 6. In § 510.300(a)(3) we stated that episodes that straddled performance years or performance year subsets would be subject to the target price applicable to the start date of the episode. This means that there will almost certainly be CJR episodes that have a performance year 5.2 target price but are reconciled in performance year 6. In the proposed rule, we stated at § 510.301 that beginning in PY 6, we would further adjust the target price computed under § 510.300 for risk and market trends to arrive at the reconciliation target price amount. However, PY 5.2 target prices were designed to apply to inpatient episodes only, incorporating adjustments for MS-DRG and fracture status without additional beneficiary-level risk adjusters, and incorporating a prospective update factor rather than a retrospective market trend adjustment. Therefore, we believe it would not be appropriate to further adjust a PY 5.2 target price for beneficiary-level risk factors and a retrospective market trend at the PY 6 reconciliation. In order to be consistent with our policy at § 510.300(a)(3), but also accommodate the difference in target price calculation

methodology between PY 5.2 and PY 6, we are modifying our proposed text at § 510.301 to specify that episodes subject to a PY 5.2 target price but reconciled in PY 6 would not have their target price further adjusted for risk and market trends.

In response to the commenters' concerns about timely feedback on their model performance, we note that providing two reconciliation reports in the transition year also mitigates concerns that a delay in reconciliation would prevent participant hospitals from receiving timely feedback in their reconciliation report. We also point out that we continue to provide a monthly claims data feed including all claims for services included in a given episode. This provides timely feedback that can be used by participants to identify cost drivers, identify opportunities for greater care coordination, and gauge their performance in the model. Further, we will be incorporating claims data for outpatient episodes, CJR HCC count, participant age bracket, and dual eligibility status, as well as providing the regression coefficients that will be used at reconciliation to risk adjust target prices at the episode level. We believe that these data will provide the necessary information to help participants gauge their performance in the model and perform preliminary estimates of the adjustments that will be made at reconciliation.

Comment: A few commenters recommended that CMS maintain the current practice of performing two reconciliations for each performance year. A commenter stated their concern that the proposed revised process will compromise physicians' engagement in care redesign plans and follow-up actions to achieve the objectives of the plan. Another commenter stated that the change would result in payments being further removed from physician behavior. They stated their concern that this could result in incentive payment delays and diminish the impact of such payments on physician behavior.

Response: We acknowledge that the time lag between when physician services are performed and when reconciliation reports and potential reconciliation payments are received may be a challenging aspect of the CJR model. However, we disagree that the change to one reconciliation will impact physician engagement significantly more than the current reconciliation process does. In the initial years of the model, the first reconciliation involved episodes that had ended between 2 and 14 months prior to when the claims data were pulled, with an additional 2 to 4 months of time to complete the

reconciliation calculations and deliver reconciliation reports, and allow a 45-day window for participant hospitals to appeal their results before we finalized them. This resulted in reconciliation payments being made, or repayments being owed, from 6 to 18 months after the episodes had ended, dependent on how early or late in the year the episodes ended. The results of the initial reconciliation would not be finalized until an additional year afterwards. The new reconciliation policy effective PY6 will consist of one reconciliation of episodes that ended 6 to 18 months prior to when the claims data are pulled, with reconciliation payments made, or repayments owed, 10 to 22 months after the episodes had ended. Although this represents a four month shift, we note that physicians will benefit from knowing that reconciliation results, while arriving a few months later than they currently do, will not be subject to any additional reconciliation in the future. We encourage participants who have found effective ways to engage with physician participants to continue these efforts.

Final Decision: After consideration of the comments we received, we are finalizing our proposal to move to one reconciliation for each performance year, beginning 6 months after the end of the performance year. However, for greater clarity, we are not finalizing our proposed changes to § 510.305(j)(1) and (2) to extend previous overlap calculations and post-episode spending calculations to PYs 6 through 8, since they were previously applied at the subsequent reconciliation. As discussed above, we are adding § 510.305(m)(1)(v) to address overlaps for PYs 6 through 8. We are adding § 510.305(m)(1)(vi) to specify that the post-episode spending calculation will be applied at the single reconciliation for PYs 6 through 8. Additionally, we are modifying our proposed text at 510.301 to specify that episodes that are subject to a PY 5.2 target price but are reconciled in PY 6, will not be subject to the additional risk and market trend adjustments that will otherwise apply at the first reconciliation for PY 6.

4. Additional Episode-Level Risk Adjustment

When we originally proposed the CJR model pricing methodology, we proposed to provide each hospital with a separate target price for episodes initiated by MS-DRG 469 versus MS-DRG-470, because MS-DRGs under the IPPS are designed to account for some of the clinical and resource variations that exist and that impact hospitals' costs of providing care (80 FR 73338).

Specifically, MS-DRG 469, which focuses on costlier and complex hip and knee procedures involving patients with major complications and comorbidities, has a higher relative weight than MS-DRG 470, which ensures that the Medicare payment for MS-DRG 469 is higher than that for MS-DRG 470. However, in response to comments requesting further risk adjustment, we finalized a policy to risk adjust target prices based on the presence of hip fractures (80 FR 73339). We stated our belief that adding hip fracture status to our risk adjustment approach would capture a significant amount of patient-driven episode expenditure variation. The impact of hip fractures on inpatient costs associated with a hip replacement was acknowledged by CMS' decision to create two new MS-DRGs (521 and 522) for hip replacements in the presence of a primary hip fracture (85 FR 58432). We incorporated these new MS-DRGs into the CJR model episode definition as of October 1, 2020 via the November 2020 IFC. Thus, we have been providing four separate target prices to each participant hospital. Prior to October 1, 2020, these target prices were based on the combination of the MS-DRG to which the IPPS admission was grouped (469 or 470) and whether or not the patient had a hip fracture. Since October 1, 2020, when MS-DRGs 521 and 522 were implemented, we no longer need to stratify MS-DRG 469 and 470 episodes by fracture status, as episodes with a hip fracture are assigned instead to one of the two new MS-DRGs.

Given our proposal to specify that permitted outpatient LEJR procedures can initiate a CJR model episode, we recognize that additional risk adjustment is needed in order to account for variability within the four categories of target price. As we note previously in section II.A. of this final rule, we recognize that a single blended target price for the MS-DRG 470 category in particular could potentially underestimate spending on some inpatient episodes and likewise, could potentially overestimate spending on some outpatient episodes. This will theoretically average out across all MS-DRG 470 without hip fracture episodes at the regional level during reconciliation, but given the fact that participant hospitals' ratio of inpatient-to-outpatient cases will vary, we proposed to make an episode-specific adjustment to each target price.

The CJR model policy of adjusting target prices for MS-DRG 469 and 470 based on the presence of hip fracture was originally intended to allow us to include beneficiaries who receive LEJR procedures due to hip fractures in the

CJR model, while acknowledging their typically greater health care needs by providing a target price that is based on payment for services furnished in the historical CJR model episode data for Medicare beneficiaries with hip fractures in order to account for a significant amount of beneficiary-driven episode expenditure variation. With the same goal in mind of recognizing the greater needs of certain beneficiaries that are beyond a participant hospital's control, we proposed an additional risk adjustment methodology for PYs 6 through 8. We note that in exploring options for a risk adjustment methodology, we considered a number of factors that are not included in the proposed methodology because they were not strong predictors of episode cost, might result in unintended provider efficiency disincentives, were overly complex to calculate or administer, had limited credibility or quality of the underlying data sources, and/or conflicted with overall bundled payment initiatives. The factors we considered include: Dual eligibility (beneficiaries enrolled in Medicare Part A and/or Part B and receiving full Medicaid benefits); discharge status (the care setting for the beneficiary post procedure); joint region (hip, knee, or ankle); gender; CMS-HCC risk scores (both community and institutional); rural/urban designation of the participant hospital; clinical setting (inpatient or outpatient); rehospitalization rate (presence of hospital admission post procedure); and indices of social determinants of health at the ZIP Code level (for example, participant hospitals receiving a certain level of Medicare disproportionate share payments). After conducting a variety of analyses and regressions, we proposed to incorporate the additional risk adjustment into the CJR model pricing based on CMS-HCC condition count and beneficiary age.

The first part of the proposed methodology takes into account the total number of clinical conditions per beneficiary by assessing the count of CMS-HCC conditions, referred to as the CJR HCC count risk adjustment factor. While we proposed to name this risk adjustment factor the "CMS-HCC condition count" in the proposed rule, we are updating the term in this final rule to be the "CJR HCC count risk adjustment variable" to avoid confusion with other applications of the CMS-HCC data. This approach parallels the risk adjustment model used in the Medicare Advantage program that began with Medicare Advantage payments in 2020, which include variables that take

into account the number of conditions a beneficiary may have and makes an adjustment as the number of conditions increase in order to implement section 1853(a)(1)(I)(i)(I) of the Act (42 U.S.C. 1395w-23(a)(1)(I)(i)(I)), as added by section 17006(f) of the 21st Century Cures Act. Similarly, we chose to include risk adjustment variables that account for the total number of conditions of a beneficiary initiating a CJR model episode.

The count variables for CJR HCC count risk adjustment in the CJR model would be a series of binary, yes/no variables, meaning that a beneficiary does or does not meet the criteria for having a given number of CMS-HCC conditions. We proposed to use five CJR HCC count variables, representing beneficiaries with zero, one, two, three, or four or more CMS-HCC conditions. We proposed to estimate a coefficient from the subgroup of beneficiaries in the sample with the specific count of conditions for each count variable (as described later in this section). For example, all beneficiaries with two CMS-HCC conditions would receive a coefficient that is estimated independently of the coefficient for beneficiaries with zero, one, three or four conditions. The coefficient for the two CJR HCC count variable would represent the expected marginal cost of having any two CMS-HCC conditions, as compared to having zero CMS-HCC conditions.

The second part of the proposed risk adjustment methodology is meant to account for average anticipated episode costs associated with the age of a CJR beneficiary. Similar to the strategy for incorporating the CJR HCC count, we would create binary, yes/no variables for beneficiaries that fall into certain age ranges. We proposed four age variables for the risk adjustment methodology to represent beneficiaries aged less than 65 years, 65 years to 74 years, 75 years to 84 years, and 85 years or more, based on the patient's age at the time the HCC files were created. We proposed to estimate a coefficient from the subgroup of beneficiaries in the sample in each age range (as described further later in this section). We proposed that, for applying the coefficient to a given reconciliation target price at reconciliation, we would select the age bracket coefficient based on the patient's age on the date of admission for the anchor hospitalization or the date of the anchor procedure.

The CMS-HCC risk adjustment model is prospective; it uses a profile of major

medical conditions in the base year, along with demographic information (for example, age, sex, Medicaid dual eligibility, disability status), to predict Medicare expenditures in the next year. It is calibrated on a population of FFS beneficiaries entitled to Part A and enrolled in Part B, because CMS has complete Medicare expenditure and diagnoses data for this population. The proposed risk adjustment method for the CJR model would also be prospective in that it would use the most recently available data to predict the average expected adjustment in target price relative to the two risk adjustment variables for future performance years. Given the timing of this rule and the time to receive and process CMS-HCC condition count data, we proposed utilizing beneficiary CMS-HCC condition count and age data from a baseline of January 1, 2019 to December 31, 2019 to calculate coefficients for both risk adjustment variables for PY6. Similarly, we proposed utilizing beneficiary CMS-HCC condition count and age data from January 1, 2020 to December 31, 2020, and from January 1, 2021 to December 31, 2021 to calculate coefficients for both risk adjustment variables for PYs 7 and 8, respectively. While this should appropriately capture CMS-HCC condition count data for almost all beneficiaries, for any beneficiaries with missing CMS-HCC condition count data we would apply a CJR HCC count risk adjustment coefficient of one, so that their missing CMS-HCC condition count would neither adjust risk up nor down from the average regional target price based in the calculation of the coefficient.

For PYs 6 through 8, coefficients for the risk adjustment variables would be calculated prospectively, prior to the beginning of each performance year, using a linear regression model. In essence, this regression model approach would allow us to estimate the impact of CJR HCC count and age bracket on the episode cost of an average beneficiary, based on typical spending patterns for a nationwide sample of beneficiaries with a given number of CMS-HCC conditions and within a given age bracket. We proposed an exponential model, with the dependent variable equal to the ratio of the individual episode cost to the regional target price, since it will make it less difficult and simpler to estimate the proportional increase or decrease for each independent variable that can be directly applied to adjust the regional target prices. In statistical terms, linear

regression models assume a linear relationship between a dependent variable and one or more explanatory variables, and the associated statistical inference typically reflects an assumption of a normal distribution of the error variance (that is, the discrepancy between observed values of the dependent variable and what would be predicted by the model). As we stated in section II.B.5 of this final rule, when costs are normally distributed, 95 percent of the costs are truly within 2 standard deviations of the mean, with only 5 percent of episodes having costs that are much higher than the average cost or much lower than the average cost. As we have previously observed, TKA and THA episode costs in the CJR model are not normally distributed; that is, less than 95 percent of the costs fall within 2 standard deviations of the mean. This means that TKA and THA episode costs in the CJR model will inherently exceed the 2 standard deviation threshold more often than other clinical episode costs that are distributed normally.

Exponential models, such as the risk adjustment model we proposed, are commonly estimated by transforming the equation to logs through logarithmic transformation. In transforming our proposed exponential model, the dependent variable becomes the difference in the logs of the individual episode costs and the applicable regional MS-DRG target prices and the proportional increases or decreases for each independent variable are obtained by exponentiating the regression coefficients of the log-transformed model.

Estimating the logged version of such a model could be problematic when de-transforming the logged results to their original form (that is, dollars), but this concern is not relevant since we are simply proposing to utilize the ratios from the logged version of the model. Further, we believe that the MS-DRG target pricing differentiation already explains a portion of the cost differences in CJR model episodes. Therefore, rather than using the log of the episode cost, we proposed to use the differential between the log of the episode cost and the log of the episode target price so as to focus only on the cost difference not already reflected in the existing target prices.

Specifically, for each episode in the national sample, grouped into its appropriate category based on 36 combinations of the 9 regions and the 4

MS-DRG categories, we would subtract the log transformed episode target price for that category from each log transformed standardized episode cost.⁸ We note that prior to computing the log values of the episode costs, we ranked the episode costs and determined the 99th percentile (high episode cost cap) amount for each region/MS-DRG combination. We then replaced the actual cost amount for each episode that exceeded the applicable 99th percentile amount with that 99th percentile amount, consistent with our proposal to update the methodology used in deriving the high episode spending cap amount.⁹ We note that we purposely applied the high cost episode cap prior to computing the regression as we are looking to compute a risk adjustment for the dollars involved in the model. Since we have a high episode cost cap such that no episode will ever cost more than the cap amount, we wanted to ensure the risk adjustment coefficient explained the difference between the capped costs and the target price so we could adjust the targets appropriately. Then, we would regress, or determine the strength of the relationship between each risk adjustment factor and episode costs, these amounts (the costs from episodes of care furnished to any

eligible beneficiary in FFS Medicare from the applicable baseline calendar year who is entitled to Part A and enrolled in Part B and has an episode triggered by a claim for a MS-DRG 469, 470, 521 or 522, or permitted outpatient TKA/THA CPT code) onto their CJR HCC count and age bracket. The resulting coefficients associated with CJR HCC count and age bracket (after exponentiating the coefficients in order to “reverse” the logarithmic transformation we performed earlier on episode costs for purposes of the regression calculation), would be referred to as the CJR HCC count risk adjustment factor and the age bracket risk adjustment factor. Because the coefficients are calculated at the national level, the average risk score in a given region and MS-DRG category may not be equal to one. As a result, the target price for a beneficiary could have a positive or negative risk adjustment applied even if that beneficiary’s risk score is equal to the average risk of the regional population on which their target price was based. We considered alternative approaches of calculating coefficients separately for each region or applying risk-standardization to the regional target price prior to applying the beneficiary-specific risk score. However, we did not pursue these alternatives in an effort to minimize complication. We solicited comment on whether additional calculations steps should be included in order to ensure

that the average risk score in a given region and MS-DRG category is equal to one.

An example of the regression output from this model is provided in Table 3. The output provided in Table 3 was calculated using the “2018 HCC payment year file” data, which is derived from national episode claims data dated January 1, 2017 to December 31, 2017 for MS-DRG 469, MS-DRG 470, and the permitted outpatient TKA/THA CPT code. The “Pr > |t|” column indicates the probability value, or p-value, that the effect of the risk adjustment factor is explained by that risk adjustment factor alone. Small p-values, typically less than 0.05, indicate strong evidence that the effect can be attributed to the risk adjustment factor. As described later in this section, the high p-value for the Dual Eligibility factor influenced our decision to not choose that risk adjustment factor. Indicated by the “ex” column, the risk adjustment coefficients represent the anticipated marginal cost associated with each specific risk adjustment factor. For example, the 1.116 value in Table 3 for beneficiaries Age 85+ indicates that beneficiaries 85 years and older are anticipated to increase marginal episode costs by 11.6 percent. These coefficients would be posted on the CMS website prior to each PYs 6 through 8, along with the average regional target prices, as described in section II.B.2 of this final rule.

⁸ We requested comment on specification checks that should be conducted and on revisions, such as a switch to a fixed effects model, that would facilitate such additional analysis.

⁹ We requested comment on the impact of this practice on the statistical validity of the model.

TABLE 3: REGRESSION OUTPUT FROM LOG LINEAR REGRESSION MODEL

Parameters	Model Estimates	Standard Error	t Value	Pr > |t|	e^x
Intercept	-0.08756	0.002127	-41.17	<.0001	0.916
Age 85+	0.109515	0.002573	42.56	<.0001	1.116
Age 75 to 84	0.012587	0.00219	5.75	<.0001	1.013
Age 65 to 74	-0.05192	0.002134	-24.33	<.0001	0.949
Age Under 65					1
Dual Eligibility[*]	0.001991	0.002787	0.71	0.4748	1.002
CJR HCC Count = 4	0.226897	0.001721	131.81	<.0001	1.255
CJR HCC Count = 3	0.140797	0.001893	74.4	<.0001	1.151
CJR HCC Count = 2	0.095357	0.001534	62.16	<.0001	1.100
CJR HCC Count = 1	0.047497	0.001314	36.14	<.0001	1.049
CJR HCC Count = 0					1

[* While we did not propose to include dual eligibility status in Medicare and Medicaid as a risk adjustment factor, it is included in this table to demonstrate the criteria we used to determine appropriate factors. The regression analysis was run without the Dual Eligibility variable, with no apparent impact on the other coefficient estimates. The results displayed for this variable in this table represent a definition of dual-eligibility that includes beneficiaries enrolled in Medicare Part A and/or Part B and receiving full or partial Medicaid benefits]

An updated example of the regression output from this model is provided in Table 3a, which was calculated using national episode data from January 1, 2018 to December 31, 2018 (prior to the introduction of MS-DRGs 521 and 522), for MS-DRG 469, MS-DRG 470, and the permitted outpatient TKA/THA CPT code. When CMS updated the data in Table 3, we also discovered an error in the original programming regarding the definition of a dual-eligible beneficiary

for the regression that inadvertently included beneficiaries enrolled in Medicare Part A and/or Part B and receiving full or partial Medicaid benefits. As noted in section II.C.4 of the proposed rule, our intention was to only include beneficiaries receiving full Medicaid benefits and not those only receiving partial Medicaid benefits. The correction in the programming to only include beneficiaries fully eligible for Medicaid benefits, as well as enrolled in

Medicare Part A and/or Part B, demonstrates that there is strong evidence to suggest that the correctly defined dual eligibility status variable alone has a statistically significant effect on episode costs. Specifically, CMS observed a p-value of <0.0001 for the correctly defined variable using the 2017 claims data that was used for Table 3 in the proposed rule, as well as using the 2018 claims data used to calculate the results in Table 3a in this final rule.

TABLE 3a: REGRESSION OUTPUT FROM LOG LINEAR REGRESSION MODEL

Parameters	Model Estimate	Standard Error	t Value	Pr > |t|	e^x
Intercept	-0.1648	0.0024	-67.98	<.0001	0.8480
Age 85+	0.4107	0.0028	148	<.0001	1.5079
Age 75 to 84	0.1191	0.0024	49.27	<.0001	1.1265
Age 65 to 74	0.0159	0.0024	66.72	<.0001	1.0160
Age Under 65	0				1
Dual Eligibility[*]	0.1959	0.0021	93.69	<.0001	1.2164
CJR HCC Count = 4	0.2940	0.0016	184.85	<.0001	1.3418
CJR HCC Count = 3	0.1432	0.0018	77.83	<.0001	1.1540
CJR HCC Count = 2	0.0903	0.0016	57.3	<.0001	1.0946
CJR HCC Count = 1	0.0366	0.0014	25.58	<.0001	1.0373
CJR HCC Count = 0	0				1

[* The results displayed for this variable in this table represent a definition of dual-eligibility that only includes beneficiaries enrolled in Medicare Part A and/or Part B and receiving full Medicaid benefits]

We proposed to conduct this linear regression model on updated baseline data and post the coefficients on the CMS website prior to the start of each of the performance years (6 through 8). By re-running the linear regression model each year based on more recent, nationwide data (including both CJR model and non-CJR episodes), we will more accurately account for changes in spending patterns that disproportionately impact certain subgroups within our two risk adjustment variables of CJR HCC count and age bracket. For instance, if a new LEJR-related treatment were introduced during the baseline period, but it was only appropriate for use in patients under the age of 85, then the risk for increased episode costs relative to the regional mean episode cost associated with being in the age brackets for beneficiaries under age 85 would be impacted differently than the risk of being in the 85+ age bracket. By re-running the linear regression model each year and updating the risk adjustment coefficients, we would be able to more accurately risk adjust at the episode level for all categories of beneficiaries at reconciliation.

At reconciliation, after actual performance year episode costs are capped at the proposed 99th percentile consistent with our proposal to update the methodology used in deriving the high episode spending cap amount, the transformed risk adjustment coefficients for the two variables from the log-linear regression would be applied to quality adjusted target prices based on the

applicable episode region and MS-DRG. However, since the age and the CJR HCC count variables are inherently included in the regional target price, as regions with a higher proportion of older beneficiaries or beneficiaries with higher CJR HCC counts tend to have higher average episode costs, we propose to apply a normalization factor to remove the overall impact of adjusting for age and CJR HCC counts on the national average target price. This normalization factor would be the national mean of the target price for all episode types divided by the national mean of the risk-adjusted target price. For example, if the average target price for all episodes (average of all 36 MS-DRG 469, MS-DRG 470, MS-DRG 521, and MS-DRG 522, applied to all episodes in a year) is \$22,000 and the average of target prices for the same set of episodes once risk adjustments are applied is \$23,158, then the normalization factor would be computed as 0.95 (\$22,000 divided by \$23,158). We would then apply the normalization factor to the previously calculated, beneficiary-level, risk adjusted target prices specific to each episode region and MS-DRG combination. These normalized target prices would then be further adjusted for market trends (as detailed at § 510.301) and quality performance (as specified at § 510.300), prior to being compared to the episode costs (after episode costs are reduced for high episode spending as specified at § 510.300 and/or extreme and uncontrollable conditions under

§ 510.305). We note in this final rule we are making a technical change to the description of this process at § 510.301(a)(5)(iv) to streamline the regulation text.

For example, a 70-year-old beneficiary with a CJR HCC count of 4, not a dual-eligible status beneficiary, located in the West North Central Division, region 4, has an MS-DRG 470 episode during PY6. Assume that the total actual cost for this episode was \$21,900, which for purposes of this example we will assume is under the high cost episode cap amount and thus no capping needs to be applied to the actual costs and that the beneficiary was treated at a CJR participant hospital with a composite quality score of 'Good' with a 1.5 percent withhold.

Assuming the target price for region 4 DRG 470 is \$17,097 (reflects a 3 percent quality withhold), the normalization factor in effect for PY6 is 0.95, and the market trend factor is 1.023, the target price applied for reconciling this episode would be computed as follows:

Step 1. Risk adjust the target
—Assuming the value shown in TABLE 4: RISK FACTOR MULTIPLIERS FOR THE CJR MODEL FOR ALL AGE BRACKET AND CJR HCC COUNT COMBINATIONS of this proposed rule are in effect for purposes of this example, locate the appropriate risk adjustment co-efficient combination for a CJR HCC count of 4 and age of 70 which is listed as 1.3633 and multiply the target price of \$17,097 by that value:
 $\$17,097 * 1.3633 = \$23,308.34$

Step 2. Normalize the risk adjusted target price by multiplying it by the normalization factor of 0.95:

$$\$23,308.34 * .95 = \$22,142.92$$

Step 3. Apply the market trend factor:

$$\$22,142.92 * 1.023 = \$22,652.21$$

Step 4. Adjust the price to reflect the hospital's composite quality score category of 'Good' (1.5 percent withhold rather than 3 percent) by restoring 3 percent and then adjusting to withhold 1.5 percent:

$$\$22,652.21 * 100/97 = \$23,352.79$$

$$\$23,352.79 * .985 = \$23,002.50$$

Once the applicable risk adjusted, normalized, trend adjusted and quality adjusted target price is computed, the actual episode costs of \$21,900 would be compared to the target of \$23,002.50 and this episode would therefore show a savings of \$1,102.50. We previously considered making risk adjustments based on a participant hospital's average HCC score for patients with anchor hospitalizations (80 FR 73338). However, we did not propose this policy because the HCC score was

developed for applications in generalized population health and might not be appropriate for use in predicting expenditures for specific clinical episodes over a shorter period of time. We proposed to use the CJR HCC count and age variables as risk adjustment factors, as we believe that these variables do improve the predictability to our target pricing, even though they are not as fully comprehensive as the HCC score variable. As noted in the "ex" column of Table 3, the risk adjustment coefficients vary across groups consistent with expected increases in severity, and the coefficients are monotonic with respect to expected severity (with the exception of the under 65 age group, which is expected to be relatively expensive due to the high volume of disabled beneficiaries in that age group). Additionally, we proposed to use CJR HCC count and age because based on internal regression analyses using the coefficients from Table 3, those factors contribute an additional 7.1 percent of statistically significant predictability to

our target price calculation. This improved accuracy in target pricing is especially important since early evaluation results from the CJR model that indicate a higher proportion of episodes are exceeding the high-cost episode cap than initially anticipated. Using the values from Table 3, we constructed Table 4 to illustrate the risk factor permutations for each Age Bracket and CJR HCC count category. Additionally, in this final rule, we used the values from Table 3a to construct an updated version of Table 4, which is Table 4a in this final rule. Table 4a illustrates the risk factor permutations for each Age Bracket and CJR HCC count category, as well as the dual-eligibility status factor. For PYs 6, 7 and 8, we proposed to publish updated versions of Tables 3a and 4a on the CMS website prior to the beginning of each performance year based on the data from the applicable baseline calendar year in order to communicate the specific risk factors applicable in a given performance year.

TABLE 4: RISK FACTOR MULTIPLIERS FOR THE CJR MODEL FOR ALL AGE BRACKET AND CJR HCC COUNT COMBINATIONS

Age Bracket	CJR HCC Count = 4	CJR HCC Count = 3	CJR HCC Count = 2	CJR HCC Count = 1	CJR HCC Count = 0
Age 85+	1.401	1.285	1.228	1.171	1.116
Age 75 to 85	1.271	1.166	1.114	1.063	1.013
Age 65 to 74	1.191	1.092	1.044	0.996	0.949
Age Under 65	1.255	1.151	1.1	1.049	1

TABLE 4a: RISK FACTOR MULTIPLIERS FOR THE CJR MODEL FOR ALL AGE BRACKET, CJR HCC COUNT, AND DUAL-ELIGIBILITY STATUS COMBINATIONS

Dual Eligibility = No					
Age Bracket	CJR HCC Count = 4	CJR HCC Count = 3	CJR HCC Count = 2	CJR HCC Count = 1	CJR HCC Count = 0
Age 85+	2.0233	1.7400	1.6504	1.5641	1.5079
Age 75 to 85	1.5115	1.2999	1.2330	1.1685	1.1265
Age 65 to 74	1.3633	1.1725	1.1121	1.0539	1.0160
Age Under 65	1.3418	1.1540	1.0946	1.0373	1.0000

Dual Eligibility = Yes					
Age Bracket	CJR HCC Count = 4	CJR HCC Count = 3	CJR HCC Count = 2	CJR HCC Count = 1	CJR HCC Count = 0
Age 85+	2.4612	2.1166	2.0076	1.9026	1.8342
Age 75 to 85	1.8387	1.5813	1.4998	1.4214	1.3703
Age 65 to 74	1.6584	1.4262	1.3528	1.2820	1.2359
Age Under 65	1.6322	1.4037	1.3314	1.2618	1.2164

Our intent with the proposed risk adjustment methodology is to reduce the need for application of the high-cost episode cap by more accurately setting and adjusting target prices, although our proposed new methodology for deriving the high episode spending cap amount may also reduce instances when the cap applies. This approach is responsive to commenters in past CJR model proposed rules that indicated the accuracy of target prices benefits participants by increasing financial predictability of participation in the model.

We also considered, as a risk adjustment variable, a beneficiary's dual-eligibility status in Medicare and Medicaid, or a variable to potentially control for social determinants of health and patient economic demographics. As noted in section II.C.4 of this final rule, CMS updated the data in Table 3 with calendar year 2018 claims data and the correct definition of a dual-eligible beneficiary, and Table 3a demonstrates that there is strong evidence to suggest that the dual eligibility status variable alone has a statistically significant effect on episode costs. Specifically, CMS observed a p-value of <0.0001 for the correctly defined dual-eligibility status variable using calendar year 2018 claims data. As previously noted, other variables considered but not chosen due to similar lack of additive predictive power were rural or urban designation of the participant hospital and ZIP Code level. While we did not propose to include dual-eligibility status as a risk adjustment variable, we sought

comment on the inclusion of this and other risk adjustment variables in the model to account for such patient characteristics. Additionally, we chose binary variables to represent the risk adjustment factors since it is a generally accepted common practice in similar regression analyses, and for simplicity purposes in our model. However, we sought comment on alternative methods for expressing these factors in our exponential risk adjustment model.

