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The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 21, 37, 50, 52, 73, and 110

[NRC–2019–0128]

RIN 3150–AK34

Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include removing obsolete language and correcting references, a typographical error, mailing, email, and web page addresses, grammatical errors, a division title, and a division address and title. This document is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

DATES: This final rule is effective on December 18, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0128 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information for this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0128. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.*
- *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.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jill Shepherd, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1230; email: *Jill.Shepherd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is amending its regulations in parts 2, 21, 37, 50, 52, 73, and 110 of title 10 of the *Code of Federal Regulations* (10 CFR) to make miscellaneous corrections. These changes include removing obsolete language and correcting references, a typographical error, mailing, email, and web page addresses, grammatical errors, a division title, and a division address and title. This document is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

II. Summary of Changes

10 CFR Part 2

Correct Reference. In § 2.629(b), this final rule removes the incorrect reference § 2.617(b)(2) and replaces it with the correct reference § 2.627(b)(2).

10 CFR Part 21

Correct typographical error. In § 21.3(2), this final rule corrects a typographical error to reference subpart B instead of subpart C.

10 CFR Part 37

Correct address. In § 37.23(b)(2), this final rule removes the incorrect mailing address, ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards and replaces it with the correct mailing address, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; ATTN: Source Management and Protection Branch. In § 37.27(c)(1) and (2), this final rule corrects a mail stop, two email addresses, a division title, and the title of a web page.

10 CFR Part 50

Correct grammatical errors. This final rule corrects grammatical errors in § 50.36(c)(1)(i)(A) and appendix B to 10 CFR part 50, Section I, Organization. In § 50.36(c)(1)(i)(A), the phrase, integrity of certain of the physical barriers is corrected to read integrity of certain physical barriers. The first word in the seventh sentence in appendix B, section I, Organization, is corrected to read ''The'' instead of ''There.''

Correct Reference. In appendix J to 10 CFR part 50, option B, subsection IV, Recordkeeping, this final rule removes the reference to § 50.72(b)(1)(ii).

10 CFR Part 52

Remove Obsolete Language. In §§ 52.43(b) and 52.79(c)(2), this final rule removes the word ''final'' when describing a standard design approval.

Correct Reference. In § 52.83(b), this final rule removes the incorrect reference to § 2.617(b)(2) and replaces it with the correct reference to § 2.627(b)(2). In appendices D and E to 10 CFR part 52, section VI.B.6, this final rule removes the incorrect reference to section VIII.B.5.f and replaces it with the correct reference to section VIII.B.5.g. In appendices A through D to 10 CFR part 52, this final rule removes the incorrect reference to ANSI/AISC–690 and replaces it with the correct reference to ANSI/AISC N–690.

10 CFR Part 73

Correct Division Address and Title. In § 73.57(e)(2), this final rule corrects the address and title of a division within the Federal Bureau of Investigation.

Correct Reference. In § 73.70(c), this final rule removes the incorrect reference to § 73.55(d)(6) and replaces it with the correct reference to § 73.55(g)(7). In § 73.71(a)(2), this final rule removes the incorrect reference to § 73.21(g)(3) and replaces it with the correct reference to § 73.22(f)(3). In appendix B, VI.B.1(a)(4), this final rule removes reference to § 73.19 to ensure clarity and orderly codification, as there have never been requirements in § 73.19.

Correct mailing address. In § 73.72(a)(1), this final rule corrects the mailing address where licensees must provide an advance notification of shipment of formula quantities of strategic special nuclear material, special nuclear material of moderate

strategic significance, or irradiated reactor fuel.

10 CFR Part 110

Correct Reference. In § 110.42(e)(1), this final rule removes the incorrect reference to § 110.32(h) and replaces it with the correct reference to § 110.32(g).

III. Rulemaking Procedure

Under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the requirements for publication in the **Federal Register** of a notice of proposed rulemaking and opportunity for comment if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on these amendments, because notice and opportunity for comment is unnecessary. The amendments will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFR sections or are related only to management, organization, procedure, and practice. These changes include removing obsolete language and correcting references, a typographical error, mailing, email, and web page addresses, grammatical errors, a division title, and a division address and title. The Commission is exercising its authority under 5 U.S.C. 553(b) to publish these amendments as a final rule. The amendments are effective on December 18, 2019. These amendments do not require action by any person or entity regulated by the NRC, and do not change the substantive responsibilities of any person or entity regulated by the NRC.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in § 51.22(c)(2), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

VI. Plain Writing

The Plain Writing Act of 2019 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VII. Backfitting and Issue Finality

The NRC has determined that the corrections in this final rule do not constitute backfitting and are not inconsistent with any of the issue finality provisions in 10 CFR part 52. The amendments are non-substantive in nature, including removing obsolete language and correcting references, a typographical error, mailing, email, and web page addresses, grammatical errors, a division title, and a division address and title. They impose no new requirements and make no substantive changes to the regulations. The corrections do not involve any provisions that would impose backfits as defined in 10 CFR chapter I or would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of this rule in final form would not constitute backfitting or represent a violation of any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this correction rulemaking addressing backfitting or issue finality.