The following is a summary of the comments received and our responses.

Comment: Many commenters were in support of the proposed episode-level risk adjustment. All commenters that commented about using age as a risk adjustment variable were in support of the proposal. While most commenters were in support of using CJR HCC count as a variable, some commenters recommended adjustments. In particular, commenters recommended adjusting the methodology to account for the severity, or weight, of certain HCC conditions instead of the count of conditions alone. In particular, a commenter requested that CMS consider the relative impact on the perioperative period of some of the cardiovascular/pulmonary codes versus more chronic diseases that might be impactful longitudinally but do not have as much effect in an acute intervention setting. A commenter expressed support for the proposed risk adjustment variables, but recommended CMS strengthen its approach to quality measurement given

the movement to the outpatient setting for these procedures.

Response: We appreciate that many commenters supported the proposed risk adjustment variables and methodology. When developing the proposed risk adjustment methodology for the 3-year extension of the CJR model, we did consider including specific adjustments for the weight and severity of certain HCC conditions. However, we encountered problems with insufficient claim volume for certain HCC conditions, and when they were included in the regression modeling, they did not contribute any material improvement in statistical predictability of the regression model compared to simply using HCC condition count alone. As noted in section II.C.4 of this final rule, simplicity has been an important consideration as we introduced the proposed risk adjustment methodology, and we determined HCC condition count would be a more transparent approach to risk adjustment than if we had included a more complex approach with specific HCC conditions included in the regression modeling. CMS appreciates the commenters' suggestion to consider the relative impact on the perioperative period of some of the cardiovascular/pulmonary HCC condition codes versus more chronic diseases. Similar to our decision to not include a site of setting risk adjustment variable, we chose to exclude specific adjustment for certain HCC conditions in the regression model to avoid

creating incentives that may motivate participant hospitals to focus on coding certain HCC conditions due to their exaggerated effect in the risk adjustment methodology compared to other HCC conditions. As noted in section II.F.2 of this final rule, we believe the proposed quality measures, in conjunction with the proposed risk adjustment methodology, will ensure our inclusion of outpatient procedures in the model does not negatively impact beneficiary quality of care or safety.

Comment: Some commenters recommended calculating the coefficients at the regional level instead of the proposed national level, citing the need to capture unobserved socioeconomic characteristics or other factors that vary by region. Some commenters recommended the effect of the risk adjustment variables be limited so they could only increase target prices (that is, do not apply any coefficients lower than 1.0), stating the purpose of the risk adjustment multiplier is to reduce the need for a high episode cap due to it being raised to the 99th percentile of historical costs. A commenter recommended that CMS calculate risk adjustment variables in a single regression that includes the MS-DRG and the fracture status. A commenter stated that since target prices reflect regional baseline costs, CMS should consider normalizing based on regional case mix.

Response: We appreciate the suggestions from commenters on the calculation of the risk adjustment coefficients. We did sample coefficients calculated at the regional level and observed similar average effects compared to our nationally calculated coefficients. In particular, we observed only a 0.1 percent difference in r-squared, or the goodness of fit measure that measures the strength of the relationship between the model and the dependent variable, between the two regression models. We anticipate the additional inclusion of dual-eligibility status as a risk adjustment variable in this final rule will capture some of the unobserved socioeconomic characteristics that may vary by region. We are also choosing to calculate the risk adjustments at the national level to reduce the complexity of calculating and posting on the CMS website coefficients for each of the three risk adjustment variables for each of the 9 regions of the CJR model. While CMS maintains the purpose of the risk adjustment methodology, as well as other proposed changes to the CJR model payment methodology meant to reduce the need for the high episode spending cap, we also designed the risk

adjustment methodology to accommodate our inclusion of the outpatient and inpatient episode target price. Since outpatient procedures may be less costly than inpatient procedures for patients that share similar characteristics, we determined it would be inappropriate to limit the effect of the risk adjustment methodology to only increase target prices. While CMS considered the approach of using a single regression that includes the variables that define the 36 MS-DRG and regional combinations and used that regression to predict the mean episode cost, we believed it would be simpler and equally effective to utilize a risk adjustment process that supplemented the existing structure and did not change the existing use of the 36 target price groups by defining the dependent variable in the regression as costs not already captured by the 36 target price group means. Lastly, we agree that target prices reflect regional baseline costs, but disagree that after risk adjustment, they should be normalized by region. We believe it would be inappropriate because the resulting effect would be that the risk adjustment process would only account for differences in severity within and not across regions.

Comment: Commenters were in support of adding dual-eligibility or a similar risk adjustment variable that would effectively capture some of the cost variation related to a patient's socioeconomic determinants or status. In particular, a commenter noted that this variable should be included because it is associated with the likelihood of readmissions for Medicare beneficiaries undergoing these procedures, as evidenced by its inclusion as a stratified risk adjustment variable in the Hospital Readmissions Reduction Program. A commenter stated they appreciated the comprehensive description of CMS' analysis in the proposed rule, including its finding regarding dual-eligible status, and recommended that CMS explore proxy measures of socioeconomic status if dual-eligibility is found to not be a significant predictor in the model.

Response: We originally included the dual-eligibility status variable in our risk adjustment regression in an attempt to include an adjustment for a variable to potentially control for social determinants of health and patient economic demographics. We ultimately chose not to propose inclusion of this variable due to a p-value 0.4748 that was calculated using 2018 claims data. However, as noted in section II.C.4. of this final rule, when CMS updated the data in Table 3 with 2019 claims data

we also discovered an error in the original programming regarding the definition of a dual-eligible beneficiary for the regression that inadvertently included beneficiaries enrolled in Medicare Part A and/or Part B and receiving full or partial Medicaid benefits. As noted in section II.C.4. of the proposed rule, our intention was to only include beneficiaries receiving full Medicaid benefits and not those receiving partial Medicaid benefits. The correction in the programming to only include beneficiaries fully eligible for Medicaid benefits, as well as enrolled in Medicare Part A and/or Part B demonstrates that there is strong evidence to suggest that the correctly defined dual-eligibility status variable alone has a statistically significant effect on episode costs. Specifically, CMS observed a p-value of <0.0001 for the correctly defined variable using the 2018 data that was used for Table 3 in the proposed rule, as well as using the 2019 data used to calculate the results in Table 3a in this final rule. As a result of this new evidence that suggests the dual-eligibility status variable alone does have a statistically significant effect on episode costs, and in response to comments, we are adding full dual-eligibility status as a risk adjustment variable to the CJR model in this final rule. Similar to the other risk adjustment variables, the dual-eligibility status variable will be a binary (yes or no) variable that indicates a beneficiary was enrolled in Medicare Part A and/or Part B and receiving full Medicaid benefits.

Since we are finalizing an update to the target price methodology, as described in section II.B.3. of this final rule, such that target prices for PYs 6, 7, and 8 will be calculated with episode baseline data from 2019, 2021, and 2022, respectively, we are finalizing corresponding changes to the data used to calculate the risk adjustment coefficients. In particular, we are finalizing that the coefficients for each of the three risk adjustment variables will be calculated from Medicare claims data dated January 1, 2019 to December 31, 2019 for PY6 and PY7, and from January 1, 2021 to December 31, 2021 for PY8. As noted previously, we agree with commenters that use of 2020 data should be avoided. Therefore, similar to declining to rely on the 2020 claims data used to calculate target prices as a result of potential distorting effects on the data due to the COVID-19 PHE, we are also not using that year of data for risk adjustment calculation purposes. In particular, we will hold the CJR HCC count risk adjustment factor coefficients

calculated with claims data dated January 1, 2019 to December 31, 2019 for PY6 constant for PY7, since we are making corresponding changes to target price calculations to avoid using 2020 baseline data for target prices. Risk adjustment coefficients would then be updated and posted on the CMS website before PY8 begins, using claims data dated January 1, 2021 to December 31, 2021. As noted in section II.B.3 of this final rule, we anticipate the corrective mechanisms of the PY6 methodology will reduce the distortion potentially caused by the COVID-19 PHE in the 2021 data. As 2021 data become available, we will monitor the potential effects of the COVID-19 PHE on that data and determine if any adjustment is needed regarding use of the 2021 data for PY8 risk adjustment coefficient calculations. All three risk adjustment factor coefficients will be posted on the CMS website prior to the start of each performance year, along with the applicable target prices. We appreciate that commenters were generally in favor of adding this dual-eligibility status, or another variable, to capture the effect of a beneficiary's socioeconomic status on their episode costs.

Comment: Some commenters were in support of adding other risk adjustment variables, including functional status, disability status, joint location, reason for Medicare eligibility, post-discharge destination, urban/rural patient address, patient demographics, sociodemographic status, marital status, race, ethnicity, income, and education.

Response: CMS appreciates the additional risk adjustment variables that commenters suggested. We anticipate our addition of the dual-eligibility status variable in this final rule may satisfy some of the recommendations from commenters to consider an additional risk adjustment variable that would adjust target price costs based on a patient's demographics, socioeconomic status, and other similar factors. As noted in section II.C.4 of this final rule, we designed the risk adjustment methodology to serve as a progressive step from the original CJR model methodology that adjusted MS-DRG 469 and 470 target prices based on fracture status alone. However, we must balance our objective to test innovative risk adjustment methodologies with the mandatory nature of the CJR model. We anticipate that some of the hospital participants that are selected for participation in the CJR model are not those that would have otherwise voluntarily chosen to participate in an APM and may not be as familiar with the related alternative forms of payment, such as the proposed risk adjustment

methodology, so we intended to reduce complexity of the risk adjustment methodology by only selecting the most important risk adjustment variables. CMS also was limited in our ability to consider some risk adjustment factors, such as a patient's income or education, given the difficulty in consistently and accurately capturing this data and using it for risk adjustment purposes. As a result, we chose to limit the complexity of the risk adjustment methodology and are not including other factors at this time.

Comment: Some commenters requested additional information about the process of calculating the episode-specific adjustments, with a commenter suggesting that CMS validate both exponential and linear risk adjustment regression models with 2019 data to evaluate goodness of fit. A commenter requested information on the factors that CMS chose not to include, specifically whether the mix of inpatient versus outpatient episode was a rejected factor. A commenter asked whether a sub-group analysis was done for the higher quintile cost groupings of the proposed risk adjustment variables to see if the effects of those risks become more apparent for poor urban populations, especially for the more specific grouping of very high cost outliers, stating that this this would also impact the proposed elimination of the outlier caps.

Response: As described in section II.C.4 of this final rule, CMS tested the proposed risk adjustment regression model using 2019 Medicare claims data. We determined that in addition to the risk adjustment variables originally proposed (age and CJR HCC count), the dual-eligibility status variable was also statistically significant, which led us to include that variable in the risk adjustment methodology described in this final rule. While we considered a linear regression model, we chose the exponential model because it yielded factors that can be applied directly to (that is, multiplied times) the existing target prices as proportional adjustments. The exponential model also yielded plausible statistically significant estimates of the effects for the proposed variables and added explanatory power. CMS did consider whether to include site of setting as a risk adjustment variable in the regression modeling. However, given the significant effect this variable would have on target prices (as a result of the variation in outpatient and inpatient episode costs), we did not propose to include it as a risk adjustment variable. We continue to assert that the risk adjustment methodology, with the

addition of dual-eligibility status as a variable, that we are adopting in this final rule will effectively capture the associated costs with CJR beneficiaries in either setting and will not infringe on the patient-doctor decision-making. Regarding the comment that suggested CMS conduct a sub-group analysis for the higher quintile cost groupings of the proposed risk adjustment variables to see if the effects of those risks become more apparent for poor or urban populations, we anticipate the addition of the dual-eligibility status variable should help address this potential differential in effect size given the income limitations associated with beneficiaries enrolled in Medicaid.

Comment: Other commenters requested clarification on the timeframe that would be used to count the number of HCCs a beneficiary has, which should give providers a better understanding of the methodology and its effects. A commenter asked whether the HCCs will be captured through outpatient ICD-10 codes as well as inpatient, and for what preceding period.

Response: We noted in the proposed rule that we would utilize beneficiary CMS-HCC condition count and age data from a baseline of January 1, 2019 to December 31, 2019 to calculate coefficients for both risk adjustment variables for PY6, data from January 1, 2020 to December 31, 2020 for PY7, and data from January 1, 2021 to December 31, 2021 for PY8. As described in section II.B.3. of this final rule, while the same date ranges for data will be used to calculate the CJR HCC count, age, and dual-eligibility status risk adjustment variables, we will calculate coefficients for PY6 and PY7 using claims data dated January 1, 2019 to December 31, 2019, and coefficients for PY8 using claims data dated January 1, 2021 to December 31, 2021. Specifically, we will hold constant for PY7 the risk adjustment coefficients we calculate for PY6. We will post the applicable risk adjustment coefficients on the CMS website prior to the start of each performance year, along with the target prices applicable to that subsequent performance year. We believe that in general, holding constant the risk adjustment coefficients that are posted on the CMS website prior to the start of a performance year until they are used at reconciliation will be responsive to commenters that expressed concern about the proposed retrospective market trend factor of the proposed payment methodology. We also clarify that this HCC data will be captured for beneficiaries receiving both inpatient and outpatient procedures.

Comment: A commenter recommended that since there is variability in the content of patients' medical records which may result in a hospital not capturing all of the patient's conditions, CMS should provide education to providers participating in the model and practitioners to better ensure they are aware of this change once finalized. A commenter requested that CMS provide HCC data in the current model year before finalizing the proposed rule, to allow participants to fully understand the implications of the proposed risk adjustment methodology.

Response: We appreciate the recommendation that given the variability in the content of patients' medical records and its potential effect of not capturing all of a patient's conditions, CMS should provide education to providers participating in the model and practitioners. We will ensure this is appropriately provided in CJR model educational material and communications. Given the timing of this final rule and the PY5 operations currently underway in the CJR model, we are unable to retroactively provide current CJR participant hospitals HCC data. However, we are aware that the HCC data and the proposed risk adjustment methodology as a whole will be new to CJR participant hospitals in PY6, we plan to ensure these topics are effectively communicated to participants prior to the start of PY6 through webinars, communications, and other learning material.

Comment: Some commenters expressed concern at the timing of baseline data used to calculate the coefficients, noting that adjustments will be needed for PY7 given that COVID-19 will result in 2020 volume of elective hip and knee surgeries that does not reflect the typical spending pattern of a hospital or region. A commenter suggested CMS consider how COVID-19 may necessitate a new HCC condition that could alter the proposed risk adjustment methodology.

Response: As noted in section II.C.4 of this final rule, we are committed to testing the proposed risk adjustment methodology for the proposed 3-year extension of the CJR model. However, we also understand that due to the COVID-19 PHE, baseline data from 2020 will likely not be as reflective of true market conditions for PY7. As noted in section II.B.3 of this final rule, as a result of potential data issues due to the COVID-19 PHE, we are finalizing that PY6 target prices will be based on episode baseline data from calendar year 2019, but PY7 target prices will be based on episode baseline data from

calendar year 2021, and PY 8 target prices on episode baseline data from calendar year 2022. Similarly, we are finalizing corresponding changes to the timing of risk adjustment data to avoid the potential in distorting effects of the COVID-19 PHE on the 2020 data. In particular, PY6 and PY7 risk adjustment coefficients will be calculated based on claims data from January 1, 2019 to December 31, 2019, and PY8 risk adjustment coefficients will be calculated based on claims data from January 1, 2021 to December 31, 2021. We will monitor the need for future adjustments to 2021 risk adjustment data as well.

Comment: A commenter stated that CMS proposed to create an episode-specific adjustment for each target price to account for a participant hospital's varying case mix and requested that CMS clarify how it will calculate the proposed episode-specific adjustment.

Response: While CMS proposed episode-level risk adjustment to account for the age and number of HCC conditions a certain beneficiary may have, we did not propose a general case-mix adjustment, such as a hospital's case mix indexes (CMI) for discharges which would be the sum of the average DRG relative weight of a hospital's discharges (as described on the CMS website: <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/AcuteInpatient-Files-for-Download-Items/CMS022630>).

Comment: A few commenters expressed concern about applying the proposed risk adjustment methodology to both inpatient and outpatient episodes, stating that the relationship between excess costs and HCC condition count varies significantly between episodes that originate in the inpatient versus outpatient setting, and additional risk adjustment must be incorporated. Similarly, a commenter stated that the proposed risk adjustment methodology will not account for beneficiary-specific factors in situations where the same patient can have an elective procedure done in either inpatient or outpatient setting.

Response: We anticipate that since the CJR HCC count risk adjustment factor will be calculated from annual HCC data, and not the HCC data documented on claims specifically related to a procedure, any variation in costs between episodes that originate in the inpatient versus outpatient setting is warranted and will appropriately account for the characteristics of those beneficiaries that are associated on average with more or less costs. CMS is not indicating that the proposed risk

adjustment factors will capture patient preferences, or other beneficiary-specific factors, in situations where the same patient can appropriately have an elective procedure in either the inpatient or outpatient setting. We proposed the risk adjustment factors because we believe they will appropriately account for some of the episode cost differences related to those factors. We maintain that the decision for site of setting is a collaborative choice made by clinicians and patients and intentionally avoided using risk adjustment factors that could affect the nature of that decision.

Comment: A few commenters suggested that CMS use the same risk adjustment model that is currently used in the BPCI Advanced model, and a commenter suggested that CMS adopt the Alternative Payment Condition Count (Alternative PCC) model since it includes new HCCs for Dementia and Pressure Ulcers. Similarly, a commenter suggested that CMS consider the benefit of aligning risk adjustment across models where it makes sense, using the most appropriate factors including an ability to adapt for changes in condition instead of relying too heavily on past behavior as the key predictor of the future, particularly to account for changing clinical practice patterns, and accounting for the number of chronic conditions of an individual.

Response: We recognize the benefit of payment policy alignment across models, including the BPCI Advanced. Given the unique mandatory nature of participation in the CJR model, however, CMS strives to ensure transparency in the model's payment methodology. We must assume that some of the participants that were selected for participation in the CJR model are not those that would have otherwise voluntarily chosen to participate in an APM and may not be as familiar with the related alternative forms of payment, such as the bundled payments in the CJR model. As a result, simplicity has been a tenet of the CJR model's payment methodology, which led us to propose the age and CJR HCC count risk adjustment methodology for the proposed 3 additional years of the model. As CMS analyzes the results of more complicated risk adjustment methodologies, such as those in BPCI Advanced or those referenced by the commenter that would use the most appropriate factors (for example, including an ability to adapt for changes in condition), we will consider their effectiveness and appropriateness for adoption in other potential mandatory models. As described in section II.C.4 of this final rule, CMS selected the CJR

HCC count variable given the recent recognition and adoption of the HCC condition count variable described in section 17006(f) of the 21st Century Cures Act, which is similar to the HCC condition count variable in the Alternative PCC model. We consider this variable a potentially effective and simple risk adjustment variable that would be appropriate for the CJR model, but we do not believe the entire Alternative PCC model would be appropriate for the CJR model since it is meant to more comprehensively assess this risk of an entire patient population for Medicare Advantage, unlike the episode-level risk adjustment proposed for the 3 additional years of the CJR model.

Comment: A commenter stated that insufficient information was provided to reach a conclusion on whether the risk adjustment method is appropriate. Another commenter responded to our request for comment on specification checks that should be conducted for the risk adjustment calculation and on revisions, such as a switch to a fixed effects model that would facilitate such additional analysis and stated the provider community lacks the necessary information to meaningfully comment on such a change and that if CMS would like substantive comments on a model that is different than the model proposed, CMS should provide the details of such a model.

Response: We note and are concerned that the commenter believes insufficient information was provided to reach a conclusion on the appropriateness of the proposed risk adjustment method. We strived to notify the public of the proposed risk adjustment method in the most comprehensive manner, while balancing the burdens associated with regulatory review. As described in section II.C. of this final rule, we will post documentation about the applicable target prices and risk adjustment coefficients on the CMS website prior to the start of each performance year. As is standard CJR model policy, we will also answer any participant hospital questions regarding the risk adjustment methodology at the CJR mailbox: cjrsupport@cms.hhs.gov. We believe the level of detail we provided in the proposed rule was sufficient for the provider community to comment on, as evidenced by the fact that the vast majority of commenters on this topic provided substantive comments, and only one commenter expressed concern, which indicates that commenters had enough information to meaningfully comment. When considering the additional risk adjustment for the 3-year extension of

the model, we considered various statistical models, including a fixed effects model, to determine the effect of the risk adjustment variables and described these considerations and our decision making process in section II.C.4. of the proposed rule. Since this is a new risk adjustment method for the CJR model, we also sought comment broadly on whether a fixed effects, or any other statistical model, would be advantageous and whether CMS should consider alternatives. While we did not receive specific comments recommending other statistical models to consider, if CMS determines that an alternative statistical model could be more appropriate, we will address the details of such a model in future rulemaking.

Final Decision: After consideration of comments received, we are finalizing the proposed risk adjustment methodology policy, with the following adjustments. We will add dual-eligibility status as a risk adjustment factor (defined as beneficiaries enrolled in Medicare Part A and/or Part B and receiving full Medicaid benefits on the first day of the CJR model episode) along with the existing factors of a beneficiary's age and CJR HCC count, as described at § 510.301(a)(1). We also note a numbering change to § 510.301(a)(1)(ii) in this final rule to ensure clarity regarding the age bracket variables. Additionally, the data used to calculate all risk adjustment coefficients for PY6 will be derived from Medicare claims data from January 1, 2019 to December 31, 2019; these coefficients will be held constant and used for PY7. The coefficients for PY8 will be derived from Medicare claims data from January 1, 2021 to December 31, 2021.

5. Changes to Methodology for Determining the High Episode Spending Cap Amount at Reconciliation

As discussed in section II.B.5. of this final rule, the high episode spending cap amount was designed to prevent providers from being held responsible for catastrophic spending amounts that they could not reasonably have been expected to prevent, such as post-acute care, related hospital readmissions, and other items and services related to the LEJR episode, by capping costs for those episodes at 2 standard deviations above the regional mean episode price in calculating the target price and in comparing actual episode payments during the performance year to the target prices. However, the current methodology for setting the high episode spending cap amount has not been as successful when applied to actual performance period episode

spending at reconciliation, illustrated by the fact that we have observed a high percentage of episodes exceed the cap during reconciliation, which indicates that the cap may not reflect true outlier costs. This may be partly explained by the fact that the TKA and THA procedure episode costs are not distributed normally. As discussed in section II.B.5 of this final rule, many LEJR episodes fall above 2 standard deviations from the mean at reconciliation (a much greater deviation than would occur if the costs were distributed normally). As a result, for PYs 6 through 8, we proposed to change our method of calculating the high episode spending cap amount applied during reconciliation by calculating high episode spending cap amounts based on the 99th percentile of costs. Similar to the current methodology, the high episode spending cap amounts applied during reconciliation for each MS-DRG would be derived from performance year regional spending. Total episode costs above the 99th percentile would be capped at the 99th percentile amount, and these capped episode amounts would be used when comparing performance year costs to target prices during reconciliation. We expect that this method of calculation will result in high episode spending cap amounts that more accurately represent the cost of infrequent and potentially non-preventable complications for each category of episode, which the participant hospital could not have reasonably controlled and for which we do not want to penalize the participant hospital. We proposed conforming changes to § 510.200. The following is a summary of the comments received and our responses.

Comment: Many commenters stated that the proposed cap is similar to spending cap policies for other CMS payment models and were supportive of consistency across CMS models wherever feasible. A few commenters recommended that if CMS finalizes the proposed high cost episode spending cap at the 99th percentile, then CMS should adjust the stop-loss and stop-gain limit amounts to be 10 percent to account for these higher expenditures being included.

Response: We appreciate that stakeholders recognize the potential benefit of aligning policies across models and the CJR model's intention to align where possible and appropriate. Given the similarity in the CJR model and the BPCI Advanced model, it makes sense to align the high episode spending cap for proposed PYs 6 through 8 with BPCI Advanced's existing policies and

maintain the 20 percent stop-gain and stop-loss limits.

Comment: Some commenters opposed the proposed methodology for determining the high cost episode spending cap amount at reconciliation. A commenter stated that for a subset of elective LEJR patients, despite optimal care being provided prior to surgery, unexpected and severe complications do occur, and the proposed cap at the 99th percentile does not appropriately protect hospitals from incurring undue penalties because of these complications. Some commenters suggested we continue to use the current 2 standard deviation spending cap for high cost episodes, and other commenters recommended setting the cap at the 98th, 95th, 90th, or 80th percentiles. A commenter stated that the proposed high episode spending cap is arbitrary and there is no clear rationale for decreasing the number of episodes that can be capped to 1 percent.

Response: We maintain that the risk adjustment methodology described in this final rule, with the addition of the dual-eligibility status variable, will effectively adjust target prices to account for characteristics of certain LEJR patients that are associated with higher costs. As we state in section II.C.5. of this final rule, we anticipate the other changes to the target price methodology we are adopting for PYs 6 through 8 also will limit the occurrence and need for the high episode spending cap used at reconciliation compared to the payment methodology for PYs 1 through 5. In particular, the policy to cap high cost episodes at the 99th percentile during reconciliation is consistent with, and mirrors the policy we are adopting in section II.B.5 of this final rule to calculate CJR model target prices during PYs 6 through 8 by capping high cost episodes in the baseline data at the 99th percentile. The alignment of these high cost episode caps is necessary to ensure they are symmetrically applied to episode costs during the target price calculation and reconciliation for each performance year. This is consistent with the high episode spending cap used in BPCI Advanced model. We analyzed internally the effect of adopting a high episode spending cap at the 98th percentile using the same 2018 claims data used to calculate the risk factor multipliers in Table 4 of this final rule. We observed that even at the 98th percentile, the high episode spending cap had the effect of capping more episodes than the previous method of capping episodes at 2 standard deviations, which was contrary to our intention to change the high cost

episode spending cap. As a result, we did not consider percentiles lower than 98th, such as 95th, 90th, or 80th as commenters suggest, and are adopting the 99th percentile in this final rule.

Final Decision: After consideration of comments received, we are finalizing the proposed policy to change our method of calculating the high episode spending cap amount applied during reconciliation by calculating high episode spending cap amounts based on the 99th percentile of costs.

6. Changes to Trend Factor Calculation

A limitation of the CJR model target price methodology for PYs 1 through 5 is the absence of a trend factor calculation at reconciliation to incorporate and be responsive to ongoing practice changes in the joint replacement space. When we designed the original target price methodology, we did not anticipate the nationwide downward trend in use of post-acute care services. This decrease in use, corresponding to a decrease in average LEJR episode prices, was seen in both CJR model and non-CJR participant hospitals, representing an underlying trend in LEJR episode spending patterns that was neither specific to, nor driven by, CJR participant hospitals. This generalized downward trend was not incorporated into CJR model target prices, leading to artificially inflated target prices for CJR model episodes. Our goal is to reward CJR participant hospitals for decreased spending based on improved coordination and quality of care related to their participation in the CJR model, not to reward decreases in spending that likely would have occurred even in the absence of the model, as evidenced by comparably decreased spending in non-CJR participant hospitals. If the CJR model were to continue to provide artificially inflated target prices, the model would not decrease Medicare spending over time.

Another major change that is not accounted for in CJR model target price methodology is the recent restructuring of the SNF payment system in the FY 2019 SNF PPS final rule (83 FR 39162). The original CJR model methodology assumed that the SNF payment system would retain the same structure, but would update prices on an annual basis, which would be reflected in the trend factor. However, effective October 1, 2018, we finalized a policy to change the case-mix methodology used to set payment rates for SNFs, which was implemented starting on October 1, 2019 (83 FR 39162). The existing case-mix classification methodology, the Resource Utilization Group, Version IV

(RUG-IV) model has been replaced by a new case-mix methodology called the PDPM. The new case mix methodology is designed to focus on the patient's condition and resulting needs for care, rather than on the amount of care provided, in order to determine Medicare payment. This structural change to the SNF payment system means that, if we were to try to adapt the existing CJR model trend factor methodology, prior year SNF spending can no longer be simply updated, but rather would need to be translated to reflect a different SNF payment methodology. A similar payment system change was finalized for the Home Health Prospective Payment System (HH PPS) in the CY 2019 HH PPS final rule (83 FR 56406) which updated the period of care and other methodological components of the HH PPS effective January 1, 2020. Similar to the FY 2019 SNF PPS updates, we anticipate the new strategy we proposed would account for these trends.

The inability to integrate both generalized spending trends not driven by the CJR model, and major payment system changes, in combination with the fact that outpatient TKA data were not available prior to 2018, have led us to propose a new way to account for trend in CJR model target prices.

Rather than the national update factor and biannual Medicare prospective payment and fee schedule update methodology we currently apply to historical episode spending in order to trend target prices forward prospectively (80 FR 73342), we proposed to calculate a market trend factor at the time of reconciliation by calculating the ratio of performance period spending to baseline period spending, and applying the resulting ratio to the target price.

Specifically, after the beneficiary-level, risk adjusted target prices are normalized, as described in section II.B.5 of this final rule, the next step before reconciling expenditures would be to apply a market trend factor to the target prices. The market trend factor would be the regional/MS-DRG mean cost for episodes occurring during the performance year divided by the regional/MS-DRG mean cost for episodes occurring during the target price base year. For example, the PY6 market trend factor for MS-DRG 470 in Region 1 would be calculated as the Region 1 mean episode costs for MS-DRG 470 episodes ending between January 1, 2021, to December 31, 2021, divided by the Region 1 mean episode costs for MS-DRG 470 without hip fracture episode ending between January 1, 2019, to December 31, 2019.

We note that after applying the adjustment to the IPPS payment for episodes with MS-DRGs 469 and 470 with fracture, they will be comparable to MS-DRGs 521 and 522 in the performance period, as described in section II.A.2. of this final rule, no further adjustment to the market trend will need to be performed. As a result, we would calculate 36 market trend factors during reconciliation, one for each MS-DRG and region combination. These market trend updates would then be applied to the normalized target prices discussed in section II.B.5 of this final rule. The resulting target prices would be the final target prices used when reconciling performance year episode costs. We proposed utilizing the regional mean episode costs as a basis for the market trend factor update calculation, but we sought comment on alternatively using the regional median episode costs for this calculation.

Combined with our proposal to use 1 calendar year of baseline data to calculate CJR model target prices for PYs 6 through 8 (discussed in section II.B.3. of this final rule), the proposed changes to our trend factor calculation methodology will allow us to capture both trends in spending patterns and payment system updates in a simplified, retrospective manner. The following is a summary of the comments received and our responses.

Comment: Some commenters generally agreed with the proposed market trend factor, with some agreeing in particular with the proposal to calculate the market trend factor at the regional level. MedPAC expressed support for the market trend factor only when it reduces target prices and recommended that in years when the market trend factor would increase the target price, CMS should not apply the market trend factor and instead only update target prices to reflect updates to Medicare payment systems and fee schedules (consistent with the model's current approach). Similarly, a commenter suggested that if CMS finalizes their proposed market trend factor they also implement a cap of 1 percent on changes in utilization-related pricing factors.

Response: CMS appreciates the supportive comments received regarding the proposed market trend factor, in particular, our proposed method to calculate the factor at the regional level. Given the variable trends in the LEJR market, as discussed in section II.B. of this final rule, as well as the potential disruption created by the COVID-19 PHE, CMS determined it would not be appropriate to limit the effect of the market trend factor (for

example, limited by decreases to target prices as suggested by MedPAC, or limited by decreases or increases of 1 percent as another commenter suggested). We believe that in conjunction with the other payment methodology policies in this final rule, such as the proposed use of a 99th percentile high cost episode cap for target price and reconciliation calculations and the 20 percent stop-gain and stop-loss limits, it is not necessary to impose a cap or limit on the effect of the market trend factor and that doing so could actually be inappropriate if there are significant variations in market conditions in the baseline data period compared to each performance year.

Comment: Many commenters were generally opposed to the proposed market trend factor, and some commenters suggested the existing twice annual update for payment system changes is sufficient. Many commenters stated the market trend factor is unnecessary and expressed concern that participants may have fewer opportunities to track and improve performance and that financial predictability may be lost if it is finalized. In particular, a few commenters noted that target price volatility resulting from the market trend factor would strain a hospital's relationship with the physicians with whom it has entered into gainsharing agreements to improve outcomes for Medicare beneficiaries.

Response: As noted in the discussion before Table 6a of section IV.C. of this final rule, we anticipate the market trend factor will alleviate the need for the twice annual update for payment system changes and that it will actually capture these changes more accurately than the twice annual update methodology. In particular, the previous update methodology was prescriptive of which payment systems it would update target prices for, and it did not anticipate the addition of a new payment system (for example, the SNF PDP) and was unable to adjust for this update. Since the market trend factor is rooted in episode costs and agnostic to a change in any one particular payment system, we believe it will more appropriately account for differences between baseline and performance period spending than the previous twice annual update. Additionally, while the market trend factor may have the effect of decreasing target prices as a result of lower performance period average costs compared to baseline costs, as we note in section II.C.6 of this final rule, the market trend factor could also have the effect of increasing target prices to

reflect higher performance period average costs. This could be particularly important if there is an innovative new device introduced for LEJR patients that increases average episode costs, or as a result of significant changes in patient case mix (for example, the potential impact of the COVID-19 PHE).

CMS recognizes the retrospective nature of the market trend factor may create uncertainty for participant hospitals. However, we believe it is important to balance this uncertainty with the need to accurately account for changes in the market. As noted in section II.A.2 of this final rule, the LEJR market in particular is undergoing many changes with the movement to outpatient procedures in 2018 and 2020. We determined that the uncertainty of the retrospective trend adjustment is appropriate to ensure accurate target prices for both hospital participants and any physicians with whom they enter gainsharing agreements, and that it is a necessary and important component of the entire CJR model payment methodology adopted for PYs 6 through 8, especially given the use of 1 year of baseline data. In this final rule, we also attempted to increase target price predictability for participant hospitals by providing sample target prices in Table 2a and by clarifying that the CJR HCC count coefficients posted on the CMS website prior to the start of each performance year will not change or be updated at reconciliation.

Comment: Some commenters stated the market trend factor would unfairly lead to decreased target prices for well-performing CJR model participant hospitals over time and would penalize the provider unnecessarily and obstruct their ability to continue delivering quality care at reduced costs. Some commenters stated that the proposed market trend factor is unnecessary for CMS to seek additional savings and is unfair given the increased administrative and financial burden it places on participants.

Response: Many of the CJR model payment methodology changes CMS is adopting in this final rule for PYs 6 through 8 are interdependent, and we believe will only be successful if implemented together. For example, the addition of outpatient procedures to the episode definition, which will create site-neutral target prices that are adjusted based on patient characteristics (age, CJR HCC count, and dual-eligibility status), is only possible if the risk adjustment methodology described in section II.C.4. of this final rule is simultaneously implemented. If the risk adjustment methodology were not also implemented, the regionally calculated

site-neutral target prices could be inappropriately low for inpatient episodes at certain participant hospitals or inappropriately high for outpatient episodes at other participant hospitals based on the fact that the target prices will be calculated by blending the generally lower-cost outpatient episodes with generally higher-cost inpatient episodes. Similarly, we are only able to adopt the use of 1 year of baseline data for target price calculation purposes for PYs 6 through 8 if we are also able to simultaneously adopt the market trend factor, which is meant to ensure consistency between baseline and performance period spending patterns. We recognize the use of 1 calendar year of baseline data compared to 3 years of data could create increased variation between performance period and baseline spending patterns and are adopting the market trend factor in response to this potential increase in variation. We are also adopting a simplified version of the CJR model payment methodology in this final rule by removing the twice annual update for payment system changes, and this would also not be possible without the market trend factor that is intended to accomplish the same effect of updating for payment system changes. In conjunction with these policies, we anticipate the proposed market trend factor will ensure consistent and more accurate pricing when comparing the baseline period to the performance year than the CJR model payment methodology used for PYs 1 through 5. CMS also asserts that our use of regional only data for target price calculations in PYs 6 through 8 (instead of using hospital-specific data that could penalize a hospital for its own improvements and potentially limit the hospital's ability to achieve savings) will still create an opportunity for participants to utilize the CJR model flexibility (for example, gainsharing agreements), achieve lower average episode spending compared to their regional peers, and achieve savings in the CJR model during PYs 6 through 8. We realize more accurate target prices could mean lower target prices (if average LEJR episode spending continues to decrease over time), but as noted previously and in section II.C.4. of this final rule, we also anticipate that the proposed risk adjustment methodology will appropriately adjust target prices based on certain beneficiary characteristics and that this risk adjustment methodology is an improvement from the previous methodology that simply adjusted target

prices based on the presence of a hip fracture.

Comment: A few commenters suggested calculating the market trend factor after excluding beneficiaries receiving an LEJR procedure from a participant in either the CJR model or BPCI Advanced, or after excluding beneficiaries aligned to a Medicare ACO. Some commenters opposed the proposed policy to calculate a blended target price with inpatient and outpatient episodes and recommended CMS create separate target prices. As a result of these changes, the commenters noted that the market trend factor would similarly need to be calculated separately for inpatient and outpatient episodes. Similarly, some commenters noted that the market trend factor methodology is a disincentive for use in the inpatient setting. Specifically, the commenters state that because CMS proposes to maintain the 100 percent regional pricing methodology, the proposed market trend factor would set target prices based on the regional rate of outpatient procedures, which has the potential to create a race to the bottom and unfairly penalize providers treating a higher proportion of complex patients.

Response: Similar to our policy to include CJR model, BPCI Advanced, and Medicare ACO beneficiaries in the baseline data to more accurately reflect national average spending patterns, we determined that it would be appropriate to also include these beneficiaries in the market trend factor calculation. As noted in section II.C.2. of this final rule, when CMS proposed the blended target price, we also proposed the risk adjustment factors to account for the potentially higher costs associated with certain patients that would likely be more appropriate for the inpatient versus outpatient setting. We continue to believe the risk adjustment methodology will accomplish this, and we also believe the model's quality measures, noted in section II.F. of this final rule, and other CMS penalties associated with patient complications will effectively guard against inappropriate outpatient utilization. CMS recognizes that incorporating outpatient procedures into the target price methodology, with 100 percent regional data used for target price calculations, would in general have the effect of decreasing target prices, as is evidenced in the sample target prices in Table 2a of this final rule. However, we do not believe this will constantly decrease target prices, or create a race to the bottom, or unfairly penalize providers treating a higher proportion of complex patients because the effect of the risk adjustment will be to increase

target prices for episodes for such beneficiaries. In particular, as noted in Table 4a of this final rule, the risk adjustment factors could have the effect of increasing target prices up to 250 percent for a beneficiary that is dual-eligible, 85 years or older, and with four or more HCC conditions.

Comment: A commenter noted that since episode costs are not normally distributed, the median cost is more appropriate than the mean to calculate the market trend factor since it is a non-parametric (not normally distributed, or asymmetrical) measure of central tendency.

Response: CMS recognizes that since episode costs are not normally distributed, the median could be considered a more appropriate variable to calculate the market trend factor compared to the mean. We completed internal analysis of the potential effect of using the median to calculate the market trend factor and observed a nominal difference compared to using the mean of episode costs. In particular, the trend factors calculated using means were 0.01 higher than trend factors calculated using medians. The differences in trend factors by region and MS-DRG ranged between -0.03 and 0.10. This effect is not surprising, as the distribution of standardized CJR model episode costs is right-skewed, meaning it is not normally distributed and more episodes have average costs that are above the median. Given the relative small difference in effect, and the benefit that using the mean of episode costs could have for participant hospitals (that is, increasing target prices more compared to the median), we continue to believe the mean of episode costs is more appropriate for calculating the market trend factors.

Comment: A commenter agreed with the theory of a trend factor but suggested the CJR model adopt a prospective trend factor, similar to BPCI Advanced. Similarly, another commenter urged CMS to consider methodologies to incorporate trend factors directly into the target price on a prospective basis while retaining reasonable savings potential for both CMS and model participants. A commenter suggested that a baseline combination of historical data and regional pricing would create a more reasonable trend adjustment that does not unfairly penalize hospitals for performing well in the model. A commenter requested that CMS recognize in the calculation of the regional trend factor an amount to reflect the contribution of CJR model incentives to reduce spending for post-

acute care above the secular trend in FFS spending.

Response: CMS understands the request of participant hospitals to incorporate a prospective market trend factor in the CJR model, similar to BPCI Advanced. As noted in section II.A.2. of this final rule, the LEJR market is currently evolving with TKA and THA shifting to the outpatient and ASC setting. The unknown effect of this migration, compounded by the potential effects of the COVID-19 PHE, elevates the importance of a mechanism to retrospectively adjust target prices at reconciliation and we maintain the market trend factor must be applied retroactively to be effective in this regard. As we note in section II.B.3. of this final rule, we recognize 2020 calendar year claims data may not be reflective of PY7 market conditions as a result of the COVID-19 PHE and are modifying our target price calculation such that PY7 target prices will be calculated using 2021 calendar year claims data instead of the proposed 2020 calendar year claims data. While 2021 data could also have distortions as a result of the COVID-19 PHE, we anticipate the corrective mechanisms of the PYs 6 through 8 payment methodology, in particular the market trend factor, will reduce this distortion. For this reason, we do not believe it is necessary to prospectively provide for a separate adjustment because we anticipate the market trend factor, as a result of its ability to retrospectively adjust target prices at reconciliation for variation that occurred between the baseline and performance period, will reduce the potential necessity to adjust 2021 data to account for the effect of the COVID-19 PHE.

We also note that the BPCI Advanced's prospective Peer Adjusted Trend (PAT) Factors approach is more complex than the market trend factor we are adopting in this final rule and relies on adjustments for peer group characteristics, time trends, and interactions (as described further on the CMS website here: <https://innovation.cms.gov/files/x/bpciadvanced-targetprice-my3.pdf>). Given the potential burden of implementing a more complex approach for mandatory CJR model participant hospitals that may not be familiar with intricate risk adjustment methods compared to voluntary participants in BPCI Advanced, as well as the administrative cost of calculating this factor each year, we do not believe it would be appropriate for use in the CJR model. Given the proposed use of regional only data in the target price calculations, we determined it would be

inappropriate and inconsistent to include hospital-specific historical data in the market trend factor calculation since it could potentially penalize hospitals for their own improvement in historical episode costs. As noted in section II.B.3. of this final rule, we will not exclude beneficiaries from the baseline data used for target price calculations that were aligned under an APM, such as the CJR model, BPCI Advanced, or a Medicare ACO initiative, because we believe their inclusion is more reflective of the true average costs of care given the proliferation of APMs. Similarly, we do not believe it would be appropriate to include adjustments in the market trend factor to account for the effect of CJR model incentives compared to FFS spending because we consider these effects and their impact on costs to be reflective of the true average costs of care. Lastly, we believe this adjustment could make the market trend factor overly complex and difficult to update for the potentially different effects of the payment methodology changes in this final rule compared to the CJR model payment methodology in PYs 1 through 5.

Final Decision: After consideration of comments received, we are finalizing the proposed policy to include a market trend factor that will be the regional/MS-DRG mean cost for episodes occurring during the performance year divided by the regional/MS-DRG mean cost for episodes occurring during the target price base year.

7. Changes to Composite Quality Score Adjustment

When setting an episode target price for a participant hospital, we currently apply a 3 percentage point discount to establish the episode target price that applies to the participant hospital's episodes during that performance year. We established this policy because we expect participant hospitals to have significant opportunity to improve the quality and efficiency of care furnished during episodes in comparison with historical practice, because this model facilitates the alignment of financial incentives among providers caring for beneficiaries throughout the episode. This discount serves as Medicare's portion of reduced expenditures from the episode, with any episode expenditure below the target price potentially available as reconciliation payments to the participant hospital where the anchor hospitalization occurred.

For PYs 1 through 5, a 1 percentage point reduction is applied to the 3 percent discount factor for participant

hospitals with good quality performance, defined as composite quality scores that are greater than or equal to 6.9 and less than or equal to 15.0. Additionally, for PYs 1 through 5, a 1.5 percentage point reduction is applied to the 3 percent discount factor for participant hospitals with excellent quality performance, defined as composite quality scores that are greater than 15.0.

While we did not propose to change the 3 percentage point discount factor, we proposed to increase a participant hospital's ability to reduce the discount factor as a result of its composite quality score. We proposed this change in recognition that the proposed changes to the target price calculation (discussed in section II.B. of this final rule), intended to increase the accuracy of target prices compared to actual performance period spending may also narrow the potential for participant hospitals to earn reconciliation payments. For PYs 1 and 2, a large majority of CJR participant hospitals received a reconciliation payment: 44 percent of CJR participant hospitals received reconciliation payments in both performance years and an additional 33 percent received a reconciliation payment in 1 of the 2 performance years; 23 percent never received reconciliation payments.

Because of these more accurate target prices, and the fact that all participant hospitals would be at financial risk during PYs 6 through 8, we determined that a more generous composite quality score adjustment to the discount factor is appropriate. The composite quality score adjustment for PYs 1 through 5, with a maximum potential for a 1.5 percentage point reduction to the discount factor, could potentially force the target amounts calculated under the proposed methodology (discussed in section II.B. of this final rule) under an appropriate actual cost amount, which is not the intent of the model. While the discount factor was meant to serve as Medicare's portion of reduced expenditures from an episode, we determined that the proposed changes to the target price methodology are adequate to maintain an appropriate level of reduced expenditures for Medicare while rewarding participant hospitals with high composite quality score. For further information on the anticipated model savings as a result of the proposed target price changes, see section IV.C. of this final rule.

As a result, we proposed that, for PY6 through 8, a 1.5 percentage point reduction be applied to the 3 percent discount factor for participant hospitals with good quality performance, defined as composite quality scores that are

greater than or equal to 6.9 and less than or equal to 15.0. Additionally, we proposed that a 3 percentage point reduction be applied to the 3 percent discount factor for participant hospitals with excellent quality performance, defined as composite quality scores that are greater than 15.0. That is, for participant hospitals with excellent quality performance, the 3 percentage point discount factor will effectively be eliminated for the applicable performance year.

Comment: Several commenters support the proposal to increase the quality score adjustment to a 1.5 percentage point reduction to the applicable discount factor for participant hospitals with “good” quality performance and a 3 percentage point reduction to the applicable discount factor for participant hospitals with “excellent” quality performance.

Response: We thank the commenters for their support on this topic.

Comment: MedPAC suggested that CMS could take various steps to increase the likelihood of savings being generated, such as increasing the episode target price discount factor from 3 percent to 5 percent.

Response: CMS appreciates MedPAC’s suggestions to generate additional savings for the Medicare program by increasing the discount factor. Many of the changes CMS proposed to the CJR model payment methodology for PY6 through 8 are intended to be improvements to the original methodology that will increase the probability for model savings. While CMS could design a payment methodology that attributed a much larger portion of savings to the Medicare program through a higher discount factor, we must also balance the administrative burden and investments needed by participating hospitals to be successful under the model, and thus propose to maintain the 3 percent discount factor that is intended to ensure that CJR participant hospitals are still capable of achieving a certain level of savings for themselves in the model.

Final Decision: After consideration of the public comments we received, we are finalizing the proposed change to percentage reduction to the discount factor for participant hospitals with good and excellent quality performance.

D. Three-Year Extension (PYs 6 Through 8)

1. PYs 6 to 8 Timeframe

As noted in sections II.B. and II.C. of this final rule, we proposed changes to the CJR model target price methodology and the reconciliation process primarily

to account for the removal of TKA and THA procedures from the IPO list and analysis of the reconciliation process for CJR model PYs 1 to 2 that indicates the process is not functioning as initially intended (for example, a larger number of episodes are being capped by the high episode spending cap amount than we anticipated). We proposed to extend the CJR model for an additional 3 years to run through December 31, 2023, to allow sufficient time to evaluate the impact of the changes we proposed to resolve these concerns. We proposed that, while PY6 episodes would end on or after January 1, 2021, PY6 episodes would start as of the later of October 4, 2020, or the date on which the final rule becomes effective. We solicited comment on our proposed start date of PY6, determining that this additional time is needed to complete the model test to generate the necessary evaluation findings for an expansion. Extending the model for 3 additional performance years will allow the Innovation Center to test and evaluate the model while promoting the alignment of quality with financial accountability. We proposed to change the regulations under 42 CFR part 510 to reflect this extension.

Further, the November 2020 IFC extended PY5 an additional 6 months to end on September 30, 2021. As a result of this new PY5 end date, we sought comment in the November 2020 IFC on the duration of PY6 of the CJR model. In particular, we sought comment on the potential for PYs 6 through 8 to remain 12 month performance years or for increasing the duration of PY 6 to 15 months.

Comment: Many commenters noted concerns regarding the impact of the COVID–19 PHE on the performance period. Some commenters expressed concern that the public health emergency (PHE) impact may endure far beyond the proposed timeline and requested that the CJR model be terminated at the conclusion of PY5 without the proposed 3 year extension. Furthermore, due to the serious complications suffered by older adults and those with underlying health conditions, it was recommended that the U.S. health system limit non-emergency, elective services to help prevent further exposure of the virus and to preserve essential medical supplies. Some commenters requested that CMS hold hospitals harmless from penalties for the 2020 performance year due to their focus on defeating COVID–19. In addition, requests for adjustments to financial expenditures, performance scores and risk adjustment were made for PY5 and PY6 due to hospital resources being shifted to combat the

virus. Many commenters also noted concerns regarding the impact of the COVID–19 PHE on participants’ financial stability to maintain administrative, post-acute care and care management infrastructure absent the reconciliation payments that would be anticipated from participation in the CJR model.

Response: We understand commenters’ concerns regarding the effect of the COVID–19 PHE on CJR participant hospitals and the health care system as a whole. We do not believe terminating the model at the end of PY5 would be the appropriate response to dealing with the COVID–19 PHE. As outlined in section II.K. of this final rule, we adopted policies in the April 2020 IFC and the November 2020 IFC to provide flexibilities for CJR participant hospitals during the PHE. In the April 2020 IFC, we originally extended PY5 to March 31, 2021 and we adjusted the extreme and uncontrollable circumstances policy to provide generous financial safeguards for CJR participant hospitals during the emergency period. In the November 2020 IFC, we adjusted the extreme and uncontrollable circumstances policy to provide a more targeted adjustment so that safeguards continue to apply for CJR episodes during which a CJR beneficiary receives a positive COVID–19 diagnosis. We also extended PY5 an additional six months to end on September 30, 2021.

Comment: A commenter requested PY5 be extended until December 31, 2021, such that PY7 and PY8 would start January 1, 2023 and January 1, 2024, respectively, citing as a benefit alignment between performance and calendar years. Another commenter recommended keeping PYs 6 through 8 as 12 months, but did not cite a specific reason.

Response: CMS agrees with the commenter that cited a preference for alignment of calendar and performance years for PYs 6 through 8, as this adds operational simplicity to the model design and follows the same alignment of PYs 1 through 5 that is already familiar to participant hospitals.

Comment: Commenters appreciated the continuous operation of the CJR model without interruption, but expressed concerns that the timeline proposed was unrealistic. Commenters stated that the ramp-up period required considerable re-tooling for the revisions proposed and recommended delaying the PY6 start date to at least six months after publication of the final rule or until the beginning of 2022.

Response: We appreciate the views of our commenters in our efforts to uphold

continuity in the CJR model. We are adopting an episode definition change in order to address changes to the IPO list that now allow for TKA and THA to be treated in the hospital outpatient setting. In addition, this rule adopts changes to the CJR model target price methodology and reconciliation process. We believe that these changes will not require participants to rebuild operational processes because the fundamental characteristics of the model, a bundled payment for a 90-day LEJR episode, have not changed. CMS will continue to provide the same support and resources to participant hospitals during the extension period as we did throughout the original performance period of the model.

Comment: Several commenters supported the 3-year extension of the CJR model.

Response: We appreciate the support given by the commenters in favor of the 3-year extension to the CJR model.

Comment: Commenters encouraged CMS to maintain a seamless transition between model years, particularly between PY5 and PY6. Some commenters requested clarification on how the 3-month extension of PY5, to March 31, 2021 which was established in the April 2020 IFC, will impact the proposed rule.

Response: We agree with the commenters that maintaining a seamless progression between PY5 and PY6 is critical. In the November 2020 IFC, CMS implemented an additional six-month extension to PY5 such that PY5 will now end on September 30, 2021. PY6 will start at the conclusion of PY5 and will run until December 31, 2024, thus creating no gap between performance years and realizing full continuity in the model. The extension of PY5 impacts the October 4, 2020 date used as a deadline for rural reclassification status. The new date will be July 4, 2021 to accommodate the revised start date of PY6, which is October 1, 2021.

Comment: A commenter requested clarification on what will happen at the conclusion of the 3-year extension, along with what changes will take effect. Another commenter suggested that CMS continue to support value-based payment models by creating a sustainable payment pathway for participants who are committed to moving away from FFS care.

Response: We appreciate the comment and will continue to monitor and evaluate model performance through the 3-year extension. CMS is dedicated to testing alternatives to FFS care and improving value based payment models. Any potential future

changes to the CJR model will be done via notice-and-comment rulemaking.

Comment: A commenter suggested termination of the CJR model at the conclusion of PY5 and instead suggested developing a pathway for hospitals to become voluntary episode initiators for BPCI Advanced. Other commenters questioned the necessity of the 3-year extension stating that no new information would be gathered that has not already been realized during the model's five-year run.

Response: We appreciate the comments. However, initial evaluation results¹⁰ for the first and second year of the CJR model indicate that the CJR model is having a positive impact on lowering episode costs while maintaining care quality. Despite these positive initial evaluation results, the changes we are making to the CJR model in this final rule will allow the CJR model to adapt to market conditions and provide additional time to assess these changes and evaluate their impact.

Final Decision: As a result of the adjusted PY5 end date to September 30, 2021, and in consideration of the comments we received regarding this topic in the November 2020 IFC, as outlined in section II.K. of this final rule, we are finalizing in this final rule that PY6 will be 15 months, such that it will begin with episodes ending on or after October 1, 2021 and end with episodes ending on or before December 31, 2022. We are also finalizing corresponding changes to the start and end dates for PYs 7 and 8. In particular, PY7 will begin with episodes ending on or after January 1, 2023 and end with episodes ending on or before December 31, 2023. Additionally, PY8 will begin with episodes ending on or after January 1, 2024 and end with episodes ending on or before December 31, 2024.

2. Participant Hospital Definition

In the December 2017 final rule (82 FR 57074) CMS established that effective with PY 3 the MSAs in the CJR model were split into 34 mandatory MSAs and 33 voluntary MSAs, and effective February 1, 2018 model participation would not be required for rural and low-volume hospitals in mandatory MSAs or for all hospitals in voluntary MSAs. CMS provided rural and low-volume hospitals in mandatory MSAs and all hospitals in voluntary MSAs a one time opt-in to continue in the model for PY 3 to PY 5. We updated the definition of participant hospital in the December 2017 final rule, to reflect

that beginning February 1, 2018, a participant hospital (other than a hospital excepted under § 510.100(b)) is one of the following: A hospital with a CMS Certification Number (CCN) primary address located in a mandatory MSA as of February 1, 2018 that is not a rural hospital or a low-volume hospital on that date; or a hospital that is a rural hospital or low-volume hospital with a CCN primary address located in a mandatory MSA that makes an election to participate in the CJR model in accordance with § 510.115; or a hospital with a CCN primary address located in a voluntary MSA that makes an election to participate in the CJR model in accordance with § 510.115. The CJR model does not include geographically rural areas; however, some hospitals in the MSAs in the CJR model are considered to be rural for other reasons, such as reclassifying as rural under the Medicare wage index regulations. For purposes of the CJR model, a rural hospital means an IPPS hospital that is located in a rural area as defined under § 412.64 of this chapter; is located in a rural census tract defined under § 412.103(a)(1) of this chapter; or has reclassified as a rural hospital under § 412.103 of this chapter. Additionally, for purposes of this model, a low-volume hospital means a hospital identified by CMS as having fewer than 20 LEJR episodes in total across the 3 historical years of data used to calculate the performance year 1 CJR episode target prices.

As noted in the previous paragraph, CMS provided rural and low-volume hospitals in mandatory MSAs and all hospitals in voluntary MSAs a one time opt-in to continue in the model for PY 3 to PY 5. Of the 400 hospitals eligible to opt-in to PY 3 to PY 5, 91 hospitals opted in to continue participating. These 91 hospitals consist of 15 rural hospitals and 1 low-volume hospital in the 34 mandatory MSAs, and 75 hospitals in the 33 voluntary MSAs. Five of the 75 hospitals in the 33 voluntary MSAs are also classified as rural hospitals. As discussed later in this section, this final rule removes 139 voluntary, low volume, and rural hospitals from this model starting in PY 6 due to numerous hospitals in mandatory MSAs reclassifying as rural hospitals for wage index purposes. At the time of this final rule, an additional 48 hospitals in the 34 mandatory MSAs have reclassified as rural.

Hospitals volunteering to participate introduce selection bias because hospitals that are ready and able to participate and keep episode spending under the target price would likely select to continue in the model while

¹⁰ Evaluation report located on the CJR Model website—<https://innovation.cms.gov/innovation-models/cjr>.

hospitals not able to keep episode spending under their target price would likely not participate. This conclusion is further supported given that, measured based on reconciliation payments, most opt-in hospitals financially benefited from participation in the CJR model in the first 2 performance years, which likely influenced their decision to continue participation in PY3 through PY5 of the model. We are evaluating the 75 hospitals who self-selected to continue participation in the model who are located in the 33 voluntary MSAs (voluntary opt-in hospitals) separately from our evaluation of the hospitals that were required to participate (mandatory hospitals) to avoid introducing selection bias into evaluation findings and improve generalizability of findings to all hospitals. It is costly to evaluate the small voluntary arm of the model for PYs 6 through 8 relative to the information that would be gained from the small sample size.

In the February 2020 proposed rule, we proposed to change the definition of participant hospital so only participant hospitals with a CCN primary address in the 34 mandatory MSAs that are not considered low-volume or rural hospitals would continue in the model for the extension. We proposed to exclude participant hospitals in the 34 mandatory MSAs that are low-volume hospitals or rural hospitals (meaning that the participant hospital received a notification from CMS dated prior to October 4, 2020 that they have been designated as a rural hospital), and other participant hospitals with a CCN primary address located in the 33 voluntary MSAs. We did not propose to provide any additional opt-in period for PYs 6 to 8 for previous participant hospitals that opted-in the CJR model, including low-volume hospitals and rural hospitals in the 34 mandatory MSAs, or for any hospitals located in the 33 voluntary MSAs. We designed the CJR model to require participation by hospitals in order to avoid the selection bias inherent in provider's choice of participation (80 FR 73278). Narrowing participation to hospitals in the 34 mandatory MSAs during the 3-year extension will allow CMS to minimize selection bias while evaluating the impact of the changes in this rule.