VIII. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

IX. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC, or adequacy category Health and Safety (H&S). Compatibility Category A program elements are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B program elements are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C program elements are those program elements that do not meet the criteria of Category A or B, but contain the essential objectives that an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D program elements are those program elements that do not meet any of the criteria of Category A, B, or C and, therefore, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC program elements are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of 10 CFR. These program elements should not be adopted by the Agreement States. Adequacy category H&S program elements are program elements that are required because of a particular health and safety role in the regulation of agreement material within the State and should be adopted in a manner that embodies the essential objectives of the NRC program.

The portion of this final rule that amends part 37 is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The compatibility categories are designated in the following table.

COMPATIBILITY TABLE

Section	Change	Subject	Compatibility	
			Existing	New
Part 37				
§ 37.23(b)(2)	Amend	Access authorization program requirements	B	B
§ 37.27(c)	Amend	Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.	B	B

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 37

Byproduct material, Criminal penalties, Exports, Hazardous materials transportation, Imports, Licensed material, Nuclear materials, Penalties, Radioactive materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Issue finality, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Incorporation by reference, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Incorporation by reference, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 21, 37, 50, 52, 73, and 110.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

§ 2.629 [Amended]

■ 2. In § 2.629(b), remove the reference ''§ 2.617(b)(2)'' and add in its place the reference ''§ 2.627(b)(2)''.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

■ 3. The authority citation for part 21 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 63, 81, 103, 104, 161, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

§ 21.3 [Amended]

■ 4. In § 21.3 paragraph (2) introductory text under the definition of ''Basic component'', remove the phrase ''subpart C'' and add in its place the phrase ''subpart B''.

PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

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

Authority: Atomic Energy Act of 1954, secs. 11, 53, 81, 103, 104, 147, 148, 149, 161, 182, 183, 223, 234, 274 (42 U.S.C. 2014, 2073, 2111, 2133, 2134, 2167, 2168, 2169, 2201, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 37.23 [Amended]

■ 6. In § 37.23(b)(2), remove the phrase ''ATTN: Document Control Desk; Director, Office of Nuclear Material Safety and Safeguards'' and add in its place the phrase ''Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Source Management and Protection Branch''.

■ 7. In § 37.27, revise paragraphs (c)(1) and (2) to read as follows:

§ 37.27 Requirements for criminal history records checks of individuals granted unescorted access to category 1 or 2 quantities of radioactive material.

* * * * *

(c) * * *

(1) For the purposes of complying with this subpart, licensees shall use an

appropriate method listed in § 37.7 to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T–8B20, Rockville, MD 20852, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by emailing *MAILSVS.Resource@nrc.gov.* Guidance on submitting electronic fingerprints can be found at *https://www.nrc.gov/security/chp.html.*

(2) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' (For guidance on making electronic payments, contact the Division of Physical and Cyber Security Policy by emailing *Crimhist.Resource@nrc.gov.*) Combined payment for multiple applications is acceptable. The Commission publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Licensee Criminal History Records Checks & Firearms Background Check information page at *https://www.nrc.gov/security/chp.html* and see the link for How do I determine how much to pay for the request?).

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTIIZATION FACILITIES

■ 8. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

§ 50.36 [Amended]

■ 9. In § 50.36(c)(1)(i)(A) in the first sentence, remove the phrase ''integrity of certain of the physical barriers'' and add in its place the phrase ''integrity of certain physical barriers''.

Appendix B to Part 50 [Amended]

■ 10. In appendix B, section I, ''Organization,'' remove the first word of the seventh sentence ''There'' and add in its place the word ''The''.

Appendix J to Part 50 [Amended]

■ 11. In appendix J, option B—Performance-Based Requirements, section IV, ''Recordkeeping,'' in the second paragraph remove the phrase ''§§ 50.72(b)(1)(ii) and''.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

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

Authority: Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

§ 52.43 [Amended]

■ 13. In § 52.43(b), remove the word ''final''.

§ 52.79 [Amended]

■ 14. In § 52.79(c)(2), remove the phrase ''final design approval'' and add in its place the phrase ''design approval''.

§ 52.83 [Amended]

■ 15. In § 52.83(b), remove the reference ''§ 2.617(b)(2)'' and add in its place the reference ''§ 2.627(b)(2)''.

Appendix A to Part 52 [Amended]

■ 16. In appendix A, section VIII.B.6c.(2), remove the reference ''ANSI/AISC–690'' and add in its place the reference ''ANSI/AISC N–690''.