At the time the proposed rule was issued, we believed that the BPCI Advanced model was an ideal fit for hospitals seeking to voluntarily participate in a clinical episode-based payment model for LEJR once CJR concluded. The BPCI Advanced model offered an LEJR episode that includes outpatient TKA procedures as of

January 1, 2020. BPCI Advanced is a voluntary model and held its application period for participation as of January 1, 2020 during the spring and summer of 2019. This application period was open to acute care hospitals, physician group practices, and other entities such as post-acute care providers, and while CJR participant hospitals could not elect LEJR participation under the BPCI Advanced model for 2020, selecting to participate in at least one other BPCI Advanced bundled payment episode for 2020 would have allowed these providers to add LEJR episode participation at the end of their CJR model participation (the end of PY5). Since the CJR model originally was to have ended on December 31, 2020, we anticipated that any participant hospitals interested in pursuing voluntary participation in a bundled payment model already would have applied to participate in BPCI Advanced, of which 40 participant hospitals are concurrently participating in BPCI Advanced for non LEJR episodes.

We proposed to use the notification date of the rural reclassification approval letter as the determining factor for participation in the CJR model for PYs 6 through 8, since it is an objective factor for determining participation based on rural reclassification. For PYs 6 through 8, we proposed that hospitals who applied for rural reclassification pursuant to 42 CFR 412.103 and have been notified by CMS before October 4, 2020 that their application for rural status has been approved will no longer be participating in the model beginning PY6 (that is, for any episodes beginning on or after October 4, 2020). We proposed that participant hospitals reclassified as rural that were notified that their application for rural status has been approved on or after October 4, 2020 (even if the effective date of the rural reclassification is retroactively effective prior to notification) would continue to participate in the CJR model for PYs 6 through 8 and remain the financially accountable entities for PYs 6 through 8. Rural reclassification requests that are submitted in accordance with § 412.103 could take several months to be reviewed and approved by the CMS Regional Office. The CJR model team will make every effort to timely post an accurate list of PY5 participant hospitals identified as having rural status prior to the notification deadline on the CJR model page (<https://innovation.cms.gov/initiatives/cjr>) and will conduct email and/or phone outreach with these providers. Because the rural

reclassification review process occurs on a rolling basis, we acknowledge that a delay in communication and notification may occur between the CMS Regional Office and the CJR model team. Accordingly, if hospitals who have been notified of their rural status before the notification deadline receive communications from the CJR model team that suggest their continued participation in the CJR model, it is only due to the delay in CMS internal communications between the CMS Regional Office and the CJR model team. The CJR model team will discontinue model communications to hospitals that were notified of rural status by CMS prior to the notification deadline as soon as the CJR model team is informed of the hospital's rural status. Any hospital who is notified of rural status prior to the notification deadline should disregard these CJR model communications as they do not suggest the hospital's continued participation in the model for PYs 6 through PY8.

Comment: Many commenters expressed concern regarding the exclusion of rural and low-volume hospitals in the mandatory 34 MSAs and hospitals in the voluntary 33 MSAs from the CJR model extension, requesting that CMS either allow voluntary participants to continue participation in the CJR model or, in the alternative, open a new application cycle for BPCI Advanced. Commenters noted that voluntary hospitals did not apply to participate in BPCI Advanced because they were participating in the CJR model at that time and now the application period has closed leaving many hospitals without an option to join any bundled payment model for LEJR episodes. Some commenters believe that rural hospitals participating in the CJR model that chose to opt-in will lose their ability to continue providing reductions in costs and improvements in care without continued support from CMS through the CJR model (including monthly data feeds, the ability to share savings with physicians and have the financial resources to maintain program oversight and population health management). Some commenters stated that the cost of care for patients who otherwise would have been included in the CJR model would increase, however they did not provide any evidence of how cost of care would increase for their patients, if they were no longer in the model. Other commenters suggested that excluding willing hospitals from participating in value-based programs goes against the ideal and goals of moving the health care system from "volume to value."

Response: We appreciate the concerns of the commenters and we understand that CJR participant hospitals that opted into the model may wish to continue; however, based on preliminary evaluation findings that will be included in the upcoming 4th year evaluation report the participation of voluntary hospitals resulted in significant net losses and therefore continuing to include these hospitals is likely to continue to reduce the overall cost savings of the model. When given the option of volunteering for a model, hospitals typically choose to participate when it is both financially advantageous and provides an opportunity to improve clinical care. A participant hospital's ability to earn reconciliation payments in connection with reduced FFS claims payments does not necessarily lead to overall Medicare savings as reconciliation payments are based on a target price established for broader hospital participation. Further, the continued cost to evaluate the small voluntary arm of the model is excessive relative to the information we would gather from a small sample that is not generalizable. Since the CJR model, as originally designed, would have ended on December 31, 2020, we anticipated that participant hospitals interested in pursuing voluntary participation in a bundled payment model already would have applied to participate in BPCI Advanced during that model's application period. For CJR participant hospitals that participate in BPCI Advanced in any episode other than joint replacement, these hospitals could have elected to participate in joint replacement episodes for CY 2021 when they are no longer in the CJR model. At the time this final rule is published, 139 hospitals will not continue in the model for PY6 through PY8. These 139 hospitals consist of 1 low-volume hospital, 63 rural hospitals, and 75 hospitals in voluntary MSAs. Further, for the 139 participant hospitals whose participation in the CJR model will end, 40 of these hospitals are enrolled in BPCI Advanced and could potentially join BPCI Advanced for LEJR. For hospitals who are unable to participate in either the CJR model or BPCI Advanced model, CMS is regularly reviewing opportunities for model development in the future and will alert hospitals of any opportunities that become available.

Comment: Some commenters noted that selection bias should not be a factor in excluding participation of voluntary hospitals. A commenter recommended removing voluntary hospitals retrospectively from the larger sample

for purposes of evaluation. Another commenter stated that CMS is simply renaming "mandatory" participants "voluntary" participants because these hospitals volunteered to remain in the CJR model after PY2 and therefore the argument regarding selection bias is unpersuasive. In contrast, MedPAC submitted comments recommending that CMS should focus on changes to the model that could generate net savings for the Medicare program.

Response: CMS recognizes the commenters' concerns, however, the CJR model is largely a randomized, mandatory participation model. Once hospitals that were previously mandatory in PY 1 and PY 2 became voluntary in PY 3 and were given the opportunity to opt-in, selection bias was introduced since hospitals that were successful in the model chose to opt-in. All hospitals that were mandatory after the opt-in period continue to be mandatory for the extension except those hospitals that were reclassified as rural or are low-volume hospitals. CMS is not allowing any hospital that voluntarily opted into the model to continue participation for PYs 6 through 8. Likewise, the mandatory design presents CMS with a valuable opportunity to see what kind of utilization patterns occur in high-cost areas when providers are faced with strong incentives to reduce spending and cannot simply opt out of a model. As recommended by MedPAC, at this time, CMS is focused on changes to the model that could generate net savings for the Medicare program instead of redistributing savings back to providers. As previously indicated, internal analyses suggest that voluntary hospitals are less likely to contribute to potential model savings than mandatory hospitals.

Comment: A couple of commenters inquired about the future of the CJR model and suggested that the model become a fully voluntary model after the 3-year extension. Further, commenters believe that the CJR model should be expanded nationally at the conclusion of the 3-year extension. For the 3-year extension, a commenter suggested instituting the CJR model in a larger number of areas, such as the 67 MSAs that were originally included in the model.

Response: We appreciate the comment and will continue to monitor and evaluate model performance through the 3-year extension. Continuing with the 34 MSAs is a sufficient geographic scope to test the changes in the CJR model 3-year extension, while potentially reducing costs to Medicare. In its comment,

MedPAC stated its belief that CMS should focus on changes to the model that could generate net savings for the Medicare program and therefore changing certain policies in the CJR model may allow Medicare to generate savings and increase the likelihood that the CJR model could expand after PY 8. Any potential expansion of the CJR model will be done via notice and comment rulemaking as required by section 1115A(c) of the Act.

Comment: A commenter requested that CMS clarify what criteria would qualify a hospital as a low-volume hospital in the 34 mandatory MSAs.

Response: Section 510.2 defines a low-volume hospital as a hospital identified by CMS as having fewer than 20 LEJR episodes in total across the 3 historical years of data used to calculate the PY1 CJR model episode target prices.

Comment: A small number of commenters expressed concerns that the CJR model did not create enough incentives to avoid financial losses. These participant hospitals stated that they fulfilled their obligations and should now be afforded an opportunity to select participation based on their mission, abilities, and market realities. They stated that the CJR model extension creates greater risk for losses without giving the hospitals an opportunity to disengage from the model and recommended finding a way to reinvigorate the options of bundled arrangements with CMS.

Response: We thank the commenters, however, CMS will continue to require hospitals in the 34 mandatory MSAs to participate in the CJR model because, based upon initial evaluation results for PYs 1 and 2, these geographic areas have significant opportunity for reducing episode spending while improving quality of care under the model. The 34 mandatory MSAs have more opportunity because these are the medium and high cost areas and, therefore, there is significant opportunity for improvement. Similarly, we believe that at this point in the CJR model it is most prudent for us to continue the model in these geographic areas because these participant hospitals have already implemented infrastructure changes as well as received initial financial and quality results for the first four performance years.

Comment: Some commenters provided recommendations for changes to the evaluation methodology. A commenter stressed the importance of incorporating health equity in the model evaluation approach and another requested that the evaluation include all

providers influencing the outcomes of patients in the CJR model.

Response: CMS will continue to evaluate the impact of the model on vulnerable populations and investigate claims and utilization across the entire episode and also longer-term outcomes in the patient survey thereby capturing the influence of various providers on model outcomes.

Comment: A commenter expressed concern about how the evaluation will differentiate the changes in cost due to the model and those driven by the ongoing transition in the care setting for services related to MS-DRG 469 and 470.

Response: The model evaluation uses a difference-in-differences design to estimate the differential change in outcomes between the baseline and the intervention period for episodes initiated at CJR participant hospitals and hospitals relative to those initiated at control group hospitals. The difference-in-differences method controls for trends that may affect both CJR model and control group hospitals, such as major policy changes. In addition, the evaluation further adjusts estimates for beneficiary, market, and hospital characteristics that can vary over time and between the CJR model and control group.

Final Decision: After consideration of the public comments we received, we are finalizing our policies with modification to account for PY6 start date as discussed in section II.D.1. of this final rule. The extension of PY5 impacts the proposed October 4, 2020 date used as a deadline for rural hospital status. Therefore, the new date will be July 4, 2021 to accommodate the revised start date of PY6, which is October 1, 2021.

All hospitals with a CCN primary address located in the 33 voluntary MSAs as well as hospitals with a CCN primary address in the 34 mandatory MSAs that are low-volume or rural hospitals will be excluded from PYs 6 through PY8. Hospitals who applied for rural reclassification pursuant to 42 CFR 412.103 (rural hospitals include any scenario outlined in § 412.103(a), which includes rural referral centers (RRCs) as set forth in § 412.96) and have been notified by CMS before July 4, 2021 that their application for rural status has been approved will no longer be participating in the model beginning in PY6 (that is, for any episodes beginning on or after July 4, 2021). Participant hospitals reclassified as rural that are notified that their application for rural status has been approved on or after July 4, 2021 (even if the effective date of the rural reclassification is retroactively

effective to before July 4, 2021) will continue to participate in the CJR model for PYs 6 through 8 and remain the financially accountable entities for PYs 6 through 8. Rural reclassification requests that are submitted in accordance with § 412.103 could take several months to be reviewed and approved by the CMS Regional Office. The CJR model team will make every effort to post an accurate list of PY5 participant hospitals identified as having rural status prior to July 4, 2021 on the CJR model page (<https://innovation.cms.gov/initiatives/cjr>) and will conduct email and/or phone outreach with these providers. Accordingly, if hospitals who have been notified of their rural status before July 4, 2021 receive communications from the CJR model team that suggest their continued participation in the CJR model, it is only due to the delay in CMS internal communications between the CMS Regional Office and the CJR model team. The CJR model team will discontinue model communications to hospitals that were notified of rural status by CMS prior to July 4, 2021 as soon as the CJR model team is informed of the hospital's rural status.

E. Participant Hospital Beneficiary Notification and Discharge Planning Notice

1. Participant Hospital Beneficiary Notification

Under current regulations, the participant hospital detailed notification informs Medicare beneficiaries of their inclusion in the CJR model and provides an in-paper, detailed explanation of the model, either upon admission to the participant hospital if the admission is not scheduled in advance, or as soon as the admission is scheduled. We proposed to change the definition of an episode of care to include outpatient procedures, for which the beneficiary would not be admitted to the participant hospital. We also proposed to add the definition of anchor procedure to mean a TKA or THA procedure that is permitted and payable by Medicare when performed in the outpatient setting and billed through the OPPIs. We believe that the beneficiary should be notified of his or her inclusion in the CJR model whether the procedure takes place in an inpatient or outpatient setting. Therefore, we proposed changes for the participant hospital detailed notification at 42 CFR 510.405(b)(1) to clarify that if the anchor procedure or anchor hospitalization is scheduled in advance, then the participant hospital must provide notice as soon as the anchor procedure or anchor

hospitalization is scheduled. Further, we proposed if the anchor procedure or anchor hospitalization is not scheduled in advance, then the notification must be provided on the date of the anchor procedure or date of admission to the anchor hospitalization.

We currently state that in circumstances where, due to the patient's condition, it is not feasible to provide the detailed notification when scheduled or upon admission, the notification must be provided to the beneficiary or his or her representative as soon as is reasonably practicable but no later than discharge from the participant hospital accountable for the CJR model episode. We proposed to clarify that this policy applies only to inpatient hospital admissions. The purpose of this policy is to promote hospital care for the beneficiary first if it is not reasonably practicable to provide the notification upon admission. For example, if a beneficiary requires emergent care, the focus of the hospital should not be on providing a notification, but on the beneficiary. In contrast, outpatient procedures are generally scheduled and non-emergent. Therefore, we do not believe this policy is applicable to outpatient procedures, and did not propose to allow this type of beneficiary notification in cases of outpatient procedures.

We believed these proposals would require changes to the participant hospital detailed notification provided on the CJR model web page. CMS will update the participant hospital notification model document accordingly.

Comment: All commenters supported CMS' proposal that beneficiaries should be notified of their inclusion in the CJR model whether the procedure takes place in an inpatient or outpatient setting, noting that patients should be equipped with the information necessary to keep them engaged and make well-informed decisions about their care. Many commenters also noted that there is a narrow opportunity for hospitals to provide the participant hospital notification as patients do not come into the hospital until the day of the procedure, and that doctors should be allowed to provide participant notifications before the surgery instead of the CJR participant hospital. Some commenters that supported the proposed policy also recommended changing the time period when a participant hospital notification is required. Specifically, a couple of commenters requested to relieve the notification requirement for providing same day notification or allow for more time to provide the participant hospital

notification when the procedure is scheduled in advance. Also, a commenter requested more time to provide the notification citing CJR participant hospitals face difficulties in identifying which beneficiaries may qualify as CJR beneficiaries, which can prevent them from providing same day beneficiary notifications. Other commenters requested that CMS use less burdensome requirements for providers such as the BPCI Advanced model notification policy.

Response: We appreciate commenters' support of our proposal to notify beneficiaries of their inclusion in the model whether the LEJR procedure is in an inpatient or outpatient setting. After considering commenters' requests to provide more expansive and less burdensome timeframes, we explored other Innovation Center models' beneficiary notification requirements. Specifically we considered BPCI Advanced's beneficiary notification policy, as BPCI Advanced is a similar episode based payment model where episodes can occur in an inpatient or outpatient setting. BPCI Advanced requires that prior to discharge from the inpatient stay or prior to the completion of the outpatient procedure, as applicable, the BPCI Advanced Participant shall ensure that the BPCI Advanced beneficiary receives a copy of a beneficiary notification. Therefore after evaluating comments and other Innovation Center policies, we are amending our beneficiary notification timing requirements so that prior to discharge from the anchor hospitalization, or prior to discharge from the anchor procedure, as applicable, the participant hospital must provide the CJR beneficiary with a participant hospital beneficiary notification. We believe that amending our proposal to incorporate BPCI Advanced's policy will allow CJR participant hospitals more time to provide the participant hospital beneficiary notification, streamline timing requirements and adhere to commenters' request to remove the requirement that a notification must be provided upon admission for an LEJR procedure or upon arrival for an outpatient LEJR procedure. In response to comments received, specifically in regards to the difficulties of identifying CJR beneficiaries, we are amending our policy allowing participant hospitals more time to provide the participant hospital beneficiary notification, in turn providing the participant hospital more time to identify the CJR beneficiaries.

Comment: Some commenters supported CMS' proposal and recommended that CMS create one

notification letter for all advanced APMs, including BPCI Advanced, noting that this would be less confusing for beneficiaries as they currently receive significant amounts of paperwork, and this would reduce the administrative burden placed on providers in multiple models.

Response: We acknowledge the commenters' recommendation. We will consider these recommendations as the CJR model progresses and for future model development at the Innovation Center.

Final Decision: After consideration of comments, we are finalizing our proposal with modification and will amend the timing requirements for the participant hospital beneficiary notification so that prior to discharge from the anchor hospitalization, or prior to discharge from the anchor procedure, as applicable, the participant hospital must provide the CJR beneficiary with a participant hospital beneficiary notification.

2. Discharge Planning Notice

Under current regulations, a participant hospital must provide the beneficiary with a written notice of any potential financial liability associated with non-covered services recommended or presented as an option as part of discharge planning, no later than the time that the beneficiary discusses a particular post-acute care option or at the time the beneficiary is discharged, whichever occurs earlier (42 CFR 510.405(b)(3)). Given our proposal as described in section II.A.2. of this final rule to change the definition of an episode of care to include outpatient procedures, for which the beneficiary would not be admitted to the participant hospital, we proposed to clarify the requirements of the discharge planning notice. We believe the beneficiary must be notified of his or her possible financial liability associated with non-covered post-acute care whether the procedure takes place in an inpatient or outpatient setting. Therefore, we proposed that a participant hospital must provide the beneficiary with a written notice of any potential financial liability associated with non-covered services recommended or presented as an option as part of discharge planning, no later than the time that the beneficiary discusses a particular post-acute care option or at the time the beneficiary is discharged from an anchor procedure or anchor hospitalization, whichever occurs earlier.

Comment: A couple of commenters noted for outpatient episodes the discharge planning notification

requirement is unclear and can become problematic when a discharge plan is uncertain at the time of procedure scheduling or when a previously discussed plan must be revised on the date of the procedure. These commenters ask CMS to consider revising the timing standard for the discharge planning notification, requiring only "best efforts" to provide notification by the time of discharge from the hospitalization or outpatient setting.

Response: We appreciate the recommendations about the discharge planning notification. To be clear, we do not require the discharge planning notice to be provided at time of scheduling. We require the participant hospital provide the beneficiary with a written discharge planning notice either when a post-acute care option is discussed with the beneficiary or when the beneficiary is discharged from an anchor procedure or anchor hospitalization, whichever occurs earlier. We understand that some commenters find this policy problematic in that post-acute care plans can change after being discussed with a beneficiary. We understand that post-acute care plans can change after the first discussion, but providing the discharge plan notification to beneficiaries when plans are first discussed allows beneficiaries to be notified of potential financial liability associated with non-covered services recommended or presented as an option as part of discharge planning. Also, this allows beneficiaries to be aware of potential financial costs associated with post-acute care options whether or not the original discharge plan is followed.

Final Decision: After consideration of public comments, we are finalizing our discharge planning notice requirements as proposed.

F. Quality Measures and Reporting

The two quality measures included in the CJR model are the THA and/or TKA Complications measure (NQF #1550) and the HCAHPS Survey measure (NQF #0166). The model also incentivizes the submission of THA/TKA PRO and limited risk variable data. We proposed to advance the Complications and HCAHPS performance periods for PYs 6 through 8 in alignment with the performance periods used for PYs 1 through 5. For PRO, we also proposed to advance the performance periods in alignment with previous performance periods as well as make changes to the thresholds for successful submission. We proposed to make these changes to the thresholds for successful submission as participant hospitals gain experience

with PRO and to continue the trend of increased thresholds set by the earlier performance years of the model. These proposed changes are outlined in Table 5.

In response to the new start and end dates for PYs 6 through 8, we are finalizing § 510.400(b)(4)) to reflect the revised pre- and post-op collection periods for PRO quality data. For PYs 6 through 8, CMS will extend the post-op PRO data collection window 2 additional months to accommodate for

patients that may schedule post-op appointments beyond 365 days. This will allow an opportunity for participant hospitals to complete their post-op PRO assessment. The post-op PRO data collection window is normally from April 1st through June 30th every year; the new window will be from April 1st through August 31st. The extended window will total 14 months compared to the original proposed 12 month window. The start of post-op PRO data collection window for PY6

will remain unchanged, but will extend an additional 2 months (April 1, 2020 through August 31, 2021). However, as a result of the PY5 extension we will shift the PY6 pre-op PRO data collection window 1 year later than originally proposed to April 1, 2021 through June 30, 2022 to align with the start and end dates of PY6 through PY8. Please refer to section II.D.1. of this final rule for complete timeline changes to the 3-year extension of performance years.

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TABLE 5. PROPOSED POTENTIAL PERFORMANCE PERIODS FOR PRE- AND POST-OPERATIVE THA/TKA VOLUNTARY DATA SUBMISSION

Model Year	Performance Period	Patient Population Eligible for THA/TKA Voluntary Data Submission	Requirements for Successful THA/TKA Voluntary Data Submission
2021	July 1, 2019 through June 30, 2020.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2019 and June 30, 2020.	Submit POST-operative data on primary elective THA/TKA procedures for $\geq 80\%$ or ≥ 200 procedures performed between July 1, 2019 and June 30, 2020.
2021	July 1, 2020 through June 30, 2021.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2020 and June 30, 2021.	Submit PRE-operative data on primary elective THA/TKA procedures for $\geq 90\%$ or ≥ 500 procedures performed between July 1, 2020 and June 30, 2021.
2022	July 1, 2020 through June 30, 2021.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2020 and June 30, 2021.	Submit POST-operative data on primary elective THA/TKA procedures for $\geq 90\%$ or ≥ 500 procedures performed between July 1, 2020 and June 30, 2021.
2022	July 1, 2021 through June 30, 2022.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2021 and June 30, 2022.	Submit PRE-operative data on primary elective THA/TKA procedures for 100% or $\geq 1,000$ procedures performed between July 1, 2021 and June 30, 2022.
2023	July 1, 2021 through June 30, 2022.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2021 and June 30, 2022.	Submit POST-operative data on primary elective THA/TKA procedures for 100% or $\geq 1,000$ procedures performed between July 1, 2021 and June 30, 2022.
2023	July 1, 2022 through June 30, 2023.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2022 and June 30, 2023.	Submit PRE-operative data on primary elective THA/TKA procedures for 100% or $\geq 1,000$ procedures performed between July 1, 2022 and June 30, 2023.

TABLE 5a. REVISED PERFORMANCE PERIODS FOR PRE- AND POST-OPERATIVE THA/TKA VOLUNTARY DATA SUBMISSION

Model Year	Performance Period	Patient Population Eligible for THA/TKA Voluntary Data Submission	Requirements for Successful THA/TKA Voluntary Data Submission
2021	July 1, 2019 through June 30, 2020.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2019 and June 30, 2020.	Submit POST-operative data on primary elective THA/TKA procedures for $\geq 80\%$ or ≥ 200 procedures performed between July 1, 2019 and June 30, 2020.
2022.....	July 1, 2021 through June 30, 2022.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2021 and June 30, 2022.	Submit PRE-operative data on primary elective THA/TKA procedures for $\geq 80\%$ or ≥ 300 procedures performed between July 1, 2021 and June 30, 2022.
2023.....	July 1, 2021 through June 30, 2022.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2021 and June 30, 2022.	Submit POST-operative data on primary elective THA/TKA procedures for $\geq 80\%$ or ≥ 300 procedures performed between July 1, 2021 and June 30, 2022.
2023	July 1, 2022 through June 30, 2023.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2022 and June 30, 2023.	Submit PRE-operative data on primary elective THA/TKA procedures for $\geq 85\%$ or ≥ 400 procedures performed between July 1, 2022 and June 30, 2023.
2024.....	July 1, 2022 through June 30, 2023.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2022 and June 30, 2023.	Submit POST-operative data on primary elective THA/TKA procedures for $\geq 85\%$ or ≥ 400 procedures performed between July 1, 2022 and June 30, 2023.
2024	July 1, 2023 through June 30, 2024.	All patients undergoing elective primary THA/TKA procedures performed between July 1, 2023 and June 30, 2024.	Submit PRE-operative data on primary elective THA/TKA procedures for $\geq 90\%$ or ≥ 500 procedures performed between July 1, 2023 and June 30, 2024.

Comment: Several commenters did not support the proposal to increase the patient-reported outcomes submission thresholds in PYs 6, 7 and 8 for pre-op and post-op data. Commenters expressed that the proposed increases were unrealistic and extreme, and that PRO submission continues to provide burden to the participant hospitals.

Response: We thank the commenters for their remarks. In the November 2015 CJR final rule, we finalized a policy whereby the thresholds for successful submission increased as participant hospitals gained experience with PRO over the performance years. We stated our belief that having increased THA/TKA recipient data would result in a more reliable measure that is better able to assess hospital performance than a measure created from a less representative patient sample. Therefore, we finalized the requirement at 80 percent of the eligible elective primary THA/TKA patients. We believed acquisition of 80 percent of the eligible elective primary THA/TKA patients would provide representative data for measure development while decreasing patient, provider and hospital burden. We believed that over time hospitals will become more adept at collecting this data, and it was reasonable to gradually increase the expected response rates to successfully fulfill the THA/TKA voluntary PRO and limited risk variable data collection and therefore proposed the increased changes to the thresholds for successful submission in order to obtain a more reliable measure.

Due to lessons learned and feedback from current CJR participant hospitals, we are revising the threshold requirements down from 100 percent as originally proposed. While PRO data submission is voluntary, to date participant hospitals have expressed challenges to reach current benchmarks in PY5 ($\geq 80\%$ or ≥ 200 eligible procedures). Both participant hospitals and key stakeholders have commented that requiring 100 percent submission is neither feasible nor realistic for participant hospitals. As a result we are revising the thresholds as explained in Table 5a (Revised Performance Periods for Pre- and Post-Operative THA/TKA Voluntary Data Submission), while also maintaining accountability of the PRO data collection from CJR participant hospitals.

Comment: Some commenters support the continuation of the PRO measures in the CJR model extension stating the consistency of methodologies over the years overall minimizes the burden on participant hospitals and supports the efficacy of the model evaluation. A

commenter suggested that CMS monitor any changes in patient outcomes now that outpatient surgeries have been added.

Response: We thank the commenters for their support and suggestions. We will take these recommendations into consideration in our future measure development and testing efforts.

Comment: A commenter suggested to include an adjuster to the Composite Quality Score (CQS) depending on the setting of the procedure (inpatient versus outpatient).

Response: We thank the commenter for their support and suggestion. We will take this suggestion into consideration as a candidate for future inclusion in our measure development and testing efforts.

Comment: Several commenters discussed suggestions to inform CJR participant hospitals if and when PRO measure data will be shared publicly. A few commenters stated they were discouraged by not receiving feedback about results to date. Commenters stated that it would be beneficial if CMS released a better means of reporting, which include live and robust dashboards with detailed data for quality review and improvement. A commenter recommended to move forward with testing of a TKA/THA PRO based performance measure.

Response: We thank the commenters for their support and suggestion. We appreciate the desire for frequent data updates for this model. CMS is continuing to assess the results of the data submitted with goals of using the data for future measure development and reporting.

Comment: Several commenters did not support or remained skeptical of the inclusion of HCAHPS in the CJR model because it is an overall measure of all patients receiving hospital services that is not specific to lower-extremity joint replacements. Therefore, the commenters contend HCAHPS does not reflect quality for targeted episodes of care. In addition, the commenters state the measure is too narrow because it only encompasses patient experience during the inpatient hospital stay and does not capture information about patient experience in the outpatient setting. For these reasons, commenters did not believe that the measure captures the correct information, and it will be of limited value to clinicians for quality improvement and limited opportunities to achieve the maximum quality points.

Response: We appreciate the concerns from the commenters about the broad patient population covered by this measure. Although the HCAHPS Survey

encompasses a broader range of patients than the model episode definitions, we are not aware of evidence that patient experience of care differs markedly from those of the larger group of eligible patients after patient-mix adjustment for service line (surgery) and age have been applied. Having all patients responding to the survey helps to inform hospitals on areas for improvement. We decline to adopt the commenters' suggestion to remove this component from of the CJR model composite quality score.

Comment: A few commenters support advancing the HCAHPS measure in the CJR model extension stating the consistency of the quality measures allows participants to effectively carry over operational improvements they have already put in place.

Response: We thank the commenters for their support and agree with their reasoning.

Comment: Several commenters discussed suggestions to reconsider the appropriateness of the current components of the Composite Quality Score (CQS) to adjust for inpatient and outpatient procedures. They stated that there is a lack of measures of outpatient procedure outcomes in the CQS and that current measures are not ideal for outpatient procedures and will skew quality of care data.

Commenters suggested adding the Forgotten Joint Score, Hospital-level 30-day risk-standardized readmission rate (RSRR) following elective primary THA and/or TKA (NQF #1551) in the inpatient setting. Other commenters suggested to consider readmission rates, Excess Days in Acute Care (EDAC), Risk Standardized Hospital Visits within 7 days of Hospital Outpatient Surgery, and Hospital Visits after Hospital Outpatient Surgery (OP-36) in the outpatient setting.

Commenters have also suggested adding additional CQS incentives for voluntary documentation of preventative tools, such as Risk Assessment and Predictive Tool (RAPT), and for participation in quality, risk variable, and PRO data submission to nationally recognized registries. Another commenter suggested CMS develop additional concepts to reward participants for tracking post-operation outcomes. Commenters also stated the current components of the CQS lack risk adjustment for sociodemographic status. Another commenter suggested CMS to consider using measures that would more accurately measure quality during the performance year in question. Finally, a commenter suggested CMS consider using a measure that would more accurately measure quality during the performance year in question.

Response: We thank the commenters for their support and suggestions to implement quality measures across the care continuum. We did not propose alterations to the components of the CQS in the CJR model 3-year extension, and we decline to adopt the commenters' suggestion that we do so now. We recognize that there may be some gaps in the current quality measures relative to other settings in which patients receive care. CMS does not provide recommendations for the setting where a procedure is performed. We will take these recommendations into consideration in our future measure development.

Comment: A commenter suggested to adjust quality measures for COVID-19.

Response: We appreciate the concern from the commenter about such adjustments. We have not made specific changes to data collection related to the COVID-19 PHE. However, in light of the IFC extensions, the pre-op and post-op collection windows have been adjusted to accommodate changes in performance year dates.

Comment: Several commenters discussed suggestions to adjust the weighting of the CQS. The commenters suggested increasing the weighting of the PRO data submission component and eliminate or reduce the weighting of the HCAHPS. Other commenters suggested to eliminate or reduce the weighting of the HCAHPS and reassign the weighting to the TKA/THA complications component.

Response: We thank the commenters for their suggestions. We did not propose alterations to the components of the CQS in the CJR model 3-year extension and decline to adopt these suggested changes.

Comment: Several commenters discussed several suggestions for CMS to improve the quality incentives of the CJR model. The commenters believed that CMS should shift to a payment system based on a participant's quality score from the pay for reporting system currently in place. The commenters argued it would help improve quality measures greatly among participants by increasing the financial incentives participants would receive.

Response: CMS would like to thank to commenters for their suggestions. They will be taken into consideration for future change to the model or future models, if warranted.

Final Decision: After consideration of the public comments we received, we are modifying the PRO and Risk Variable Submission Requirements to reduce the percentage and procedure PRO data submission thresholds for PYs 6 through 8. Please refer to Table 5a

Revised Performance Periods for Pre- and Post-Operative THA/TKA Voluntary Data Submission. The post-op collection window for PYs 6 through 8 will be extended an additional 2 months. The extended window will total 14 months compared to the original proposed 12 month window. The start of post-op collection window for PY6 will remain unchanged, but will extend an additional 2 months (April 1, 2020 through August 31, 2021). However, we will shift the PY6 pre-op collection window 1 year later than originally proposed to April 1, 2021 through June 30, 2022. We are also making a technical correction to Section 510.400(b)(2)(ii) introductory text by removing the phrase "of the program" and adding in its place the phrase "of the model."

G. Financial Arrangements: Elimination of 50 Percent Cap on Gainsharing Payments, Distribution Payments, and Downstream Distribution Payments

Currently, participant hospitals may engage in financial arrangements under the CJR model. Starting with the November 2015 CJR model final rule (80 FR 73412 through 73437) participant hospitals have been allowed to enter into sharing arrangements to make gainsharing payments to certain providers and suppliers with which they were collaboratively caring for CJR beneficiaries and to allow CJR collaborators that are physician group practices to enter into distribution arrangements to share those gainsharing payments with certain PGP members. In the January 2017 final rule (82 FR 180) we finalized a full replacement of the prior CJR model regulations in order to revise and refine these requirements to allow for—(1) participant hospitals to enter into sharing arrangements with additional categories of CJR collaborators, including certain ACOs, hospitals, CAHs, NPPGPs and therapy group practices (TGP); (2) ACOs, PGPs, NPPCGs and TGPs that are CJR collaborators to enter into distribution arrangements with certain entities and individuals; and (3) PGPs, NPPGPs and TGPs that received distribution payments from ACOs to enter into downstream distribution arrangements to share distribution payments with certain of their members. We believe these opportunities outlined in the January 2017 final rule (82 FR 531 through 554) for the individuals and entities that engage in beneficiary care, care redesign and care management to share in the financial risk and rewards of the CJR model promote accountability for the quality, cost, and overall care for CJR beneficiaries.

In order to ensure that goals of the CJR model are met, and to ensure program integrity and protection from abuse, the CJR model has many requirements for these financial arrangements. According to § 510.2 a gainsharing payment means a payment from a participant hospital to a CJR collaborator, under a sharing arrangement, composed of only reconciliation payments or internal cost savings or both; a distribution payment means a payment from a CJR collaborator that is an ACO, PGP, NPPGP, or TGP to a collaboration agent, under a distribution arrangement, composed only of gainsharing payments; and a downstream distribution payment means a payment from a collaboration agent that is both a PGP, NPPGP, or TGP and an ACO participant to a downstream collaboration agent, under a downstream distribution arrangement, composed only of distribution payments. Among other requirements, the CJR model has always included a cap on certain gainsharing payments and distribution payments to physicians, non-physician practitioners, and PGPs equal to 50 percent of the total Medicare approved amounts under the Physician Fee Schedule for items and services that are furnished to beneficiaries by that individual or entity during the performance year. As the CJR model has evolved, this cap has been retained and broadened to apply to gainsharing payments to NPPGPs, to distribution payments to non-physician practitioners, PGPs and NPPGPs, and to downstream distribution payments to non-physician practitioners and physicians. Accordingly, under the current regulations at § 510.500(c)(4)(i) and (ii), the total amount of gainsharing payments for a performance year paid to physicians, non-physician practitioners, physician group practices (PGPs), and non-physician practitioner group practices (NPPGPs) must not exceed 50 percent of the total Medicare approved amounts under the Physician Fee Schedule for items and services that are furnished to beneficiaries during episodes that occurred during the same performance year for which the CJR participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made. Distribution payments to these individuals and entities are similarly limited as specified in § 510.505(b)(8)(i) and (ii), and downstream distribution payments are similarly limited as specified in § 510.506(b)(8). However, based on comments received over the course of this model, our experience over time,

and our desire to allow consistent flexibilities across models, we proposed to eliminate these caps for episodes ending after December 31, 2020.

The need for the caps has been the subject of extensive comment since the start of the CJR model. In the initial CJR model proposal in July 2015 (80 FR 41198) we emphasized that the payment arrangements must be actually and proportionally related to the care of the beneficiaries in the CJR model and proposed a cap on gainsharing payments to individual physicians, non-physician practitioners, and PGPs equal to 50 percent of the Medicare-approved amounts under the PFS for items and services billed by that individual or PGP and furnished to the participant hospital's CJR beneficiaries. As discussed in the November 2015 final rule (80 FR 73420 through 73422), many commenters opposed the proposed cap on the total amount of gainsharing payments for a calendar year that could be paid to a PGP or an individual physician or non-physician practitioner who is a CJR collaborator, arguing that the 50 percent figure is arbitrary and should be removed. Other commenters asserted that a PGP that is a CJR collaborator should have the freedom to determine the most appropriate way to distribute gainsharing payments, given the multiple disciplines involved in patient care. Additionally, some commenters requested that internal cost savings be treated separately from reconciliation payments under the cap on gainsharing payments. Other commenters urged CMS to apply the same cap to the CJR model as is applied to Model 2 of the BPCI initiative. In our response, we acknowledged the many perspectives of the commenters on the proposed cap on gainsharing payments to physicians, non-physician practitioners, and PGPs in the CJR model. We stated that the purpose of the cap is to serve as a safeguard against the potential risks of stinting, steering, and denial of medically necessary care due to financial arrangements specifically allowed under the CJR model by providing an upper limit on the potential additional funds a physician, non-physician practitioner, or PGP can receive for their engagement with participant hospitals in caring for CJR model beneficiaries beyond the FFS payments that those suppliers are also paid and that are included in the actual episode spending calculation for the episodes. Moreover, we affirmed our intent to align the cap in the CJR model with the 50 percent cap on gainsharing payments to physicians and non-physician practitioners in the BPCI

initiative, and noted that participants in BPCI had not voiced significant complaints that this moderate financial limitation had hampered their ability to engage physicians and non-physician practitioners in care redesign to improve episode quality and reduce costs. Accordingly, we concluded the 50 percent cap on gainsharing payments was an appropriate condition for the CJR model at that time. This final rule also established a framework for distribution payments and applied the cap to those payments as well.

In August 2016, when we proposed to expand the range of permissible financial arrangements to include additional parties and to allow for downstream distribution arrangements, we proposed to apply the 50 percent cap to those payment arrangements well. As discussed in the January 2017 EPM final rule (82 FR 458 through 460), commenters were again of mixed views on these caps. While several commenters, including MedPAC, supported the caps, most commenters either recommended that CMS eliminate the caps for PGPs, eliminate the caps altogether for PGPs, physicians, and non-physician practitioners, or apply the caps on a different basis than CMS' proposal of 50 percent of the Medicare-approved amounts under the PFS for items and services furnished by the physician or non-physician practitioner. In our response, we stated our continued belief that the caps served as a safeguard against the potential risks of stinting, steering, and denial of medically necessary care due to financial arrangements specifically allowed under the model. We again emphasized that we applied the 50 percent cap in both the CJR model and the BPCI initiative, and participants in neither model had voiced significant complaints that this financial limitation had hampered their ability to engage physicians, non-physician practitioners, and PGPs in care redesign to improve episode quality and reduce costs.

In our subsequent CJR model rulemaking, we did not propose changes to the caps, but as described in the December 2017 final rule (82 FR 57083), we again received comments both for and against these policies. Several commenters supported the current 50 percent gainsharing cap. Other commenters offered a variety of recommendations for changing the gainsharing limitations. In our response, we stated that we would continue to consider the issues raised by commenters as we moved forward with the CJR model and other models. Based on further consideration, we believe the commenters who opposed the caps

presented the more compelling policy argument that these caps are arbitrary and limiting.

The burdens associated with caps in the CJR model outweigh the potential benefits of these payment limitations. The caps were adopted and retained based on the belief that these limits on the potential financial rewards available via gainsharing payments, distribution payments and downstream distribution payments were needed to prevent physicians and non-physician practitioners from stinting, steering, and denial of medically necessary care. However, as we have continued to monitor the CJR participant hospitals and CJR model claims data we have not seen evidence suggesting that the financial arrangements in the CJR model have adversely impacted beneficiary access to care. We believe other limitations on the financial arrangements in the CJR model, including the express prohibitions in the CJR model regulations on financial arrangements to induce clinicians to reduce or limit medically necessary services or restrict the ability of a clinician to make decisions in the best interests of its patients, are sufficient and more reasonably targeted restrictions to prevent financial arrangements from resulting in the harms the caps were intended to address.

Moreover, as commenters have consistently noted over the years, the caps in the CJR model constrain options to incentivize the clinicians who are supporting the care of CJR beneficiaries and participant hospitals and others incur administrative burden to monitor their compliance with these caps. Commenters previously argued that CJR collaborators should have the freedom to determine the most appropriate way to distribute gainsharing payments. Commenters contend the cap dampens the ability of gainsharing to support physician behavior change by reducing payments to a nominal amount. Accordingly, we believe maintaining these caps is unnecessary and unduly burdensome on the participant hospitals participating in the CJR model.

Additionally, we note that in 2018 we revised our policies for BPCI Advanced such that BPCI Advanced Participants may execute an amendment, which would, among other things, eliminate the 50 percent cap on NPRA Shared Payments and Partner Distribution Payments (<https://innovation.cms.gov/Files/x/bpciadvanced-my3-mutual-amendment.pdf>). Previously, commenters stated that having different policies between models could create the potential for an uneven playing

field. Accordingly, the elimination of the caps in the CJR model would improve consistency across the CJR model and BPCI Advanced model. We believe that if the CJR model and BPCI Advanced model do not align, a consequence may be confusion among participants and sharing arrangements may not be used therefore impeding the CJR model's goal to support better and more efficient care for beneficiaries undergoing hip and knee replacements.

We proposed to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments is a physician, non-physician practitioner, physician group practice (PGP), or non-physician practitioner group practice (NPPGP) for episodes that begin on or after January 2, 2021. We proposed that these changes would apply to episodes on or after January 2, 2021 to align with the timing for the other policy changes we proposed in the proposed rule.

We sought comment on our proposals to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments are a physician, non-physician practitioner, physician group practice (PGP), or non-physician practitioner group practice (NPPGP).

Comment: Several commenters support our proposal to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments are a physician, non-physician practitioner, physician group practice (PGP), or non-physician practitioner group practice (NPPGP). Specifically, MedPAC commented that although they previously supported inclusion of the 50 percent cap on gainsharing payments in the CJR model, MedPAC now supports CMS's proposal to eliminate the cap, and agrees with CMS that elimination of the cap reduces the administrative costs that hospitals and other entities incur in monitoring their compliance. MedPAC also agreed with CMS that the cap imposes an administrative burden that makes it more difficult for hospitals and other entities to provide gainsharing payments, and that the elimination the 50 percent cap would make the CJR model more consistent with the BPCI Advanced model, which simplifies CMS's oversight of the models. Further MedPAC and other commenters highlighted that CMS should continue to monitor the quality of care and the mix of beneficiaries who receive LEJR procedures to ensure that eliminating

the cap on gainsharing payments does not lead to lower quality or patient selection. Lastly, MedPAC recommended that CMS should use evaluation methods in the 2019 CJR model evaluation report to evaluate whether eliminating the cap on gainsharing payments affects patient selection.

Response: We appreciate the positive feedback on the proposed policy, and agree with commenters that eliminating the 50 percent cap reduces administrative cost, administrative burden and aligns with BPCI Advanced's policy. We acknowledge commenters' recommendation that CMS monitor participant hospitals and ensure that elimination of the cap does not have negative implications. As explained in the proposed rule, we monitor CJR participant hospitals and CJR model claims data closely and will continue these monitoring efforts to ensure eliminating the cap does not lead to lower quality care, patient selection bias, or other negative effects. Lastly, MedPAC's recommendation as to the evaluation of this policy is appreciated, and will be taken into consideration when evaluating future performance years.

Comment: Some commenters that support the proposal to eliminate the 50 percent cap noted their disappointment that the policy is limited to physicians, non-physician practitioners, physician group practices, and non-physician practitioner group practices because they believe post-acute care providers, playing a key role in the CJR model, should be offered the same financial incentives. These commenters believe this proposal likely exacerbates disparate treatment of PAC providers in comparison to physicians regarding gainsharing payments.

Response: We agree with the commenters that PAC providers play a key role in the CJR model. In this response, PAC providers include: Skilled Nursing Facilities; Home Health Agencies; Long Term Care Hospitals; Inpatient Rehabilitation Facilities; Therapist in private practice; Comprehensive Outpatient Rehabilitation Facility; a provider of Outpatient Therapy Services; Hospitals, Critical Access Hospitals; and Therapy Group Practices. PAC providers that are in CJR model financial arrangements have never had a cap on gainsharing payments, therefore, there was no need remove a cap that never existed. We appreciate the time and effort PAC providers put into the CJR model, however we disagree that our policy creates disparate treatment that negatively impacts them given PAC

providers never had the cap on gainsharing payments.

Comment: Several commenters made recommendations regarding financial arrangements that were not discussed in our proposal, such as mandating CJR participant hospitals to provide gainsharing opportunities and adding requirements that internal costs savings cannot be tied to joint implant pricing.

Response: We appreciate the commenters' suggestions and may consider them in future model development.

Final Decision: After consideration of the public comments we received, we are finalizing our proposed policies to eliminate the 50 percent caps with a modification to account for the extension of PY5. We proposed regulatory text to eliminate the caps for episodes that begin on or after January 2, 2021 to align with the anticipated start of PY6. As discussed previously, after the publication of the February 2020 proposed rule, we extended PY5 from December 31, 2020 to March 31, 2021 in the April 2020 IFC, and then extended PY5 an additional six months to September 30, 2021 to account for the impact of the COVID-19 PHE on CJR participant hospitals. Accordingly, in order for the proposal to eliminate the 50 percent caps on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments is a physician, non-physician practitioner, PGP, or NPPGP to take effect as intended for episodes that begin in PY6, the regulatory text implementing this proposal for episodes that begin on or after January 2, 2021 must be altered to account for the new end date of PY5. Therefore, we are finalizing our proposal as modified to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments is a physician, non-physician practitioner, PGP, or NPPGP for episodes that end on or after October 1, 2021.

H. Waivers of Medicare Program Rules

In the November 2015 final rule (80 FR 73273), we stated that it may be necessary and appropriate to provide additional flexibilities to participant hospitals in the model, as well as other providers that furnish services to beneficiaries in CJR model episodes. The purpose of such flexibilities is to increase CJR model episode quality and decrease episode spending or internal costs or both of providers and suppliers that results in better, more coordinated care for beneficiaries and improved financial efficiencies for Medicare,

providers, and beneficiaries. These additional flexibilities were implemented through our waiver authority under section 1115A of the Act, which affords broad authority for the Secretary to waive Medicare program requirements as may be necessary solely for purposes of carrying out section 1115A of the Act with respect to testing models.

Section 510.610 of the regulations waives the 3-day hospital stay requirement before a beneficiary may be discharged from a hospital to a qualified SNF, which we define as a SNF that is rated an overall of 3 stars or better for 7 of the last 12 months on the Nursing Home Compare website, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF. The calendar quarter list of qualified SNFs is available under Participant Resources on the CJR model web page at <https://innovation.cms.gov/initiatives/CJR>. This waiver applies to episodes being tested under the CJR model beginning in PY2. All other Medicare rules for coverage and payment of Part A-covered SNF services continue to apply.

In the December 2017 final rule (82 FR 180), we added additional protections in the event a CJR beneficiary is discharged to a SNF without a qualifying 3-day inpatient stay, but the SNF is not on the qualified list as of the date of admission to the SNF, and the participant hospital has failed to provide a discharge planning notice, as specified in § 510.405(b)(3). We specified in that situation, CMS will make no payment to the SNF for such services; the SNF will not charge the beneficiary for the expenses incurred for such services; the SNF must return to the beneficiary any monies collected for such services; and the hospital must be responsible for the cost of the uncovered SNF stay.

We proposed to extend these additional flexibilities to hospitals furnishing services to beneficiaries in the hospital outpatient setting as well. As discussed in section II.A.2. of this final rule, we proposed to change the definition of an episode of care to include procedures performed in the hospital outpatient department. We also proposed to add the definition of anchor procedure to mean a TKA or THA procedure that is permitted and payable by Medicare when performed in the hospital outpatient setting and billed through the OPPIs. Therefore, based upon this proposal, when we use the term “discharge” under the Medicare Program Rule waivers, we intend for

this term to apply to both anchor hospitalizations and anchor procedures.

We do not anticipate that a beneficiary who receives a LEJR procedure in the hospital outpatient setting would generally need a SNF stay, since we expect that patients who are selected for outpatient LEJR procedures would generally be a healthier population than those who are selected for inpatient procedures. However, in the event that a participant hospital performs an LEJR procedure in the hospital outpatient setting and due to unforeseen circumstances, the beneficiary needs a SNF stay and has not had a qualifying 3-day inpatient stay, we do not want the beneficiary to be held financially liable for these costs. In accordance with section 1861(i) of the Act, beneficiaries must have a prior inpatient hospital stay of no fewer than 3 consecutive days in order to be eligible for Medicare coverage of inpatient SNF care. We refer to this as the SNF 3-day rule. If this requirement is not met, then the beneficiary may be liable for the cost of the SNF stay. Additionally, we want to protect beneficiaries in the event that a participant hospital makes a choice that is based on billing, rather than on clinical needs. While this behavior is prohibited under the model and would be actionable under § 510.410, we proposed to add this additional safeguard so that a beneficiary would not be responsible for the expense. We proposed to amend § 510.610 by redesignating paragraphs (a) as (a)(1) and (a)(2), (a)(1) as (a)(2) and (a)(2) as (a)(3) and amending paragraph (b)(1) to reflect these proposals.

Additionally, § 510.600 of the regulations waives the direct supervision requirement to allow clinical staff to furnish certain post-discharge home visits under the general, rather than direct, supervision of a physician or non-physician practitioners. This waiver allows a CJR beneficiary who does not qualify for home health benefits to receive up to nine post-discharge visits in his or her home or place of residence any time during the episode. All other Medicare rules for coverage and payment of services incident to a physician's service continue to apply. We proposed to update § 510.600(b)(1) so that this program rule waiver applies for LEJR procedures performed in the outpatient setting as well. As mentioned previously, when we use the term “discharge” under the Medicare Program Rule waivers, we intend for this term to apply to both anchor hospitalizations and anchor procedures.

We sought comment on our proposals to apply CMS program rule waivers to LEJR procedures performed in the outpatient setting.

Comment: Many commenters supported our proposal to extend the waiver of the SNF 3-day rule and direct supervision requirement to beneficiaries receiving an LEJR in the outpatient setting, noting that these waivers provide important services, as demonstrated through PYs 1 through 5 and that CMS should attempt to maintain consistency between the original CJR model performance period and the extension when possible. Commenters urged CMS to finalize this policy as proposed, stressing that this policy accounts for unforeseen circumstances where beneficiaries need a SNF stay after receiving an LEJR procedure in the outpatient setting.

Response: We appreciate commenters support to extend the waiver of the SNF 3-day rule and direct supervision requirement to beneficiaries receiving an LEJR in the outpatient setting, and agree with commenters that this policy maintains consistency into PYs 6 through 8 as well as accounts for unforeseen circumstances where beneficiaries need a SNF stay after receiving an anchor procedure. In general for the waiver of direct supervision, CMS waives the requirement in § 410.26(b)(5) of this chapter that services and supplies furnished incident to a physician's service must be furnished under the direct supervision of the physician (or other practitioner) to permit home visits. The services furnished under this waiver are not considered to be hospital services, even when furnished by the clinical staff of the hospital. In § 510.600(b), we specifically refer to circumstances of when this waiver may be used. Also as noted in § 510.600(d), this waiver does not change other Medicare rules for coverage and payment of services incident to a physician's service. We note that in the CY 2020 OPPIs/ASC final rule with comment period (CMS-1717-FC), we changed the generally applicable minimum required level of supervision for hospital outpatient therapeutic services from direct supervision to general supervision for services furnished by all hospitals, including Critical Access Hospitals (CAHs).

Comment: A few commenters do not believe the waiver of the SNF 3-day rule should be applied in the outpatient setting, noting that facilities performing outpatient procedures should send beneficiaries to home health or therapy because these cases should be less complex and require less intensive post-

acute care. Additionally, commenters requested clarification on the policy proposed and when and how the 3-day SNF waiver could be applied in the hospital outpatient setting. Also, commenters asked whether the stay billable by the SNF to Medicare Part A would be accounted for in calculating the episode.

Response: We understand that generally a beneficiary receiving an LEJR procedure in an outpatient setting should not need a SNF stay and, as noted previously, we do not anticipate that a beneficiary who receives an LEJR procedure in the outpatient setting will need a SNF stay, and the use of the waiver in this circumstance will be seldom. However, in the event that a participant hospital performs an LEJR procedure in the outpatient setting and, due to unforeseen circumstances, the beneficiary needs a SNF stay and has not had a qualifying 3-day inpatient stay, we do not want the beneficiary to be held financially liable for these costs.

We acknowledge the proposed language for coverage of a SNF stay after an anchor procedure was not clear and did not indicate a qualifying time period between the anchor procedure and SNF stay. Though we believe this waiver will unlikely be used, holding participant hospitals similarly accountable whether the waiver is used for an anchor hospitalization (in an inpatient setting) or for an anchor procedure (in an outpatient setting) provides consistency for participant hospitals in using the waiver. Therefore to provide consistency and clarification, we are amending the proposal for anchor procedures in that, for episodes being tested in PYs 6 through 8 of the CJR model, CMS waives the SNF 3-day rule for coverage of a SNF stay for a beneficiary who is a CJR beneficiary on or after 30 days of the date of service of the anchor procedure, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF. CMS determines the qualified SNFs for each calendar quarter based on a review of the most recent rolling 12 months of overall star ratings on the Five-Star Quality Rating System for SNFs on the Nursing Home Compare website. Qualified SNFs are rated an overall of 3 stars or better for at least 7 of the 12 months. Providing a 30 day window here is the same flexibility provided for anchor hospitalizations since when a CJR beneficiary receives an inpatient LEJR procedure, the 3-day SNF waiver is available for use within 30 days from the beneficiary's discharge date. This 30 day window is the current Medicare

policy regarding SNF admission, specifically under Medicare beneficiaries must meet the "3-day rule" before SNF admission. The 3-day rule requires the beneficiary to have a medically necessary 3-day-consecutive inpatient hospital stay and does not include the day of discharge, or any pre-admission time spent in the emergency room (ER) or in outpatient observation, in the 3-day count. SNF extended care services are an extension of care a beneficiary needs after hospital discharge or within 30 days of their hospital stay (unless admitting them within 30 days is medically inappropriate).

Participant hospitals must correctly communicate to SNFs and beneficiaries (and/or their representatives) the number of inpatient days and outpatient stay, so all parties fully understand the potential payment liability.

CMS will communicate new and revised policies to the Medicare Administrative Contractors and provide additional billing guidance to participant hospitals once processes are implemented. In amending the proposed policy, if a CJR beneficiary receives an outpatient LEJR procedure, the 3-day SNF waiver is available for use within 30 days from the date of service of the anchor procedure, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF. Here, the SNF stay is covered under the waiver and billable by the SNF to Medicare. Also, this stay would be included in the episode cost, barring any other unknown variable. This waiver only applies to the 3-day SNF rule, and therefore all other Medicare SNF coverage rules apply.

Comment: Some commenters suggested CMS waive additional Medicare rules, such as the post-acute care transfer policy when beneficiaries are discharged to home health agencies (HHAs) that commit to coordinating with their hospital partners would help support care transitions without penalizing CJR participant hospitals.

Response: We thank the commenters for their suggestions. We have not proposed to add additional waivers, but may consider these suggestions in future model development.

Final Decision: After consideration of the public comments we received, we are finalizing our proposal to amend our policy regarding use of the 3-day SNF waiver for an outpatient LEJR episode at § 510.610. Specifically, for episodes being tested in PYs 6 through 8 of the CJR model, CMS waives the SNF 3-day rule for coverage of a SNF stay within

30 days of the date of service of the anchor procedure for a beneficiary who is a CJR beneficiary on the date of service of the anchor procedure, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF.

I. Appeal Procedures

In the November 2015 final rule (80 FR 73411), we finalized an appeal process for participant hospitals to dispute matters that are not precluded from administrative or judicial review. Under § 510.310(a), a participant hospital may appeal certain calculations related to payment by submitting a timely notice of calculation error. Participant hospitals must provide written notice of a calculation error within 45 days of the date the reconciliation report is issued if they believe a calculation error was made. A participant hospital may appeal CMS' response to the notice of a calculation error by requesting reconsideration review by a CMS official. The request for a reconsideration review must be received by CMS within 10 calendar days of the response to the notice of a calculation error. The reconsideration review request must provide a detailed explanation of the basis for the dispute and include supporting documentation for the participant hospital's assertion that CMS or its representatives did not accurately calculate the NPRA the reconciliation payment, or the repayment amount in accordance with § 510.305. The reconsideration review is an on-the-record review (a review of briefs and evidence only); it is not an in-person hearing. Under the process we finalized in 2015, a CMS reconsideration official notifies the hospital in writing within 15 calendar days of receiving the participant hospital's reconsideration review request of the date, time, and location of the review; the issues in dispute; the review procedures; and the procedures (including format and deadlines) for submission of evidence (the "Scheduling Notice"). The CMS reconsideration official must take all reasonable efforts to schedule the review to occur no later than 30 calendar days after the date of the Scheduling Notice. The CMS reconsideration official issues a written determination within 30 days of the review. The determination is final and binding.

We proposed to revise the § 510.310(b)(4) to clarify that the reconsideration review process is an on-the-record review, not an in-person review. The existing language at

§ 510.310(b)(4)(i) requires the reconsideration official to give hospitals the date, time, and location of the review. While we believe providing participant hospitals with information about the review is important, after careful review of the language we believe this language could cause confusion as to whether the participant hospital needs to attend the reconsideration review and whether the CJR model team will receive the Scheduling Notice and notice of the review procedures. Therefore, we proposed to remove paragraph (b)(4)(i) and to revise the introductory text of paragraph (b)(4) to clarify that the reconsideration official must notify both CMS and the hospital of the issues in dispute, the review procedures, and the procedures for submission of briefs and evidence. Additionally, we proposed to modify § 510.310(b)(4)(iv) (which will be renumbered § 510.310(b)(4)(iii)) to clarify that the parties may submit briefs and evidence in support of their positions. The reconsideration official will conduct an on-the-record review of the briefs and evidence provided by the parties. We proposed to make conforming changes to delete § 510.310(b)(5) (as it references a scheduled review in accordance with § 510.310(b)(4)(i), which we proposed to delete) and to revise § 510.310(b)(7) (which will be renumbered § 510.310(b)(6)) to state that the CMS reconsideration official issues a written determination within 30 days of the deadline for submission of all briefs and evidence. We sought comment on our proposal.

Comment: A commenter supported CMS' proposal to clarify the language describing the appeals process.

Response: We appreciate the commenter's support.

Final Decision: After consideration of the public comment we received, we are finalizing the proposal without modification.