Appendix B to Part 52 [Amended]

■ 17. In appendix B, section VIII.B.6c.(2), remove the reference ''ANSI/AISC–690'' and add in its place the reference ''ANSI/AISC N–690''.

Appendix C to Part 52 [Amended]

■ 18. In appendix C, section VIII.B.6c.(4), remove the reference ''ANSI/AISC—690'' and add in its place the reference ''ANSI/AISC N–690''.

Appendix D to Part 52 [Amended]

■ 19. In appendix D, in section VI.B.6, remove the reference ''VIII.B.5.f'' and add in its place the reference ''VIII.B.5.g'' and in section VIII.B.6.c(4), remove the reference ''(ANSI/AISC)–690'' and add in its place the reference ''(ANSI/AISC) N–690''.

Appendix E to Part 52 [Amended]

■ 20. In appendix E, section VI.B.6, remove the reference ''VIII.B.5.f'' and add in its place the reference ''VIII.B.5.g''.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

§ 73.57 [Amended]

■ 22. In § 73.57(e)(2):

■ a. Remove the title ''Assistant Director,'' in the second sentence;

■ b. Remove the title ''Identification Division'' and add in its place the title ''Criminal Justice Information Services Division'' wherever it appears; and

■ c. Remove ''Washington DC 20537–9700'' and add in its place ''1000 Custer Hollow Road, Clarksburg, WV 26306'' in the second sentence.

§ 73.70 [Amended]

■ 23. In § 73.70(c) remove the reference ''73.55(d)(6)'' and add in its place the reference ''73.55(g)(7)''.

§ 73.71 [Amended]

■ 24. In § 73.71(a)(2) remove the reference ''§ 73.21(g)(3)'' and add in its place the reference ''§ 73.22(f)(3)''.

■ 25. In § 73.72, revise paragraph (a)(1) to read as follows:

§ 73.72 Requirement for advance notice of shipment of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, or irradiated reactor fuel.

(a) * * *

(1) Notify in writing by mail addressed to ATTN: Director, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or by using any appropriate method listed in § 73.4 of this part. Classified notifications shall be sent to the NRC headquarters classified mailing address listed in appendix A to this part.

* * * * *

Appendix B to Part 73 [Amended]

■ 26. In appendix B, section VI.B.1(a)(4) remove the last sentence.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 27. The authority citation for part 110 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124, 126, 127, 128, 129, 133, 134, 161, 170H, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2071, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160c, 2160d, 2201, 2210h, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 *et seq.*

§ 110.42 [Amended]

■ 28. In § 110.42(e)(1) remove the reference ''§ 110.32(h)'' and add in its place the reference ''§ 110.32(g)''.

Dated at Rockville, Maryland, this 8th day of November 2019.

For the Nuclear Regulatory Commission.

Pamela J. Shepherd-Vladimir,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–25021 Filed 11–15–19; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0394; Product Identifier 2017–NE–36–AD; Amendment 39–19784; AD 2019–22–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–23–06, for certain General Electric Company (GE) CF34–8C1, CF34–8C5, CF34–8C5A1, and CF34–8C5B1 engines. AD 2017–23–06 required an inspection of the bleed air manifold link rod assemblies and the supply, return, and drain fuel fittings on the operability bleed valve (OBV). This AD requires repetitive inspections of the OBV fuel tubes, OBV bleed air manifold link rod assemblies, and the OBV fuel fittings and replacement of OBVs or related hardware that fail inspection. In addition, this AD expands the applicability of these inspections to include additional GE CF34–8C model turbofan engines. This AD was prompted by multiple engine fires that have occurred as a result of malfunctions related to the OBV. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 23, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 23, 2019.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0394.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov*by searching for and locating Docket No. FAA–2019–0394; 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 final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Michael Richardson-Bach, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *michael.richardson-bach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–23–06, Amendment 39–19100 (82 FR 52830, November 15, 2017), (''AD 2017–23–06''). AD 2017–23–06 applied to certain GE CF34–8C1, CF34–8C5, CF34–8C5A1, and CF34–8C5B1 engines. The NPRM published in the **Federal Register** on June 28, 2019 (84 FR 30956). The NPRM was prompted by multiple engine fires that have occurred as a result of malfunctions related to the OBV. The NPRM proposed to require repetitive inspections of the OBV fuel tubes, OBV bleed air manifold link rod assemblies, and the OBV fuel fittings and replacement of OBVs or related hardware that fail inspection. In addition, the NPRM proposed to expand the applicability of these inspections to include additional GE CF34–8C model turbofan engines. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

The FAA gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Change the Inspection Intervals

GE requested that the FAA extend the initial and repetitive inspection intervals to 16,000 flight hours (FHs) and 1,680 FHs, respectively, for engines equipped with OBV part number (P/N) 4123T71P05. GE reasoned that based on testing and analysis, OBV P/N 4123T71P05 is more resistant to wear than OBV P/N 4123T71P04, and earlier versions, if the installation support links are regularly inspected and maintained.