J. Request for Comment on New LEJR-Focused Models That Would Include ASCs and That Could Involve Shared Financial Accountability

While we continue to believe that the CJR model is helping to improve care for joint replacements in the inpatient and outpatient hospital setting, we recognize that lower joint procedures are gradually being transitioned into ASCs. Specifically, in the CY 2020 OPPS/ASC final rule (84 FR 61253), CMS finalized a proposal to add TKAs to the ASC covered procedures list. In the proposed rule we stated our belief that continued improvements and advances in medical technologies and surgical techniques

could make ASCs an appropriate setting for THAs at a future point in time. Subsequently, in the CY 2021 OPPS/ASC final rule with comment period (85 FR 85866), CMS finalized a proposal to remove TAR and certain other orthopedic procedures from the IPO list and allow all procedures not on the IPO list to be paid when furnished in both the outpatient hospital and ASC settings. This means that all procedures included in the CJR model can, as of CY 2021, be performed in the ASC setting as well as the outpatient and inpatient hospital setting. Given that trends in care settings were continuing to transition in this direction at the time that the CJR February 2020 proposed rule was published, we solicited comment on how we might best conceptualize and design a future bundled payment model focused on LEJR procedures performed in the ASC setting. Further, while the CJR model established hospitals as the financially accountable entity, we sought comment on how a new model could better recognize the role of the surgeons and clinicians in LEJR episodes. Who should participate in the model and should the reconciliation payment and/or repayment obligations be shared between the facility and the rendering surgeon to better encourage collaboration? Are there any other clinicians who should share directly in the financial accountability? In general, would a prospective bundled payment or a retrospective target price benchmarked payment model approach work best? What types of quality measures would participants need to track and report? Should the model be ASC specific or site-neutral such that inpatient, outpatient hospital and ASC service sites would be paid the same rate, regardless of where the procedure was performed?

We appreciate the comments received and are taking each comment into consideration. We will continue to seek input from stakeholders as we consider future models that will incorporate ASCs.

K. April 2020 IFC and November 2020 IFC

As discussed in section II.D.1. of this rule, the April 2020 IFC extended PY5 through March 31, 2021, and adjusted the extreme and uncontrollable circumstances policy to account for the COVID-19 PHE 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. Comments on these policies and our responses are outlined in sections II.G.2. and II.G.5. of the November 2020 IFC. In this final rule, we are finalizing the CJR related provisions in the April 2020 IFC.

In section II.G. of the November 2020 IFC, we implemented four changes to the CJR model. First, we extended PY5 an additional six months, so PY5 ends on September 30, 2021. Second, we made changes to the reconciliation process for PY5 to allow two subsets of PY5 to be reconciled separately. Third, we made a technical change to include MS-DRGs 521 and 522 in the CJR episode definition, retroactive to inpatient discharges beginning on or after October 1, 2020, to ensure that the model continues to include the same inpatient LEJR procedures, despite the adoption of new MS-DRGs 521 and 522 to describe those procedures. Lastly, we made 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 the COVID-19 PHE after the extreme and uncontrollable circumstances policy no longer applies. We received five comments on the CJR related provisions in the November 2020 IFC. Comments on these policies and our responses are outlined in this section hereafter.

1. Extension of Performance Year 5 to September 30, 2021

Comment: Commenters supported the extension of PY5 to September 30, 2021 agreeing with CMS that if PY5 ended on March 31, 2021 it would create disruption to the model, which could be disruptive to hospitals and patient care, especially during the PHE. A commenter requested that we make the CJR model voluntary after March 31, 2021 or terminate the model due to the COVID-19 PHE. Another commenter requested that we extend PY5 to December 31, 2021 or until the end of the COVID-19 PHE in order to contain the impact of the COVID-19 PHE within PY5.

Response: We agree with commenters that ending PY5 on September 30, 2021 lessens the chance of disruption to the model and provides participant hospitals with additional relief and stability in model operations. We understand the commenter's concern in regards to the COVID-19 PHE and the progression of the model, but as we discussed in section II.D.1. of this final

rule, we believe this concern is alleviated by the extreme and uncontrollable circumstances policy that is in place to deal with CJR beneficiaries with a COVID-19 diagnosis after March 31, 2021. In addition, we considered extending PY5 to December 31, 2021, however, as noted previously the extreme and uncontrollable circumstances policy provides no downside risk for all participant hospitals that have an episode with a date of admission to the anchor hospitalization that is on or within 30 days before the date that the emergency period began until March 31, 2021 or the last day of such emergency period, whichever is earlier. This policy provides no downside risk for hospitals for the majority of 2020. Further, the new policy we adopted in the November IFC provides for no downside risk for CJR beneficiaries that have a COVID-19 diagnosis on a claim during a CJR episode for episodes that start on or after March 31, 2021, for the remainder of the model. As discussed in section II.G.5. of the November 2020 IFC, we believe these policies will still alleviate commenters' concern by containing the impact and financial risks to participant hospitals, as they operate the CJR model in conjunction with the COVID-19 PHE.

Final Decision: After considering the comments received, we are finalizing without modification that PY5 extends to September 30, 2021. The definition of performance year reflects this finalization as well as incorporates the date ranges of PY6 through PY8 for the extension.

2. Additional Reconciliations for Performance Year 5

Comment: Most commenters support the policy to conduct two reconciliations for PY5, specifying that conducting two reconciliations for PY5 in order to break up what would otherwise be a 21-month gap between reconciliation payments during the COVID-19 PHE is favorable to participant hospitals.

Response: We appreciate the support by commenters and agree that providing two reconciliation periods allows participant hospitals the opportunity to receive a reconciliation payment, if applicable, on a timelier schedule rather than having an extended gap between reconciliation payments.

Final Decision: After considering the comments received, we are finalizing without modification that, within PY5, CMS separately performs the reconciliation processes for PY subsets 5.1 and 5.2. This policy is finalized throughout 42 CFR part 510.

3. DRG 521 and DRG 522

As outlined in section II.G.4. of the November 2020 IFC, we received 3 comments in response to the February 2020 proposed rule and 20 comments in response to the FY 2021 IPPS/LTCH proposed rule addressing the effects of the proposed new MS-DRGs on the CJR model. For a discussion of those comments, please see section II.G.4. of the November 2020 IFC (85 FR 71170 and 71171).

Comment: Most commenters support the addition of MS-DRGs 521 and 522, and the addition of these MS-DRGs to be retroactive to October 1, 2020. Commenters highlighted that it is administratively simpler for CJR participant hospitals and associated surgeons to continue performing hip fracture THAs under the CJR model arrangements than to begin removing cases from the CJR model. Commenters also stated that maintaining hip fractures in the CJR model means those procedures remain subject to the value-based care incentives of the CJR model. A commenter on the November 2020 IFC, opposed the addition on MS-DRGs 521 and 522, suggesting that CMS monitor the episodes mapped to the new MS-DRGs and conduct periodic data analyses to ascertain the actual financial impact of the MS-DRG additions to the CJR model.

Response: We appreciate the support of many commenters on adding MS-DRG 521 and 522 as of October 1, 2020 and agree that it is administratively simpler for CJR participants to continue performing hip fracture THAs under the CJR model arrangements than to begin removing cases from the CJR model. We agree that maintaining hip fractures in the CJR model means those procedures remain subject to the value-based care incentives of the CJR model. As discussed in section II.G.4. of the November 2020 IFC, we believe that failure to retroactively incorporate MS-DRGs 521 and 522 into the CJR model as of October 1, 2020 is detrimental to participant hospitals because it would have resulted in approximately 20–25 percent of all LEJR episodes to be dropped from the CJR model. The categories of episodes that may have been dropped tend to be associated with emergent surgeries, high-costs, and complex post-acute care needs. Dropping these episodes from the model would have created confusion, and increased administrative burden for participant hospitals, and removed the opportunity for participant hospitals to earn reconciliation payments by coordinating care for these complex, high-cost episodes. Regarding the

comment that CMS monitor the episodes mapped to the new MS-DRGs and conduct periodic data analyses to ascertain the actual financial impact of the MS-DRG additions to the CJR model, CMS currently monitors and completes analyses on MS-DRGs 521 and 522. This is because, historically, the CJR model episode definition 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. Therefore, the creation of two new MS-DRGs, 521 and 522 (Hip Replacement with primary hip fracture, with and without major complications and comorbidities), respectively is a mere seamless transition for CMS to monitor these DRGs and operationally is a seamless transition for participant hospitals, which continue to bill Medicare FFS as usual for hip replacements with hip fractures. The new MS-DRGs are incorporated into the CJR episode reconciliation data system, and are included in participant hospitals' monthly data feeds.

Final Decision: After considering the comments received, we are finalizing without modification 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).

4. Changes to Extreme and Uncontrollable Circumstances Policy for the COVID-19 PHE

In the April 2020 IFC we developed an extreme and uncontrollable circumstances adjustment for the COVID-19 PHE to provide 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, applied 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). Ultimately, this policy removed downside risk for all participant hospitals until the COVID-19 PHE ends.

We received comments on both the April 2020 IFC and the CJR February 2020 proposed rule about the extreme and uncontrollable circumstances adjustment, and responded to these comments in section II.G.5. of the November 2020 IFC. After consideration of comments as discussed in section II.G.5. of the November 2020 IFC, in the November 2020 IFC, CMS amended the policy, such that 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. However, in order to account for CJR beneficiaries with a positive COVID-19 diagnosis during a CJR episode that initiates after March 31, 2021 or the last day of the PHE, whichever occurs earlier, we capped 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.

Comment: In regards to the extreme and uncontrollable circumstances

policy for COVID-19 adopted in the November 2020 IFC, some commenters believe that CMS should revert back to the policy in the April 2020 IFC and waive downside risk for all episodes until the PHE ends. These commenters noted that though CMS portrayed LEJR procedures as being on the rise, hospitals are still experiencing a decline in LEJR procedures when comparing 2019 and 2020 data, and that the latest spike in COVID-19 cases likely will depress that volume through the winter months so it continues to be appropriate to hold hospitals as risk bearing entities harmless from downside risk through the winter.

Most commenters supported CMS' decision to develop a specific COVID-19 policy so participant hospitals are held harmless if a CJR beneficiary has a positive COVID-19 diagnosis during a CJR episode. A commenter asked when the beneficiary has to have COVID-19 in order for the financial safeguards to apply.

Response: We appreciate the comments on the November 2020 IFC extreme and uncontrollable circumstances policy for the COVID-19 PHE. On January 7, 2021, the Secretary renewed the COVID-19 PHE effective January 21, 2021. Because the policy we adopted in the November 2020 IFC provides that the downside risk waiver applies only to episodes with a date of admission to the anchor hospitalization that occurs on or before the earlier of March 31, 2021 or the end of the emergency period, and the emergency period now will extend beyond March 31, 2021, the extreme and uncontrollable circumstances policy set forth at § 510.305(k)(4) will not apply to episodes that are initiated on or after April 1, 2021.

We understand commenters' concern about the PHE and recommendation that CMS should revert back to the policy in the April 2020 IFC, ultimately waiving

downside risk for all episodes until the PHE ends. As noted previously, the current public health emergency was renewed effective January 21, 2021, and will be in effect for 90 days. Further, the Acting Secretary of Health and Human Services expressed to Governors that the PHE will likely remain in place for the entirety of 2021, and that when a decision is made to terminate the declaration or let it expire, HHS will provide states with 60 days' notice prior to termination.¹¹ In light of the continued renewal of the PHE, waiving downside risks for all episodes until the PHE ends could threaten the ability of the CJR model to generate any savings over the course of the model, especially given the potential for the PHE to remain in place for the entirety of 2021. Because the agency's authority to conduct models is constrained to those anticipated to reduce program expenditures, CMS is therefore unable to revert back waiving downside risk for all episodes until the PHE ends. Also, we understand the commenters' feedback that hospitals experienced a decline in LEJR procedures when comparing 2019 and 2020 data. However the difference in episodes volume is not only in response to the COVID-19 PHE, but also other factors such as LEJR procedures being performed in the outpatient and ambulatory surgery setting. Despite all factors, episode volume is experiencing an upward trend since June 2020 and averaging at 50 percent or more when comparing episode volume between 2019 and 2020 post June 2020. Table 5b depicts recent Medicare claims data comparing February to December of 2019 and February to November of 2020. These numbers reflect episode volume for each month, accounting for any CJR episode that began within that month.

TABLE 5b—CJR EPISODE VOLUME COMPARISON

	February	March	April	May	June	July	August	September	October	November	December
2019	6,212	6,174	6,514	6,020	5,833	6,059	5,839	6,122	7,014	5,546	4,739
2020	5,252	3,379	878	2,252	4,036	3,860	3,738	3,845	3,691	3,187	2,504

L. Coordination With Other Agencies

Impacts created by payment changes under this model are entirely internal to HHS operations; coordination with other agencies is not required outside of the usual coordination involved in the

publication of a HHS regulatory changes.

III. Collection of Information Requirements

As stated in section 1115A(d)(3) of the Act, Chapter 35 of title 44, United States

Code, shall not apply to the testing and evaluation of models under section 1115A of the Act. As a result, the information collection requirements contained in this final rule need not be reviewed by the Office of Management

¹¹ See, *Public-Health-Emergency-Message-to-Governors.pdf* (georgetown.edu).

and Budget. However, we have summarized the information collection requirements in the Regulatory Impact Analysis section of this final rule.

IV. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (CRA) (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). This final rule implements proposed changes and extension of the CJR model; these provisions impact a subset of hospitals under the IPPS. The Office of Management and Budget has designated this final rule as an “economically significant” rule under E.O. 12866 and a “major rule” under the Congressional Review Act (CRA).

B. Statement of Need

Initial reports from the Innovation Center evaluation contractor as well as an independent study in the *New England Journal of Medicine*¹² indicate that the model in PYs 1 and 2 resulted in modest cost reductions with quality of care maintained and no increases in case complication. Specifically, for PY1, without considering net reconciliation payments earned under the CJR model, the Innovation Center evaluation contractor observed that the total episode payments decreased 3.3 percent, or \$910 per episode, more for CJR model episodes than control group episodes in the difference in difference

analysis.¹³ Further, the second annual CJR model evaluation report, released on June 27, 2019, has found that CJR model episode payments decreased by 3.7 percent more over the first 2 years of the CJR model. These decreases in payments have likely reduced Medicare program spending over the first 2 performance years of the model by an estimated \$17.4 million (with a range of Medicare losses of \$41.1 million to Medicare savings of \$75.9 million, due to uncertainty in per episode savings).¹⁴ From these observations, it appeared that continuing to bundle lower joint payments would assist the Innovation Center in meeting its goal to reduce expenditures while preserving or enhancing the quality of care.

However, since these initial evaluation results, the traditional Medicare FFS program has shifted in ways that limit the model’s long-term ability to achieve savings, and we have determined that the changes adopted in this final rule are necessary for the following reasons. First, to address changes in the CY 2018 OPPS final rule (65 FR 18455) to the IPO list (published annually in OPPS rule) to remove the TKA procedure code, as well as the recent removal of the THA procedure code from the IPO list in the CY 2020 OPPS final rule (84 FR 61353), we proposed to change the definition of an Episode of care to include outpatient procedures for TKAs and THAs. Additionally, we believe it is necessary to adjust target pricing to ensure that target prices better capture spending trends and changes, by using more recent historical spending data that includes outpatient TKA and inpatient TKA/THA claims, as well as outpatient THA claims that will be included in CY 2021 and CY 2022 data, and in order to parallel the proposed changes to the reconciliation process with the changes we proposed to the target price calculations. We also proposed to conduct one reconciliation per CJR model performance year, which would be initiated six months following the end of a CJR model performance period. This change is intended to reduce the administrative burden of an additional reconciliation for Medicare and CJR participant hospitals. In an effort to remain consistent with BPCI Advanced,

we proposed to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments is a physician, non-physician practitioner, PGP, or NPPGP for episodes beginning on or after April 1, 2016 and ending on or before December 31, 2020 to remain consistent with the other policy changes made in the proposed rule. We believe that participant hospitals, CJR collaborators, collaboration agents, and downstream collaboration agents are now accustomed to the episode-based CJR model payment methodology and that administrative burden should be reduced and further flexibility should be offered to allow hospitals to share internal savings or earned reconciliation payments by removing the gainsharing cap. We proposed to adjust the composite quality score discount in recognition that the proposed changes to the target price calculation (discussed in section II.B. of this final rule), intended to increase the accuracy of target prices compared to actual performance period spending may also narrow the potential for participant hospitals to earn reconciliation payments. Because of these more accurate target prices, and the fact that all participant hospitals would be at financial risk during PYs 6 through 8, we determined that a more generous composite quality score adjustment to the discount factor is appropriate for hospitals ranked in the good and excellent CJR model quality categories.

In this final rule we also note that the third annual CJR model evaluation report, released in November 2020, found that for mandatory CJR participant hospitals, the CJR model resulted in decreases in average payments for both the inpatient only and all LEJR episodes (inpatient and outpatient) during the first 3 performance years. Specifically, payments decreased by \$1,378 more for all CJR model LEJR episodes (inpatient and outpatient) than for control group episodes, or 4.7 percent from CJR model baseline payments. For the inpatient only episodes, payments decreased by \$1,540 more than for control group episodes, or 5.3 percent from CJR model baseline payments. After accounting for the reconciliation payments, net savings from mandatory hospitals totaled \$61.6 million (or 2 percent savings from baseline) for all LEJRs and \$76.3 million (or 2.5 percent savings from baseline) for inpatient only episodes. From these recent observations, it continues to appear that bundling lower joint payments will assist the Innovation

¹³ For the CJR first annual evaluation at a glance and full report see <https://innovation.cms.gov/Files/reports/cjr-fg-firstannrpt.pdf> and <https://innovation.cms.gov/Files/reports/cjr-firstannrpt.pdf>.

¹⁴ For the CJR second annual evaluation at a glance and full report see <https://innovation.cms.gov/Files/reports/cjr-fg-secondannrpt.pdf> and <https://innovation.cms.gov/Files/reports/cjr-secondannrpt.pdf>.

¹² Barnett, Wilcock, McWilliams, Epstein, et al. “Two-Year Evaluation of Mandatory Bundled Payments for Joint Replacement” see <https://www.nejm.org/doi/10.1056/NEJMsa1809010>.

Center in meeting its goal to reduce program expenditures while preserving or enhancing the quality of care.

When we proposed this rule, we believed a 3-year extension was necessary to allow for enough time and information to reasonably evaluate the proposed changes. While the COVID-19 PHE will necessitate adjustments to the evaluation of the changes we are adopting in this final rule, we continue to believe they are improvements to the CJR model that will increase the probability of model savings compared to the original CJR model payment methodology (as described in Table 6a. of this final rule). Additionally, we continue to believe the CJR model promotes alignment of quality and financial accountability in the LEJR space and should continue to be tested through an extension of the model.

C. Anticipated Effects

In prior sections of this final rule, we discuss our proposals to amend the regulations governing the CJR model. We present the following estimated overall impact of the proposed changes during the 3-year proposed extension. Table 7 summarizes the estimated impact for the proposed changes to the CJR model for the proposed 3-year extension of the model from April 1, 2021 through December 31, 2023. This table was created using 2018 claims data that was available at the time the proposed rule was published. Table 7a in this final rule is an updated version of the table calculated using 2019 claims data.

There were approximately 470 providers participating in the CJR model as of October 2019. By limiting participation to the non-rural, non-low-volume providers physically located in the 34 mandatory MSAs, we expect approximately 330 participants in the CJR model for the 3-year extension, dependent on changes in rural reclassification status or mergers. Specifically, we anticipate removing around 75 providers located in the 33 MSAs that were changed to voluntary and removing around 45 providers for rural reclassification status. For purposes of modeling this impact, using the 2019 Medicare claims data pulled from the Chronic Conditions Warehouse in February of 2021 and limiting the analysis to non-rural, non-low-volume providers located in the 34 mandatory MSAs, we had 330 eligible providers with CJR model episode claims data. Projected CJR model episode volume increases from 2021 to 2024 follow Medicare enrollment assumptions included in the 2020 Medicare Trustees

Report.¹⁵ Price updates for 2019 to 2020 follow FFS unit cost increases by service category for 2018 to 2020. The weights for each service category were developed using 2019 episode spending data. For 2021 to 2024, price updates were assumed to equal the market basket minus multifactor productivity (MFP) growth, or roughly the approximate price update that is built into the Trustees Report model.

We are assuming that participants would reduce episode spending by 1 percent during PY6 due to their participation in the model. In PY7 and PY8, we assume that participant hospitals' spending would grow at the same rate as spending by non-participating hospitals in their respective regions. We make these assumptions given that the most recent CJR model evaluation report showed that participant hospitals reduced spending by 5.3 percent for inpatient episodes during the first 3 years of the CJR model. Specifically, we are assuming that participant hospitals will have more difficulty producing additional savings over time. Since LEJR episode costs have been declining, there is some uncertainty around how much more efficient participant hospitals, clinicians and the associated post-acute care providers can be in terms of further reducing the costs of LEJR episodes. However, as the CJR model shares the extra savings back to participant hospitals, we do not anticipate large changes in the impact analysis as a result of changes in the assumption that participant hospitals would have difficulty producing additional savings over time. We assumed that if the CJR model were not extended, participant hospitals would increase their episode spending by 2.65 percent as a response to the model ending, which is half of the savings shown by the evaluation for the first 3 years of the CJR model.

We noted in the proposed rule that we did not make any assumptions about behavioral changes in the post-acute care space that may result from significant payment policy changes finalized in the FY 2019 SNF (83 FR 39162) and CY 2019 HH (83 FR 56406) rules for implementation with FY 2020 and CY 2020, respectively, as we did not yet have claims experience with these new methodologies in place. Behavioral changes stemming from these policies could have impacts upon our CJR model savings estimate that we

were unable to quantify at that time. However, we have not updated our assumptions in this final rule about behavioral changes in the post-acute care space that may result from the payment policy changes noted previously since the COVID-19 PHE will likely impact the effect of these policies in CY 2020 claims data, and as noted in section II.B.3. of this final rule, we are omitting the use of 2020 claims data for target price and risk adjustment coefficient calculations.

While we are not using CY 2020 claims data to update our previous assumptions about behavioral changes in the post-acute care space that may have resulted from the payment policy changes referenced previously given the potential effect of the COVID-19 PHE on that data, we are adding certain assumptions to this final rule based on CY 2020 claims data because there is no other source of data to make these assumptions and they are also informed by CY 2018 and CY 2019 claims data. In particular, we used CY 2020 claims data to estimate the effect on overall LEJR spending in 2020 from two payment changes in 2020; the effect of the payment policy changes to TKA procedures performed in the ASC setting and THA procedures performed in the hospital outpatient setting, as described later in this section. We determined it appropriate to add these assumptions based on CY 2020 claims data since CY 2019 and prior year claims data does not include these two policy changes that only became effective in 2020. Additionally, we determined it appropriate to utilize CY 2020 data for this purpose since the overall LEJR spending and site of service utilization assumptions are also informed by data from CY 2018 and CY 2019. As noted later in this section regarding the effect on LEJR spending from THA procedures being performed in the outpatient setting in 2020, we did include basic considerations for the potential effect of the COVID-19 PHE on these general estimates. In contrast, we chose not to update assumptions about specific changes, such as behavioral changes in the post-acute care space, given the increased uncertainty of the magnitude and directional effect of COVID-19 PHE on those specific aspects of LEJR spending and since the assumptions would only be informed by CY 2020 claims data (unlike the overall LEJR spending and site of service assumptions informed also by CY 2018 and CY 2019 data).

TKA procedures in the ASC setting are eligible for Medicare payment as of January 1, 2020. In the OPPS CY 2020 final rule (84 FR 61388), we agreed with

¹⁵ See page 176 of the 2020 Annual Report of the Board of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds which can be found on: <https://www.cms.gov/files/document/2020-medicare-trustees-report.pdf>.

commenters who stated that the majority of Medicare beneficiaries would not be suitable candidates to receive TKA procedures in an ASC setting, based on factors such as age, comorbidity, and body mass index that should be taken into account to determine if performing a TKA procedure in an ASC would be appropriate for a particular Medicare beneficiary. However, we further stated that we believe there are a small number of less medically complex beneficiaries that could appropriately receive the TKA procedure in an ASC setting and physicians should exercise clinical judgment when making site-of-service determinations, including for TKA. Since ASC procedures are not included in the CJR model extension, the agency's policy choice to allow Medicare payment for TKA procedures in the ASC setting could result in a decrease in the number of CJR model TKA episodes. However, we assume ASC procedures will only account for approximately five percent of LEJR procedures during the CJR model extension, and thus the changes in CJR episode volume would likely be small such that only the magnitude of this CJR model impact estimate would change. As noted previously, we determined it appropriate to utilize CY 2020 claims data to inform this assumption since

2020 is the first year TKA procedures in the ASC setting became eligible for Medicare payment.

THA procedures were removed from the IPO list, effective January 1, 2020. We acknowledge that it is possible this change could result in reductions in THA episode costs should some percentage of inpatient THA procedures move into the OPPS setting over the next several years. Analysis of 2020 claims data from an external analytic contractor indicates during 2020, THA procedures in the OPPS setting accounted for approximately 10 percent of all LEJR episodes. Additionally, compared to inpatient THA episodes, episode spending for THA procedures in the OPPS setting was approximately 30 percent less in 2020. We assume the reduction in episode costs for THA procedures in the OPPS setting during 2020 was partially a result of the effect of the COVID-19 PHE, which likely had the effect of shifting less complex and costly patients to the OPPS setting in an effort to avoid inpatient hospital utilization. Therefore, we assumed overall LEJR spending decreased by 2 percent in 2020 as a result of this setting change.

The calculations shown in Table 7 estimated that, in total, the proposed changes to the CJR model would result in a net Medicare program savings of approximately \$269 million over the 3

proposed performance years (2021 through 2023). We sought comment on our assumptions and approach. The updated calculations shown in Table 7a in this final rule estimated that, in total, the changes we are adopting in this final rule to the CJR model would result in net Medicare program savings of approximately \$217 million over the 3 proposed performance years (2021 through 2024).

The following Table 6 summarizes the anticipated impact of certain provisions of this final rule. While the table does not include all the provisions in this final rule, it includes those provisions for which we determined there was the potential for a significant change in costs or savings related to a change in the model's major policies. We did not include policies for which we determined there would not be the potential for changes in costs or savings, such as the removal of the gainsharing caps that were in place PYs 1 through 5. We were unable to provide discrete estimates associated with each of these provisions at the time the proposed rule was published due to lack of calendar year 2019 claims data availability. This table includes a qualitative estimate of the possible costs/savings to Medicare resulting from each provision in this final rule. The "Notes" column provides additional background when necessary.

TABLE 6: ANTICIPATED IMPACTS BY FINAL PROVISION RELATIVE TO ORIGINAL CJR MODEL POLICIES 2021-2023

Provision	Direction of Transfers (labeled “Costs/Savings” in the proposed rule)	Transfers	Notes
Changes to episode definition to include outpatient TKA/THA	Cost		The bulk of data used to set target prices under original CJR methodology would not include many OPPS knee episodes and would include no OPPS hip episodes until proposed PY7. Therefore, if we were to make no changes to the current CJR target price methodology and were only to add outpatient TKA/THA procedures to the CJR episode definition, targets would be based on inpatient hospitalization costs and subsequent post-acute care and would likely be inappropriately high relative to OPPS episode costs.
Freezing hip fracture list and episode exclusions list	Zero Impact		We have not needed to update the fracture/episode exclusion list to any degree of significance for the first 5 years of CJR and do not anticipate changes in the next 3 years so we assume this will have a zero impact.
Capping high episode spending at the 99 th percentile (rather than 2 standard deviation methodology)	Savings		The 99 th percentile high episode cap will be higher than the 2 standard deviations of mean episode cost such that more costs per episode will be considered relative to the target and reconciliation payments may decrease slightly while reconciliation obligations may increase slightly.
Use of the most recently available 1year of data to calculate target prices (rather than most recent 3 years of data), removal of regional and hospital anchor weighting factor(s) from target price calculation, and discontinuing twice annual updates to the target prices to account for changes in the Medicare prospective payment systems and fee schedule rates	Savings		Updating the target price data set to use a time period closer to the model, removing anchor weighting and discontinuing the FFS updating (in favor of a trend update at reconciliation) should ensure the targets are better aligned to actual expected episode spending.
Applying a market trend factor (that is., the regional MS-DRG/fracture mean cost of episodes occurring during the performance year divided by the regional MS-DRG/fracture mean cost for episodes occurring during the target price base year)	Cost or Savings Trend Ratio		The trend factor will incorporate all differences in average episode costs between year used for target price and actual model so to the extent FFS payment updates have increased, the trend could be greater than 1 which could increase targets and the model cost; if, despite FFS increases overall ,episode spending decreases then targets will decrease and savings will result.

Provision	Direction of Transfers (labeled “Costs/Savings” in the proposed rule)	Transfers	Notes
Incorporating a risk adjustment for beneficiary specific CJR HCC count and age bracket	Zero Impact		This risk adjustment is designed to increase target prices somewhat for beneficiaries with increasing age and/or HCCs; it will lower targets somewhat for younger beneficiaries with fewer or no HCCs. The presumption is that episode costs for older, more complex beneficiaries should be higher than average and for younger, less complex beneficiaries they should be lower than average so we anticipate a net impact of zero for this provision.
Increasing hospital quality incentive payments (that is, a 1.5 percentage point reduction to the applicable discount factor for participant hospitals with “good” quality performance and a 3 percentage point reduction to the applicable discount factor for participant hospitals with “excellent” quality performance).	Zero Impact		We believe this provision will be redistributive among participants but that it will not have an overall impact on the model given the other changes we proposed to the pricing methodology.
Excluding opt-in low-volume and rural hospitals with a CCN primary address in a mandatory MSA and excluding opt-in hospitals with a CCN primary address in a voluntary MSA.	Savings		We assume that those participants who voluntarily opted to continue in CJR as of PY3 were doing well in the CJR model and that removing them from the model will likely result in a smaller reconciliation payout which will create some savings relative to current CJR reconciliation spending.

We are updating Table 6 from the proposed rule with Table 6a, which includes a discussion of the transfer amounts for certain provisions in this final and the considerations that frame the assumptions for each provision. While we noted in the proposed rule that Table 6 would reflect the transfer amounts relative to the original CJR model provisions, we are clarifying that the transfer amounts included in Table 6a are transfer amounts of each provision relative to the CJR model extension payment methodology with or without that provision. This clarification is also noted in the Transfers column in Table 6a in this final rule. We chose to display the transfer amounts this way after we determined that certain provisions in the CJR model extension methodology were incomparable to the original CJR model methodology and could lead to misleading transfer amount assumptions. Additionally, certain provisions in the final rule would have

different impacts if applied to the original CJR model methodology together or separately.

For example, as a result of the SNF PDPM that was implemented on October 1, 2019 (83 FR 39162), we have observed changes in average SNF episode costs in CJR model episodes. Under the CJR model methodology, which utilizes the most recent 3 years of data for target price calculations and updates that data every other year and updates target prices twice annually for prospective payment systems updates, we would not completely account for the effect of the SNF PDPM payment change in PYs 6 through 8. Specifically, the 3 years of historical data would only include a portion of time when the new PDPM was implemented (as PY6 target prices would be calculated with 2016–2018 data and PY7 and PY8 target prices would be calculated with 2018–2020 data), and the twice annual updates in the CJR model original methodology that would include a SNF Services

Update Factor would not be correctly updated because that methodology relies on the former RUG–IV Case-Mix Adjusted Federal Rates. This would create inaccurate target prices, which could lead to higher model transfer costs if the effect of the SNF PDPM payment change would be to lower target prices. While the provision to rely on only the most recent year of historical data for target price calculations would help remedy this and could lead to model transfer savings, the market trend factor would also help eliminate the delay in adjusting for lower SNF episode costs in historical target pricing data. While we consider all the provisions as improvements related to the original CJR model methodology, which are meant to generate transfer savings or zero amounts, the transfer assumptions in Table 6a are relative to the CJR model extension methodology with or without each provision; they are not relative to the original CJR model provisions.

Table 6a: ANTICIPATED IMPACTS BY FINAL PROVISION

Provision	Direction of Transfers (labeled “Costs/Savings” in the proposed rule)	Transfers (relative to the methodology without each final provision)	Notes
Changes to episode definition to include outpatient TKA/THA	Savings	79,000,000 – 178,000,000	Data trends on 3 years of episode data (2017-2019) shows that as the volume of OPPS episode increases, the target price for the blended inpatient and outpatient category (470/no fracture) decreases. Using 2019 CJR average standardized payment data, we determined that excluding OPPS TKA episodes in the CJR Extension target price modeling would lead to a higher target price for the DRG 470/no fracture episode category across all 9 CJR regions, ranging from 4% to 9% higher. This range was used to calculate the associated transfer estimate. It should be noted that 2019 data indicates a material increase in the number of outpatient procedures compared to 2018. The 2018 and 2019 data also supports the assumption that outpatient procedures are lower cost, such that excluding outpatient procedures from the baseline data would likely result in higher target prices. Additionally, if the outpatient episode mix continues to trend upwards, the magnitude of excluding these outpatient episodes from the base data will continue to increase.
Freezing hip fracture list and episode exclusions list	Zero Impact	NA	NA
Capping high episode spending at the 99 th percentile (rather than 2 standard deviation methodology)	Savings	4,875,000	Using 2019 average standardized cost data, we compared the percentage difference in calculating average target prices using the 99 th percentile high-cost outlier cap vs. using a 2 standard deviation cap. Holding other current CJR extension assumptions constant, we see a consistent increase by approximately 2% in target prices when applying 99 th percentile regional high episode caps, which we estimated will contribute to approximately \$1,500,000 in savings for each of the PYs 6 through 8.

Provision	Direction of Transfers (labeled “Costs/Savings” in the proposed rule)	Transfers (relative to the methodology without each final provision)	Notes
Use of the most recently available 1 year of data to calculate target prices (rather than most recent 3 years of data), removal of regional and hospital anchor weighting factor(s) from target price calculation, and discontinuing twice annual updates to the target prices to account for changes in the Medicare prospective payment systems and fee schedule rates	Savings	NA	Using 2016-2018 average standardized payments, we compared the percentage change in average target prices using 3 years of data and applying the original CJR national growth factor methodology versus the most recent 1 year of data to calculate target prices. When using 3 years of data, we observed higher target prices for DRG 470 no fracture category episodes across all regions. Analysis based on inpatient episode comparison shows that as hospitals improved efficiency, the average prices for the DRG 470 no fracture category episodes decreased by up to 4% (and decreased by 3-6% for all episode types) across the 9 CJR regions in comparing 2019 data alone versus the data from 2016 -2018. For this analysis, however, we did not include a specific transfer amount given the uncertainty in attributing that amount to the provision versus market fluctuations related to outpatient procedures emerging in 2018. In general, the downward trend in average payments supports our provision that utilizing more recent data will better reflect program efficiencies achieved and the service mix to outpatient. Additionally, utilizing the most recent year of data will help limit variations in the target price at reconciliation that would occur as a result of the proposed market trend factor.
Applying a market trend factor (that is, the regional MS-DRG/fracture mean cost of episodes occurring during the performance year divided by the regional MS-DRG/fracture mean cost for episodes occurring during the target price base year)	Savings	201,000,000	Analyzing standardized payment data from 2016-2019, we observed a decreasing trend in CJR regional average episode prices. To estimate the impact of the market trend factor, we used 2017 data as the baseline for calculating target prices, which would be reconciled in 2019 under the new methodology. We observed regional average target prices for inpatient episodes that were approximately 1-3% higher than if we had included the market trend factor. It should be noted that the impact of the market trend factor in relation to other potential market fluctuations could increase or decrease average target prices each year. Additionally, OPPTS TKA episodes were excluded from this calculation because they were not present in the 2017 data. As a result of our proposed provision to use the most recently available 1 year of data to calculate target prices, the impact of the market trend factor is smaller than it would have been had we followed the original CJR methodology and used 3 years of historical data.
Incorporating a risk adjustment for beneficiary specific CJR HCC count and age bracket	Zero Impact	NA	NA

Provision	Direction of Transfers (labeled “Costs/Savings” in the proposed rule)	Transfers (relative to the methodology without each final provision)	Notes
Increasing hospital quality incentive payments (that is, a 1.5 percentage point reduction to the applicable discount factor for participant hospitals with “good” quality performance and a 3 percentage point reduction to the applicable discount factor for participant hospitals with “excellent” quality performance)	Costs	27,000,000	While we determined a more generous composite quality score adjustment to the discount factor is appropriate for hospitals ranked in the good and excellent CJR model quality categories for PYs 6 through 8, maintaining the policies applicable to PYs 1 through 5 would have contributed to \$27,000,000 in savings over PYs 6 through 8.
Excluding opt-in low-volume and rural hospitals with a CCN primary address in a mandatory MSA and excluding opt-in hospitals with a CCN primary address in a voluntary MSA	Savings	172,250,000	We analyzed the effect of this provision by assuming the opt-in low-volume, rural, and voluntary hospitals that participated in PY 4 of the model would participate in PYs 6 through 8. Since the total NPRA for these hospitals was approximately \$53,000,000 in PY 4, we assumed this would be the approximate cost per year if those hospitals were included in PYs 6 through 8. However, this transfer amount does not include considerations regarding the redistributive effect to model savings or costs as a result of the changes to the payment methodology (for example, the new risk adjustment variables in this final rule). While we continue to assume that these hospitals would achieve positive NPRA if included for the 3 PYs of the extension (and thus, increase model costs), we assume it would be to a lesser degree than in PYs 1 through 5 of the model.

*Transfer amounts are noted in average annual savings or costs expected over the 3 years of the extension.

Burden reductions should result from other proposals. Specifically, we proposed the move from two to one reconciliation should effectively cut the level of effort participants and the agency need to expend on reconciliation in half. Assuming a rate of \$33.89 per hour for an accountant (<https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm>) and an average of 15 hours to review each report for each of the 474 participant hospitals at 2 months then again at 14 months could cost approximately \$481,916. Moving to only one report for each performance year should reduce that cost by \$240,958 to approximately \$240,958. Likewise, accounting hours necessary to ensure that no physician received more than 50 percent of his or her total billing

for Medicare-approved amounts under the PFS for items and services furnished by that physician or non-physician practitioner to the participant hospital's CJR beneficiaries during CJR model episodes that occurred during the same performance year for which the participant hospital accrued internal cost savings or earned a reconciliation payment will no longer be necessary should our proposal to remove the 50 percent cap be finalized. Given our most recent review, 159 CJR participant hospitals have CJR collaborators that are physicians. Assuming an average of 10 collaborators per participant and 20 hours to review each collaborator's Part B claim totals by accountants at an hourly rate of \$33.89, each participant could have spent approximately \$6,778 on the reviews for a total of \$1.1 million

across all 159 participants with CJR collaborators. Our proposal to remove the 50 percent cap should therefore reflect a burden reduction around \$1.1 million. While we are unable to quantify the change to be had by our proposals to modify beneficiary notice requirements for model inclusion, discharge planning notices, and our extension of waivers for Medicare program rules, we believe having uniform requirements regardless of procedure setting for CJR beneficiaries will help participants to streamline the administrative procedures they put in place for the CJR model and that this streamlining will reduce the effort participants need to expend in complying with the CJR model regulations.

TABLE 7: FINANCIAL IMPACT FOR THE PROPOSED CHANGES AND THREE-YEAR EXTENSION OF THE CJR MODEL
[Figures are in \$ millions, negative values represent savings]

Year	2021	2022	2023	Total
Episode Spending with Model	\$1,505	\$1,582	\$1,661	\$4,748
Episode Spending without Model	1,533	1,623	1,703	4,859
Reconciliation	-50	-53	-55	-158
Total Impact	-78	-94	-97	-269

Note: Totals do not necessarily equal the sums of rounded components.

Our analysis in Table 7 from the proposed rule was informed by the target price and episode spending calculations produced by an external analytic contractor using 2018 claims

data and presented the transfer payment effects of the proposed rule to the best of our ability. The updated analysis in Table 7a in this final rule was informed by calculations produced by the same

external analytic contractor using 2019 claims data and presents the updated transfer payment effects of the final rule to the best of our ability.

TABLE 7a: FINANCIAL IMPACT FOR THE FINAL CHANGES AND THREE-YEAR EXTENSION OF THE CJR MODEL
[Figures are in \$ millions, negative values represent savings]

Year	4 th Quarter 2021	2022	2023	2024	Total
Episode Spending with Model	\$316	\$1,298	\$1,356	\$1,422	\$4,392
Episode Spending without Model	323	1,327	1,409	1,472	4,531
Reconciliation	-6	-23	-24	-25	-78
Total Impact	-13	-52	-77	-75	-217

Note: Totals do not necessarily equal the sums of rounded components.

The following Table 8 summarizes the financial impact of the proposal across 3 relevant years as well as two alternative scenarios: (1) If the CJR model were discontinued; and (2) if the CJR model were extended with changes to the episode definition to include outpatient TKA/THA but no other proposed changes. This table includes

the full amount of FFS episode payments and any rows that show the model extending also includes any reconciliation payments related to the model. This table shows costs/savings (costs are represented as positive amounts and savings as negative amounts) imposed on non-federal entities (that is, participating medical

facilities) as well as net transfers of federal funds (that is, increases in Medicare program expenditures are indicated as positive amounts and decreases in Medicare program expenditures are indicated as negative amounts).

TABLE 8: NET FINANCIAL IMPACTS UNDER PROPOSAL AND ALTERNATIVE SCENARIOS (\$ in millions) 2021-2023

Scenario	Costs/Benefits	Transfers
Net financial impact of extending CJR model with all proposed changes	0	4,626
Net financial impact of extending CJR model including outpatient TKA/THA in episode definition, but including no other proposed changes	0	4,965
Net financial impact of ending CJR model	0	4,859

Note: Row 1 of Table 8 reflects the value shown in Table 7 row 1 (episode spending with model) less the reconciliation payment amount shown in row 3 of Table 7. Row 3 of Table 8 shows the total spend without the model as shown in Table 7.

In this final rule, we have updated Table 8 with Table 8a, based on the new assumptions regarding financial impact of the CJR model noted in Table 7a. We excluded impact assumptions for the alternative scenario from Table 8, (2) if the CJR model were extended with changes to the episode definition to include outpatient TKA/THA but no other proposed changes, in Table 8a since we determined this scenario is not practically feasible. As noted in section

II.C.6. of this final rule, many of the CJR model payment methodology changes CMS is adopting in this final rule for PYs 6 through 8 are interdependent, and we believe will only be successful if implemented together. We determined it is not practical to consider scenario (2), adding outpatient TKA/THA to the episode definition with none of the other proposed changes, because the CJR model extension payment methodology relies on the risk

adjustment mechanism to appropriately account for the variation in inpatient procedure costs compared to the OPPI setting. Additionally, similar to the updates to Table 6a in this final rule, we determined comparing certain provisions of the CJR model extension methodology to the original CJR model methodology could lead to misleading transfer amount assumptions.

TABLE 8a: NET FINANCIAL IMPACTS UNDER FINAL RULE AND ALTERNATIVE SCENARIOS (\$ in millions) 2021-2024

Scenario	Costs/Benefits	Transfers
Net financial impact of extending CJR model with all proposed changes	0	4,388
Net financial impact of ending CJR model	0	4,605

Note: Row 1 of Table 8a reflects the value shown in Table 7a row 1 (episode spending with model) less the reconciliation payment amount shown in row 3 of Table 7a. Row 2 of Table 8 shows the total spend without the model as shown in Table 7a.

We received no comments about the anticipated financial effects specified in the proposed rule or about our assumptions and approach regarding Table 7 or Table 8. We have provided approximate updates to these tables based on our current assumptions regarding the LEJR market environment.

D. Effects on Beneficiaries

We believe the refinements to the CJR model adopted in this final rule would not materially alter the potential effects of the model on beneficiaries. We believe the changes would not alter the effects of the model on beneficiaries because the changes predominantly alter how hospitals interact with the model, rather than how beneficiaries receive care. We do not expect that CJR participant hospitals will conduct a larger share of LEJR procedures in the outpatient setting than non-CJR participant hospitals. We believe that the combination of our episode-level risk adjustment methodology, with the fact that sicker patients who are inappropriately treated in the outpatient setting would potentially have

complications requiring readmissions or other expensive post-acute care as a result of the inappropriate care setting for the original procedure, will incentivize physicians to make the appropriate clinical judgment based on the individual beneficiary's needs.

We received no comments on this section of the proposed rule and therefore are finalizing this section without modification.

E. Effects on Small Rural Hospitals

Section 1102(b) of the Act requires CMS to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, a small rural hospital is defined as a hospital that is located outside of an MSA and has fewer than 100 beds. We note that, according to this definition, the CJR model has never included any rural hospitals given that the CJR model only includes hospitals located in MSAs. However, for purposes of our policy to provide a more

protective stop-loss policy for certain hospitals, in the November 2015 final rule we revised our definition of a rural hospital to include an IPPS hospital that is either located in a rural area in accordance with § 412.64(b) or in a rural census tract within an MSA defined at § 412.103(a)(1), or has reclassified to rural in accordance with § 410.103.

The changes to, and extension of, the CJR model as laid out in this final rule are focused on high cost urban area MSAs and exclude participant hospitals that are rural hospitals as of July 4, 2021 from participation. We note that the hospitals with rural status that opted to continue to participate in the CJR model after February 1, 2018 were defined as rural based on their urban to rural reclassifications governed by § 412.103 and were also qualified as rural referral centers (RRCs) (see § 412.96), which are high-volume acute care hospitals that treat a large number of complicated cases. None of these hospitals were geographically rural for purposes of section 1102(b) of the Act. Therefore, we are not preparing an analysis for section 1102(b) of the Act because we have

determined, and the Secretary certifies, that the changes to, and extension of, the CJR model will not have a significant impact on the operations of a substantial number of small rural hospitals. We received no comments on this section of the proposed rule and therefore are finalizing this section without modification.

F. Effects on Small Entities

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. We estimated that most hospitals and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by qualifying as small businesses under the Small Business Administration's size standards (revenues of less than \$8.0 to \$41.5 million in any one year; NAICS Sector-62 series). States and individuals are not included in the definition of a small entity. For details, see the Small Business Administration's website at <https://www.sba.gov/document/support-table-size-standards>. For purposes of the RFA, we generally consider all hospitals (NAICS code 622110 or 622310) and other providers and suppliers to be small entities. We believe that the provisions of this final rule relating to acute care hospitals will have some effects on a substantial number of other providers involved in these episodes of care including surgeons and other physicians (NAICS code 621111), SNFs (NAICS code 623110), physical therapists (NAICS code 621340), and other providers. Although we acknowledge that many of the affected entities are small entities, and the analysis discussed throughout this final rule discusses aspects of the CJR model that may or would affect them, we have no reason to assume that these effects would reach the threshold levels of 3 or five percent of revenues used by HHS to identify what are likely to be "substantial" or "significant" impacts, respectively.

Using the table of Small Business Size Standards Matched to NAICS codes released by the U. S. Small Business Administration,¹⁶ we determined that HHAs are considered small businesses if

annual revenues are less than \$16 million, and SNFs are considered small businesses if annual revenues are less than \$20 million. Using the Medicare Cost report data from 2017,¹⁷ only 353 HHAs of the 10,413 that filed cost reports were not considered small businesses. Similarly, only 1,199 SNFs of the 14,764 that filed cost reports were not considered small businesses. CJR model historical experience has demonstrated that HHAs benefit from the model through increased referrals and HHA utilization. While the CJR Model Third Annual Evaluation Report could not draw conclusions on the model's effect on HHA payments, it does note that the proportion of CJR patients first discharged to an HHA increased 21.9% from the CJR baseline proportion during PYs 1–3.¹⁸ In contrast, SNFs experience decreases in overall Medicare payments compared to baseline estimates (15.4 percent during PYs 1–3) as a result of the model.¹⁹ While the Evaluation Report indicates the model affected these entities as such, only a small proportion of the total bed days in SNFs are covered by Medicare, which limits the degree of impact on the overall revenues of those entities. Based on 2017 cost report data, only 12.9 percent of all bed days in SNFs were covered by Medicare FFS while Private Payer, Managed Care and Medicaid accounted for the remaining 87.1 percent.²⁰ Additionally, although LEJR procedures (MS–DRGs 469 and 470) are among the most common surgical procedures undergone by Medicare beneficiaries, they are only about 5 percent of all acute hospital discharges.²¹ We assume that all or almost all of these entities will continue to serve these patients, and to receive payments commensurate with their cost of care. Hospitals currently experience frequent changes to payment (for example, as both hospital affiliations and preferred provider networks change) that may impact revenue, and we have no reason to assume that this

will change significantly under the changes.

We received no comments on this section of the proposed rule and therefore are finalizing this section without modification.

G. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number providers participating in CJR, or 470 providers as of October 2019, would be the number of reviewers of this final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that some reviewers chose not to comment on the proposed rule. However, for the purposes of our estimate we assume that each reviewer reads approximately 100 percent of the rule.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is \$110.74 per hour, including overhead and fringe benefits https://www.bls.gov/oes/current/oes_nat.htm. Assuming an average reading speed, we estimate that it would take approximately 2.3 hours for staff to review this final rule. For each entity that reviews the rule, the estimated cost is \$254.70 (2.3 hours × \$110.74). Therefore, we estimate that the total cost of reviewing this regulation is \$119,709 (\$254.70 × 470 reviewers).

H. Accounting Statement

As required by OMB Circular A–4 under Executive Order 12866 (available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>) in Table 9, we have prepared an accounting statement showing the classification of transfers, benefits, and costs associated with the provisions in this proposed rule. The accounting statement is based on estimates provided in this regulatory impact analysis. As described in Table 7, we estimate the proposed 3-year extension and changes to the CJR model will result in savings to the federal government of \$269 million over the 3 performance years of the model from 2021 to 2023. The following Table 9 shows the annualized change in— (1) net federal monetary transfers; and (2) potential reconciliation payments to participating hospitals net of repayments from participant hospitals that is associated

¹⁶ U.S. Small Business Administration: Table of Small Business Size Standards Matched to North American Industry Classification System Codes is accessible at: https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.

¹⁷ 2017 Medicare Cost Report data accessible at: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Downloadable-Public-Use-Files/Cost-Reports>.

¹⁸ See pg. 61 of the CJR Model Third Annual Evaluation Report accessible at: <https://innovation.cms.gov/data-and-reports/2020/cjr-thirdannrpt>.

¹⁹ See pg. 58 of the CJR Model Third Annual Evaluation Report accessible at: <https://innovation.cms.gov/data-and-reports/2020/cjr-thirdannrpt>.

²⁰ 2017 Medicare Cost Report data accessible at: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Downloadable-Public-Use-Files/Cost-Reports>.

²¹ Medicare Inpatient Claims data from January–December 2019, Chronic Conditions Warehouse.

with the provisions of the proposed rule as compared to baseline. In Table 9, the annualized change in payments based

on a 7 percent and 3 percent discount rate, results in net federal monetary transfer from the participant IPPS

hospitals to the federal government of \$83 million and \$86 million, respectively.

TABLE 9—ACCOUNTING STATEMENT ESTIMATED IMPACTS
[Estimate amounts are in \$ millions]

Category	Estimates	Units		
		Year Dollar	Discount Rate	Period Covered
Transfers				
Annualized Monetized (\$million/year)	83	2019	7%	2021 - 2024
	86	2019	3%	2021 - 2024
From Whom to Whom	Participant IPPS to Federal Government			

The updated accounting statement in this final rule is based on estimates provided in this regulatory impact analysis in this final rule. As described in Table 7a, we estimate the extension and changes to the CJR model will result in savings to the federal government of \$217 million over the 3 performance years of the model from 2021 to 2024.

The following Table 9a in this final rule shows the annualized change in— (1) net federal monetary transfers; and (2) potential reconciliation payments to participating hospitals net of repayments from participant hospitals that is associated with the provisions of this final rule as compared to baseline. In Table 9a in this final rule, the

annualized change in payments based on a 7 percent and 3 percent discount rate, results in net federal monetary transfer from the participant IPPS hospitals to the federal government of \$59 million and \$63 million, respectively.

TABLE 9a—UPDATED ACCOUNTING STATEMENT ESTIMATED IMPACTS
[Estimate amounts are in \$ millions]

Category	Estimates	Units		
		Year Dollar	Discount Rate	Period Covered
Transfers				
Annualized Monetized (\$million/year)	59	2020	7%	2021 - 2024
	63	2020	3%	2021 - 2024
From Whom to Whom	Participant IPPS to Federal Government			

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold is approximately \$158 million. This rule will have no consequential effect on state, local, or tribal governments or on the private sector.

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 regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

I. Analysis of Regulatory Alternatives

As noted previously, Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. In developing the proposed rule, we considered a number of regulatory alternatives. These include—

- Broadening or modifying the types of entities that may convene an episode under the CJR model;
- Calculating coefficients separately for each region or applying risk-standardization to the regional target price prior to applying the beneficiary-specific risk score (as noted earlier in section II.C.4. of the proposed rule “Additional Episode-Level Risk Adjustment”); and
- Utilizing the regional median episode costs as a basis for the market trend factor update calculation, rather than the regional mean episode costs for this calculation (as noted earlier in section II.C.6. of this final rule “Changes to Trend Factor Calculation”)

These regulatory alternatives and their potential costs and benefits are explored in more detail later in this section.

In developing this final rule, as we believe it would be good for the CMS Innovation Center to consider a wider range of participants for future LEJR models, we considered broadening and modifying the types of entities that may initiate an episode under the CJR model. However, the CJR model as established in notice-and-comment rulemaking, limited participants to hospitals. As the impetus for proposing this extension was that the active model is currently showing promise in terms of reducing costs while maintaining quality and we wished to continue that momentum, we were limited by timing. Further, we would likely have needed to reconsider and broaden the geographic scope of the model were we to extend participant types since the original model geography was based on hospital specific criteria. Further, we believe that broadening and modifying who may

initiate an episode would unnecessarily complicate the evaluation and limit the generalizability of the results affecting the ability of this model being certified in the future. Therefore, we did not propose to include additional participants in the proposed CJR model extension but rather solicited comment in section II.J. of this final rule on how a future LEJR model that incorporated other entities in addition to hospitals might be structured.

We received many comments related to future LEJR models and the incorporation of other entities in addition to hospitals. A summary of those comments can be found in section II.J. of this final rule.

In developing our risk adjustment methodology approach, although we proposed to calculate coefficients at the national level, we also considered calculating coefficients separately for each region or applying risk-standardization to the regional target price prior to applying the beneficiary-specific risk score (as noted earlier in section II.C.4. of this final rule “Additional Episode-Level Risk Adjustment”). As we believe regional differences in risk for CJR HCC count and age should already be accounted for via our region/MS-DRG pricing strategy we proposed the computationally less complex national approach although we sought comment on a regional calculation of coefficients.

After consideration of the public comments we received, we are finalizing the proposed policy to calculate the risk adjustment coefficients at the national level without applying risk standardization to the regional target price prior to applying the beneficiary-specific risk score. A summary of those comments and our responses can be found in section II.C.4. of this final rule.

Finally, in developing our methodology for the market trend factor update calculation, we considered utilizing the regional median episode costs as a basis for the market trend factor update calculation, as medians are generally recognized as the preferred measure of central tendency for data that is not normally distributed. However, we did not propose to use the median in the market trend factor update, as discussed in section II.C.6. of this final rule, because we determined using the mean only resulted in a small difference in effect (the trend factors calculated using means were 0.01 higher than trend factors calculated using medians), and using the mean could benefit participant hospitals (that is, increase target prices more compared to the median). Further, using the mean

aligns the trend calculation with the methodology for deriving the target prices for the model, which also relies on the mean rather than the median.

After consideration of the public comments we received, we are finalizing the proposed policy to calculate the market trend factor using the mean of episode costs instead of the median. A summary of comments received regarding this alternative policy and our responses can be found in section II.C.6. of this final rule.

I, Elizabeth Richter, Acting Administrator of the Centers for Medicare & Medicaid Services, approved this document on April 23, 2021.

List of Subjects in 42 CFR Part 510

Administrative Practice and Procedure, Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 510—COMPREHENSIVE CARE FOR JOINT REPLACEMENT MODEL

- 1. The authority citation for part 510 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1315a, and 1395hh.

- 2. Section 510.2 is amended by:
 - a. Adding a definition for “Age bracket risk adjustment factor”;
 - b. Revising the definition of “Anchor hospitalization”;
 - c. Adding definitions for “Anchor procedure”, “BPCI Advanced”, “CJR HCC count risk adjustment factor”, and “Dual-eligibility risk adjustment factor”;
 - d. Revising the definitions of “Episode of care (or Episode)” and “Net payment reconciliation amount (NPRA)”;
 - e. Adding the definitions for “OPPS” and “OP THA/OP TKA”;
 - f. Revising the definitions of “Participant hospital”, “Performance Year”, “Quality improvement points”, and “Reconciliation payment”;
 - g. Adding the definition for “Reconciliation target price”.

The additions and revisions read as follows:

§ 510.2 Definitions.

* * * * *

Age bracket risk adjustment factor means the coefficient of risk associated with a patient’s age bracket, calculated as described in § 510.301(a)(1).

* * * * *

Anchor hospitalization means the initial hospital stay upon admission for

a lower extremity joint replacement, for which the institutional claim is billed through the IPPS. Anchor hospitalization also includes an inpatient hospital admission within 3 days after an outpatient Total Knee Arthroplasty (TKA) or Total Hip Arthroplasty (THA).

Anchor procedure means a TKA or THA procedure that is permitted and paid for by Medicare when performed in a hospital outpatient department (HOPD) and billed through the OPPI, except when the beneficiary is admitted to an inpatient hospital stay within 3 days after the TKA or THA.

* * * * *

BPCI Advanced stands for the Bundled Payments for Care Improvement Advanced Model.

* * * * *

CJR-HCC condition count risk adjustment factor means the coefficient of risk associated with a patient’s total number of CMS Hierarchical Condition Categories, calculated as described in § 510.301(a)(1).

* * * * *

Dual-eligibility risk adjustment factor means the coefficient of risk associated with beneficiaries that are eligible for full Medicaid benefits or beneficiaries that are not eligible for full Medicaid benefits, calculated as described in § 510.301(a)(1).

* * * * *

Episode of care (or Episode) means all Medicare Part A and B items and services described in § 510.200(b) (and excluding the items and services described in § 510.200(d)) that are furnished to a beneficiary described in § 510.205 during the time period that begins with the beneficiary’s admission to an anchor hospitalization or, on or after July 4, 2021, the date of admission to an anchor hospitalization or the date of the anchor procedure, as applicable, and ends on the 90th day after the following, as applicable:

(1) The date of discharge from the anchor hospitalization (with the day of discharge itself being counted as the first day of the 90-day post-discharge period); or

(2) The date of service for the anchor procedure.

* * * * *

Net payment reconciliation amount (NPRA) means the amount determined in accordance with § 510.305(e) or (m).

* * * * *

OPPS stands for the outpatient prospective payment system.

OP THA/OP TKA means a total hip arthroplasty or total knee arthroplasty, respectively, for which the institutional

claim is billed by the hospital through the OPDS.

* * * * *

Participant hospital means one of the following:

(1) During performance years 1 and 2 of the CJR model and the period from January 1, 2018 to January 31, 2018 of performance year 3, a hospital (other than a hospital excepted under § 510.100(b)) with a CCN primary address located in one of the geographic areas selected for participation in the CJR model in accordance with § 510.105.

(2) Between February 1, 2018 and September 30, 2021 a hospital (other than a hospital excepted under § 510.100(b)) that is one of the following:

(i) A hospital with a CCN primary address located in a mandatory MSA as of February 1, 2018 that is not a rural hospital or a low-volume hospital on that date.

(ii) A hospital that is a rural hospital or low-volume hospital with a CCN primary address located in a mandatory MSA that makes an election to participate in the CJR model in accordance with § 510.115.

(iii) A hospital with a CCN primary address located in a voluntary MSA that makes an election to participate in the CJR model in accordance with § 510.115.

(3) Beginning October 1, 2021, a hospital that is not a rural hospital or a low-volume hospital as defined in § 510.2, as of July 4, 2021 (based on the date of the CMS notification letter and not the effective date of the rural reclassification, if applicable) with a CCN primary address located in a mandatory MSA.

* * * * *

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, performance year 5, which is January 1, 2020 through September 30, 2021, and performance year 6 which is October 1, 2021 through December 31, 2022. 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 6 through 8, or for performance year subsets of performance year 5, 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).

* * * * *

Reconciliation payment means a payment made by CMS to a CJR participant hospital as determined in accordance with § 510.305(f) or (l).

* * * * *

Reconciliation target price means, for performance years 6 through 8, the target price applied to an episode at reconciliation, as determined in accordance with § 510.301.

* * * * *

■ 3. Section 510.100 is amended by revising paragraph (a) to read as follows:

§ 510.100 Episodes being tested.

(a) *Initiation of an episode.* An episode is initiated when, with respect to a beneficiary described in § 510.205—

(1) The participant hospital admits the beneficiary for an anchor hospitalization; or

(2) On or after July 4, 2021, an anchor procedure is performed at the participant hospital.

* * * * *

■ 4. Section 510.105 is amended by adding paragraph (a)(3) to read as follows:

§ 510.105 Geographic areas.

(a) * * *

(3) Beginning with performance year 6, only the 34 MSAs designated as mandatory participation MSAs as of performance year 3.

* * * * *

■ 5. Section 510.120 is amended by revising paragraph (a) introductory text to read as follows:

§ 510.120 CJR participant hospital CEHRT track requirements.

(a) *CJR CEHRT use.* For performance years 2 through 8, CJR participant hospitals choose either of the following:

* * * * *

■ 6. Section 510.200 is amended by—

- a. Revising paragraph (a);
- b. Adding paragraph (b)(15);
- c. Revising paragraph (c);
- d. Revising paragraphs (d)(4) introductory text, and (d)(6);
- e. Adding paragraph (d)(7)
- f. Revising paragraphs (e)(2), (e)(3) introductory text, and (e)(4) introductory text; and
- g. Adding paragraph (e)(5).

The revisions and additions 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 December 31, 2024.

(b) * * *

(15) The surgeon's Part B claim for the LEJR procedure dated within the 3 days prior to an inpatient admission, if the LEJR procedure was performed at the participant hospital on an outpatient basis but the patient was subsequently admitted as an inpatient, resulting in an anchor hospitalization.

(c) *Episode attribution.* All items and services included in the episode are attributed to the participant hospital at which the anchor hospitalization or anchor procedure, as applicable, occurs.

(d) * * *

(4) Items and services unrelated to the anchor hospitalization or the anchor procedure. Excluded services include, but are not limited, to the following:

* * * * *

(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).

(7) For performance years 6 through 8 only, payments for otherwise included items and services in excess of the 99th percentile of regional spending, ranked within each region, for each of the four MS-DRG target price categories, as specified in § 510.300(a)(1) and (6), for performance years 6 through 8, in accordance with § 510.300(b)(5).

* * * * *

(e) * * *

(2) For performance years 1 through 5 only, on an annual basis, or more frequently as needed, CMS updates the list of excluded services to reflect annual coding changes or other issues brought to CMS' attention.

(3) For performance years 1 through 5 only, CMS applies the following standards when revising the list of excluded services for reasons other than to reflect annual coding changes:

* * * * *

(4) For performance years 1 through 5 only, CMS posts the following to the CMS website:

* * * * *

(5) For performance years 6 through 8, the list of excluded services posted on the CMS website as it appears at the beginning of performance year 5 will apply and will not be updated.

■ 7. Section 510.205 is amended by revising paragraph (a)(6)(iii) to read as follows:

§ 510.205 Beneficiary inclusion criteria.

(a) * * *

(6) * * *

(iii) A Shared Savings Program ACO in the ENHANCED track (formerly Track 3).

* * * * *

■ 8. Section 510.210 is amended by revising paragraphs (a) and (b)(1)(ii) to read as follows:

§ 510.210 Determination of the episode.

(a) *General.* (1) An episode begins with the admission of a Medicare beneficiary described in § 510.205 to a participant hospital for an anchor hospitalization and ends on the 90th day after the date of discharge, with the day of discharge itself being counted as the first day in the 90-day post-discharge period.

(2) On or after July 4, 2021, an episode—

(i) Begins and ends in the manner specified in paragraph (a)(1) of this section; or

(ii) Begins on the date of service of an anchor procedure furnished to a Medicare beneficiary described in § 510.205 and ends on the 90th day after the date of service of the anchor procedure.

(b) * * *

(1) * * *

(ii) Is readmitted to any participant hospital for another anchor hospitalization, or, on or after July 4, 2021, receives an anchor procedure at any participant hospital.

* * * * *

■ 9. Section 510.300 is amended by—
a. Revising paragraph (a)(2) through (a)(4);

■ b. Adding paragraphs (a)(6), and (b)(1)(iv) through (vi); and

■ c. Revising paragraphs (b)(2)(iii), (b)(5), and (c)(3)(iii).

The revisions and additions read as follows:

§ 510.300 Determination of episode quality-adjusted target prices.

(a) * * *

(2) *Applicable time period for performance year or performance year*

subset episode quality-adjusted target prices. For performance years 1 through 4 and performance year subset 5.1 only, 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, performance year subsets, or payment updates.* The quality-adjusted target price that applies to the episode is one of the following:

(i) For episodes beginning on or after April 1, 2016 and ending on or before September 30, 2021, the date of admission for the anchor hospitalization.

(ii) For episodes beginning on or after July 4, 2021 and ending on or after October 1, 2021, the date of the anchor procedure or the date of admission for the anchor hospitalization, as applicable.

(4) *Identifying episodes with hip fracture.* CMS develops a list of ICD-CM hip fracture diagnosis codes that, when reported in the principal diagnosis code files on the claim for the anchor hospitalization or anchor procedure, represent a bone fracture for which a hip replacement procedure, either a partial hip arthroplasty or a total hip arthroplasty, could be the primary surgical treatment. The list of ICD-CM hip fracture diagnosis codes used to identify hip fracture episodes can be found on the CMS website. Beginning on October 1, 2020, hip fracture episodes initiated by an anchor hospitalization will be identified by MS-DRGs 521 and 522.

(i) For performance years 1 through 5 only, on an annual basis, or more frequently as needed, CMS updates the list of ICD-CM hip fracture diagnosis codes to reflect coding changes or other issues brought to CMS' attention.

(ii) For performance years 1 through 5 only, CMS applies the following standards when revising the list of ICD-CM hip fracture diagnosis codes.

(A) The ICD-CM diagnosis code is sufficiently specific that it represents a bone fracture for which a physician could determine that a hip replacement procedure, either a Partial Hip Arthroplasty (PHA) or a THA, could be the primary surgical treatment.

(B) The ICD-CM diagnosis code is the primary reason (that is, principal diagnosis code) for the anchor hospitalization.

(iii) For performance years 1 through 5 only, CMS posts the following to the CMS website:

(A) Potential ICD-CM hip fracture diagnosis codes for public comment; and

(B) A final ICD-CM hip fracture diagnosis code list after consideration of public comment.

(iv) For performance years 6 through 8, the hip fracture diagnosis code list posted at <https://innovation.cms.gov/Files/worksheets/cjr-icd10hipfracturecodes.xlsx> as it appears at the beginning of performance year 5 will not be updated. The hip fracture diagnosis code list will be used to identify hip fracture episodes initiated by an anchor procedure in performance years 6 through 8.

* * * * *

(6) For episodes beginning on or after July 4, 2021 that are initiated by an anchor procedure, permitted OP TKAs and OP THAs are grouped with MS-DRG 470 or MS-DRG 522 episodes as follows:

(i) Permitted OP THAs with hip fracture group with MS-DRG 522.

(ii) Permitted OP THAs without hip fracture and permitted OP TKAs group with MS-DRG 470.

(b) * * *

(1) * * *

(iv) Episodes beginning in 2019 for performance year 6.

(v) Episodes beginning in 2021 for performance year 7.

(vi) Episodes beginning in 2022 for performance year 8.

(2) * * *

(iii) Regional historical episode payments for performance year 4, for each subset of performance year 5, and performance years 6 through 8.

* * * * *

(5) *Exception for high episode spending.* (i) For performance years 1 through 4, and for performance year 5, each subset thereof, episode payments are capped at 2 standard deviations above the mean regional episode payment for both the hospital-specific and regional components of the quality-adjusted target price.

(ii) For performance years 6 through 8, episode payments are capped at the 99th percentile of regional spending for each of the four MS-DRG categories, as specified in § 510.300(a)(1) and (6).

* * * * *

(c) * * *

(3) * * *

(iii) In performance years 4, each subset of performance year 5, and performance years 6 through 8, 3.0 percent.

* * * * *

■ 10. Section 510.301 is added to read as follows:

§ 510.301 Determination of reconciliation target prices.

Beginning with performance year 6, the quality-adjusted target price computed under § 510.300 is further adjusted for risk and market trends as described in this section to arrive at the reconciliation target price amount, with the exception of episodes that are reconciled in performance year 6 but subject to a performance year subset 5.2 target price. Specifically:

(a) *Risk adjustment.* (1) The quality-adjusted target prices computed under § 510.300 are risk adjusted at a beneficiary level by a CJR HCC count risk adjustment factor, an age bracket risk adjustment factor, and a dual-eligibility status risk adjustment factor. All three factors are binary, yes/no variables, meaning that a beneficiary either does or does not meet the criteria for a specific variable.

(i) The CJR HCC count risk adjustment factor uses five variables, representing beneficiaries with zero, one, two, three, or four or more CMS–HCC conditions.

(ii) The age bracket risk adjustment factor uses four variables, representing beneficiaries aged—

- (A) Less than 65 years;
- (B) 65 to 74 years;
- (C) 75 years to 84 years; or
- (D) 85 years or more.

(iii) The dual-eligibility status factor uses two variables, representing beneficiaries that are eligible for full Medicaid benefits or beneficiaries that are not eligible for full Medicaid benefits.

(2) All three factors are computed prior to the start of performance years 6 and 8 via a linear regression analysis. The regression analysis is computed using 1 year of claims data as follows:

(i) For performance year 6, CMS uses claims data with dates of service dated January 1, 2019 to December 31, 2019.

(ii) For performance year 7, CMS uses the same regression analysis results and corresponding coefficients that were calculated for performance year 6.

(iii) For performance year 8, CMS uses claims data with dates of service dated January 1, 2021 to December 31, 2021.

(3)(i) The dependent variable in the annual regression that produces the risk adjustment coefficients is equal to the difference between the log transformed target price calculated under § 510.300 and the capped episode costs as described in § 510.300(b)(5)(ii).

(ii) The independent variables are binary values assigned to each CJR HCC count variable, age bracket variable and dual-eligibility status variable.

(iii) Using these variables, the annual regression produces exponentiated coefficients to determine the anticipated

marginal effect of each risk adjustment factor on episode costs. CMS transforms, or exponentiate, these coefficients in order to “reverse” the previous logarithmic transformation, and the resulting coefficients are the CJR HCC count risk adjustment factor, the age bracket risk adjustment factor, and the dual-eligibility status factor that would be used during reconciliation for the subsequent performance year.

(4)(i) At the time of reconciliation, the quality adjusted target prices computed under § 510.300 are risk adjusted at the beneficiary level by applying the applicable CJR HCC count risk adjustment factor, the age bracket risk adjustment factor, and the dual-eligibility risk adjustment factor specific to the beneficiary in the episode.

(ii)(A) For the CJR HCC count risk adjustment factor, applicable means the coefficient that applies to the CMS–HCC condition count for the beneficiary in the episode;

(B) For the age bracket risk adjustment factor, applicable means the coefficient for the age bracket into which the beneficiary falls on the first day of the episode; and

(C) For the dual-eligibility risk adjustment factor, applicable means the coefficient for beneficiaries that are eligible for full Medicaid benefits on the first day of the episode.

(5)(i) The risk-adjusted target prices are normalized at reconciliation to remove the overall impact of adjusting for age, CJR HCC count, and dual-eligibility status on the national average target price.

(ii) The normalization factor is the national mean of the target price for all episode types divided by the national mean of the risk-adjusted target price.

(iii) CMS applies the normalization factor to the previously calculated, beneficiary-level, risk-adjusted target prices specific to each episode region and MS–DRG combination (as specified in paragraph (a)(4) of this section).

(iv) These normalized target prices are then further adjusted for market trends (as specified in paragraph (b) of this section) and quality performance (as specified at § 510.300) to become the reconciliation target prices, which are compared to actual episode costs at reconciliation, as specified in § 510.305(m)(1)(i).

(b) *Market trend adjustment factor.* (1) The risk-adjusted quality-adjusted target price computed under § 510.300 and paragraph (a) of this section is further adjusted for market trend changes at the region and MS–DRG level.

(2) This adjustment is accomplished by multiplying each risk-adjusted quality-adjusted target price computed

under § 510.300 and paragraph (a) of this section by the applicable market trend adjustment factor.

(3) The applicable market trend adjustment factor is calculated as the percent difference between the average regional MS–DRG episode costs computed using the performance year claims data and comparison average regional MS–DRG fracture episode costs computed using historical calendar year claims data used to calculate the regional target prices in effect for that performance year.

■ 11. Section 510.305 is amended by—

■ a. Revising paragraphs (b), (d) heading, and (e) introductory text;

■ b. Adding paragraphs (f)(1)(iv) through (vi);

■ c. Revising paragraph (i); and

■ d. Adding paragraphs (l) and (m).

The revisions and additions read as follows:

§ 510.305 Determination of the NPRA and reconciliation process.

* * * * *

(b) *Reconciliation.* (1) For performance years 1 through 4 and for each subset of performance year 5, 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, to establish final payment amounts to participant hospitals for CJR model episodes for a given performance year.

(2) For performance years 6 through 8, CMS conducts one reconciliation process, which CMS performs as described in paragraphs (l) and (m) of this section after the end of each performance year, to establish final payment amounts to participant hospitals for CJR model episodes for a given performance year.

(3) Following the end of each performance year, for performance years 1 through 4 and for performance year 5, each subset thereof, 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.

* * * * *

(d) *Annual reconciliation for performance years 1 through 5.*

* * * * *

(e) *Calculation of the NPRA for performance years 1 through 5.* 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 for performance year

5, each subset thereof, and applying the adjustments in paragraph (e)(1)(v) of this section, CMS establishes an NPRA for each participant hospital for each of performance years 1 through 4 and for performance year 5, each subset thereof.

* * * * *

(f) * * *

(1) * * *

(iv) Results from the performance year 6 reconciliation and post-episode spending calculations as described in paragraph (m) of this section are added together in order to determine the reconciliation payment or repayment amount for performance year 6.

(v) Results from the performance year 7 reconciliation and post-episode spending calculations as described in paragraph (m) of this section are added together in order to determine the reconciliation payment or repayment amount for performance year 7.

(vi) Results from the performance year 8 reconciliation and post-episode spending calculations as described in paragraph (m) of this section are added together in order to determine the reconciliation payment or repayment amount for performance year 8.

* * * * *

(l) *Annual reconciliation for performance years 6 through 8.* (1) Beginning 6 months after the end of each of performance years 6 through 8, CMS does all of the following:

(i) Performs a reconciliation calculation to establish an NPRA for each participant hospital.

(ii) For participant hospitals that experience a reorganization event in which one or more hospitals reorganize under the CCN of a participant hospital, performs—

(A) Separate reconciliation calculations for each predecessor participant hospital for episodes where the anchor hospitalization admission or the anchor procedure occurred before the effective date of the reorganization event; and

(B) Reconciliation calculations for each new or surviving participant hospital for episodes where the anchor hospitalization admission or anchor procedure occurred on or after the effective date of the reorganization event.

(2) CMS—

(i) Calculates the NPRA for each participant hospital in accordance with paragraph (m) of this section including the adjustments provided for in paragraph (m)(1)(vii) of this section; and

(ii) Assesses whether participant hospitals meet specified quality requirements under § 510.315.

(m) *Calculation of the NPRA for performance years 6 through 8.* By

comparing the reconciliation target prices described in § 510.301 and the participant hospital's actual episode spending for the performance year and applying the adjustments in paragraph (m)(1)(vii) of this section, CMS establishes an NPRA for each participant hospital for each of performance years 6 through 8.

(1) In calculating the NPRA for each participant hospital for each performance year, CMS does the following:

(i) Determines actual episode payments for each episode included in the performance year (other than episodes that have been canceled in accordance with § 510.210(b)) using claims data that is available 6 months after the end of the performance year. Actual episode payments are capped at the amount determined in accordance with § 510.300(b)(5)(ii) for the performance year, the amount determined in paragraph (k) of this section for episodes affected by extreme and uncontrollable circumstances, or the target price determined for that episode under § 510.300 for episodes that contain a COVID-19 Diagnosis Code as defined in § 510.2.

(ii) Multiplies each episode reconciliation target price by the number of episodes included in the performance year (other than episodes that have been canceled in accordance with § 510.210(b)) to which that episode reconciliation target price applies.

(iii) Aggregates the amounts computed in paragraph (m)(1)(ii) of this section for all episodes included in the performance year (other than episodes that have been canceled in accordance with § 510.210(b)).

(iv) Subtracts the amount determined under paragraph (m)(1)(i) of this section from the amount determined under paragraph (m)(1)(iii) of this section.

(v) Performs an additional calculation using claims data available at that time, to account for any episode cancellations due to overlap between the CJR model and other CMS models and programs, or for other reasons as specified in § 510.210(b).

(vi) Conducts a post-episode spending calculation as follows: If the average post-episode Medicare Parts A and B payments for a participant hospital in the performance year being reconciled is greater than 3 standard deviations above the regional average post-episode payments for that same performance year, then the spending amount exceeding 3 standard deviations above the regional average post-episode payments for the same performance year is subtracted from the net reconciliation

or added to the repayment for that performance year.

(vii) Applies the following prior to determination of the reconciliation payment or repayment amount:

(A) *Limitation on loss.* Except as provided in paragraph (m)(1)(vii)(C) of this section, the total amount of the NPRA for a performance year cannot exceed 20 percent of the amount calculated in paragraph (m)(1)(iii) of this section for the performance year. The post-episode spending calculation amount in paragraph (m)(vi) of this section is not subject to the limitation on loss.

(B) *Limitation on gain.* The total amount of the NPRA for a performance year cannot exceed 20 percent of the amount calculated in paragraph (m)(1)(iii) of this section for the performance year. The post-episode spending calculation amount in paragraph (m)(vi) of this section are not subject to the limitation on gain.

(C) *Limitation on loss for certain providers.* Financial loss limits for rural hospitals, SCHs, MDHs, and RRCs for performance years 6 through 8. If a participant hospital is a rural hospital, SCH, MDH, or RRC, the amount cannot exceed 5 percent of the amount calculated in paragraph (m)(1)(iii) of this section.

(2) [Reserved]

* * * * *

■ 12. Section 510.310 is amended by—

■ a. Removing paragraph (b)(4)(i);

■ b. Redesignating paragraphs (b)(4)(ii), (iii), and (iv) as paragraphs (b)(4)(i), (ii), and (iii);

■ c. Revising newly redesignated paragraph (b)(4)(iii);

■ d. Removing paragraph (b)(5);

■ e. Redesignating paragraph (b)(6) and (7) as paragraph (b)(5) and (6); and

■ f. Revising newly redesignated paragraph (b)(6).

The revisions read as follows:

§ 510.310 Appeals process.

* * * * *

(b) * * *

(4) * * *

(iii) The procedures (including format and deadlines) for submission of briefs and evidence.

* * * * *

(6) The CMS reconsideration official makes all reasonable efforts to issue a written determination within 30 days of the deadline for submission of briefs and evidence. The determination is final and binding.

* * * * *

■ 13. Section 510.315 is amended by revising paragraphs (d), (f)(1), and (f)(2) to read as follows:

§ 510.315 Composite quality scores for determining reconciliation payment eligibility and quality incentive payments.

* * * * *

(d) *Quality improvement points.* (1) 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.

(2) For each of performance years 2 through 4, each of performance year subsets 5.1 and 5.2, and each of performance years 6 through 8, 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 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.

* * * * *

(f) * * *

(1) *Performance years 1 through 5.* For performance years 1 through 5—

(i) A 1.0 percentage point reduction to the effective discount factor or applicable discount factor for participant hospitals with good quality performance, defined as composite quality scores that are greater than or equal to 6.9 and less than or equal to 15.0; or

(ii) A 1.5 percentage point reduction to the effective discount factor or applicable discount factor for participant hospitals with excellent quality performance, defined as composite quality scores that are greater than 15.0.

(2) *Performance years 6 through 8.* For performance years 6 through 8—

(i) A 1.5-percentage point reduction to the effective discount factor or applicable discount factor for participant hospitals with good quality performance, defined as composite quality scores that are greater than or equal to 6.9 and less than or equal to 15.0; or

(ii) A 3-percentage point reduction to the effective discount factor or applicable discount factor for participant hospitals with excellent quality performance, defined as

composite quality scores that are greater than 15.0.

* * * * *

■ 14. Section 510.400 is amended—

■ a. In paragraph (b)(2)(i) by removing the phrase “over the 5 years” and adding in its place the phrase “over the first 5 years”;

■ b. In paragraph (b)(2)(ii) introductory text by removing the phrase “of the program” and adding in its place the phrase “of the model”;

■ c. By adding paragraph (b)(4).

The addition reads as follows:

§ 510.400 Quality measures and reporting.

* * * * *

(b) * * *

(4) For years 6 through 8 of the model the following data are requested by CMS for each performance period as follows:

(i) Year 6 (October 1, 2021 to December 31, 2022). 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 ≥300 procedures performed between July 1, 2021 and June 30, 2022.

(ii) Year 7 (2023). Submit—

(A) Post-operative data on primary elective THA/TKA procedures for ≥80% or ≥300 procedures performed between July 1, 2021 and June 30, 2022; and

(B) Pre-operative data on primary elective THA/TKA procedures for ≥85% or ≥400 procedures performed between July 1, 2022 and June 30, 2023.

(iii) Year 8 (2024). Submit—

(A) Post-operative data on primary elective THA/TKA procedures for ≥85% or ≥400 procedures performed between July 1, 2022 and June 30, 2023; and

(B) Pre-operative data on primary elective THA/TKA procedures for ≥90% or ≥500 procedures performed between July 1, 2023 and June 30, 2024.

* * * * *

■ 15. Section 510.405 is amended by revising paragraphs (b)(1) and (3) to read as follows:

§ 510.405 Beneficiary choice and beneficiary notification.

* * * * *

(b) * * *

(1) *Participant hospital beneficiary notification*—(i) *Notification to beneficiaries.* Each participant hospital must provide written notification to any Medicare beneficiary that meets the criteria in § 510.205 of his or her inclusion in the CJR model.

(ii) *Timing of notification.* Prior to discharge from the anchor hospitalization, or prior to discharge

from the anchor procedure, as applicable, the participant hospital must provide the CJR beneficiary with a participant hospital beneficiary notification as described in paragraph (b)(1)(iv) of this section.

(iii) *List of beneficiaries receiving a notification.* The participant hospital must be able to generate a list of all beneficiaries receiving such notification, including the date on which the notification was provided to the beneficiary, to CMS or its designee upon request.

(iv) *Content of notification.* The beneficiary notification must contain all of the following:

(A) A detailed explanation of the model and how it might be expected to affect the beneficiary's care.

(B) Notification that the beneficiary retains freedom of choice to choose providers and services.

(C) Explanation of how patients can access care records and claims data through an available patient portal, and how they can share access to their Blue Button® electronic health information with caregivers.

(D) A statement that all existing Medicare beneficiary protections continue to be available to the beneficiary. These include the ability to report concerns of substandard care to Quality Improvement Organizations or the 1-800-MEDICARE helpline.

(E) A list of the providers, suppliers, and ACOs with whom the CJR participant hospital has a sharing arrangement. This requirement may be fulfilled by the participant hospital including in the detailed notification a Web address where beneficiaries may access the list.

* * * * *

(3) *Discharge planning notice.* A participant hospital must provide the beneficiary with a written notice of any potential financial liability associated with non-covered services recommended or presented as an option as part of discharge planning, no later than the time that the beneficiary discusses a particular post-acute care option or at the time the beneficiary is discharged from an anchor procedure or anchor hospitalization, whichever occurs earlier.

(i) If the participant hospital knows or should have known that the beneficiary is considering or has decided to receive a non-covered post-acute care service or other non-covered associated service or supply, the participant hospital must notify the beneficiary that the service would not be covered by Medicare.

(ii) If the participant hospital is discharging a beneficiary to a SNF prior

to the occurrence of a 3-day hospital stay, and the beneficiary is being transferred to or is considering a SNF that would not qualify under the SNF 3-day waiver in § 510.610, the participant hospital must notify the beneficiary in accordance with paragraph (b)(3)(i) of this section that the beneficiary will be responsible for payment for the services furnished by the SNF during that stay, except those services that would be covered by Medicare Part B during a non-covered inpatient SNF stay.

* * * * *

■ 16. Section 510.500 is amended by revising paragraphs (c)(4)(i) and (ii) to read as follows:

§ 510.500 Sharing arrangements under the CJR model.

* * * * *

(c) * * *

(4) * * *

(i) For episodes beginning on or after April 1, 2016 and ending on or before September 30, 2021, in the case of a CJR collaborator who is a physician or non-physician practitioner, 50 percent of the Medicare-approved amounts under the PFS for items and services furnished by that physician or non-physician practitioner to the participant hospital's CJR beneficiaries during CJR model episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made.

(ii) For episodes beginning on or after April 1, 2016 and ending on or before September 30, 2021, in the case of a CJR collaborator that is a PGP or NPPGP, 50 percent of the Medicare-approved amounts under the PFS for items and services billed by that PGP or NPPGP and furnished to the participant hospital's CJR beneficiaries by the PGP members or NPPGP members respectively during CJR model episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made.

* * * * *

■ 17. Section 510.505 is amended by revising paragraphs (b)(8)(i) and (ii) to read as follows:

§ 510.505 Distribution arrangements.

* * * * *

(b) * * *

(8) * * *

(i) For episodes beginning on or after April 1, 2016 and ending on or before September 30, 2021, in the case of a collaboration agent that is a physician or non-physician practitioner, 50 percent of the total Medicare-approved amounts under the PFS for items and services furnished by the collaboration agent to the participant hospital's CJR beneficiaries during CJR model episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being distributed.

(ii) For episodes beginning on or after April 1, 2016 and ending on or before September 30, 2021, in the case of a collaboration agent that is a PGP or NPPGP, 50 percent of the total Medicare-approved amounts under the PFS for items and services billed by that PGP or NPPGP for items and services furnished by PGP members or NPPGP member respectively to the participant hospital's CJR beneficiaries during CJR model episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being distributed.

* * * * *

■ 18. Section 510.506 is amended by revising paragraph (b)(8) to read as follows:

§ 510.506 Downstream distribution arrangements.

* * * * *

(b) * * *

(8) Except for a downstream distribution payment from a PGP to a PGP member that complies with § 411.352(g) of this chapter, for episodes beginning on or after April 1, 2016 and ending on or before September 30, 2021 the total amount of downstream distribution payments for a performance year paid to a downstream collaboration agent who is a physician or non-physician practitioner and is either a member of a PGP or a member of an NPPGP must not exceed 50 percent of the total Medicare-approved amounts under the PFS for items and services furnished by the downstream collaboration agent to the participant hospital's CJR beneficiaries during a CJR model episode that occurred during the

same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the distribution payment being distributed.

* * * * *

§ 510.600 [Amended]

■ 19. Section 510.600 is amended in paragraph (b)(1) by removing the phrase “an anchor hospitalization” and adding in its place the phrase “an anchor hospitalization or anchor procedure.”

■ 20. Section 510.610 is amended—

■ a. By revising paragraph (a); and

■ b. In paragraph (b)(1), removing the phrase “qualifying inpatient stay.” and adding in its place the phrase “qualifying inpatient stay or anchor procedure.”

The revision reads as follows:

§ 510.610 Waiver of SNF 3-day rule.

(a) *Waiver of the SNF 3-day rule*—(1) *Performance year*—(i) *Performance years 2 through 5*. For episodes being tested in performance years 2 through 5 of the CJR model, CMS waives the SNF 3-day rule for coverage of a SNF stay for a beneficiary who is a CJR beneficiary on the date of discharge from the anchor hospitalization, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF.

(ii) *Performance years 6 through 8*. (A) For episodes being tested in performance years 6 through 8 of the CJR model, CMS waives the SNF 3-day rule for coverage of a SNF stay within 30 days of the date of discharge from the anchor hospitalization for a beneficiary who is a CJR beneficiary on the date of discharge from the anchor hospitalization, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF.

(B) For episodes being tested in performance years 6 through 8 of the CJR model, CMS waives the SNF 3-day rule for coverage of a SNF stay within 30 days of the date of service of the anchor procedure for a beneficiary who is a CJR beneficiary on the date of service of the anchor procedure, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF.

(2) *Determination of qualified SNFs.* CMS determines the qualified SNFs for each calendar quarter based on a review of the most recent rolling 12 months of overall star ratings on the Five-Star Quality Rating System for SNFs on the Nursing Home Compare website. Qualified SNFs are rated an overall of 3

stars or better for at least 7 of the 12 months.

(3) *Posting of qualified SNFs.* CMS posts to the CMS website the list of qualified SNFs in advance of the calendar quarter.

* * * * *

Dated: April 27, 2021.
Xavier Becerra,
Secretary, Department of Health and Human Services.
[FR Doc. 2021–09097 Filed 4–29–21; 4:15 pm]
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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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