The FAA disagrees with extending the inspection intervals for engines equipped with OBV P/N 4123T71P05 because the FAA did not find GE's test and analysis data sufficient to justify the extended inspection intervals. The FAA did not change this AD.

Request To Update the Applicability

The National Transportation Safety Board (NTSB) supported this AD and requested that the FAA consider similar rulemaking to include the GE CF34–8E model turbofan engines. The NTSB suggested that the unsafe condition exists on this engine and that the FAA should identify the higher-risk OBVs and publish an AD that mandates a repetitive inspection for the GE CF34–8E OBVs.

The FAA agrees to consider future rulemaking for the GE CF34–8E model turbofan engines because those engines have experienced the same unsafe condition addressed by the engine

models of this AD. The FAA did not change this AD.

Support for the AD

The Air Line Pilots Association International and an individual commenter expressed support for the AD as written.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE Service Bulletin (SB) CF34–8C S/B 75–0020, R04, dated May 10, 2019. The SB describes procedures for inspecting the bleed air manifold link rod assemblies; the supply, return, and drain fuel fittings; and the fuel tubes on the OBV. 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.

Costs of Compliance

The FAA estimates that this AD affects 1,297 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of OBV fuel tubes, assemblies, and fittings.	1 work-hour × $85 per hour = $85	$0	$85	$110,245

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace OBV	2 work-hours × $85 per hour = $170	$17,230	$17,400
Replace OBV support hardware	2.25 work-hours × $85 per hour = $191.25	3,595	3,786.25

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

The FAA has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–23–06, Amendment 39–19100 (82 FR 52830, November 15, 2017), and adding the following new AD:

2019–22–05 General Electric Company: Amendment 39–19784; Docket No. FAA–2019–0394; Product Identifier 2017–NE–36–AD.

(a) Effective Date

This AD is effective December 23, 2019.

(b) Affected ADs

This AD replaces AD 2017–23–06, Amendment 39–19100 (82 FR 52830, November 15, 2017).

(c) Applicability

This AD applies to all General Electric Company (GE) CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5B1, CF34–8C5A2, and CF34–8C5A3 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7531, Compressor bleed governor.

(e) Unsafe Condition

This AD was prompted by multiple engine fires that have occurred as a result of malfunctions related to the operability bleed valve (OBV). The FAA is issuing this AD to prevent failure of the OBV. The unsafe condition, if not addressed, could result in engine fire and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) For CF34–8C1, CF34–8C5, CF34–8C5A1, and CF34–8C5B1 model turbofan engines with serial numbers (S/Ns): 965101 through 965670 inclusive; 194101 through 194999 inclusive; and 195101 through 195653 inclusive:

(i) Perform an inspection of the OBV bleed air manifold link rod assemblies and the OBV fuel fittings within 500 flight hours after November 30, 2017 (effective date of AD 2017–23–06), or before next flight after the effective date of this AD, whichever occurs later.

(ii) Within 880 flight hours since the previous inspection, 500 flight hours from the effective date of this AD, or 6,880 flight hours since new, whichever occurs later, inspect the OBV bleed air manifold link rod assemblies, the OBV fuel fittings, and the OBV fuel tubes.

(iii) Thereafter, perform additional repeat inspections of the OBV bleed air manifold link rod assemblies, the OBV fuel fittings, and the OBV fuel tubes within every 880 flight hours since the previous inspection.

(iv) Use the Accomplishment Instructions, Paragraph 3.B., of GE CF34–8C S/B 75–0020, R04, dated May 10, 2019 (''the SB''), to perform the inspections in paragraphs (g)(1)(i) through (iii) of this AD and, per the criteria for the results of inspections in Paragraph 3.B. of the SB, do the following:

(A) Replace any OBV or fuel tube that is leaking and tighten or replace any loose OBV fuel tube clamps with a part eligible for installation before further flight.

(B) Replace any worn OBV link rod assembly hardware within 50 flight cycles after the inspection required by paragraphs (g)(1)(i), (ii), or (iii) of this AD. The engine can be returned to service each day for up to the 50 flight cycles if the OBV fittings are inspected each day for fuel leaks and looseness and, if they do not require removal based on the criteria in Table 1, ''OBV Inspection,'' of GE SB CF34–8C S/B 75–0020, R04, dated May 10, 2019.

(2) For CF34–8C5B1 model turbofan engines with S/Ns not listed in paragraph (g)(1) of this AD and for all CF34–8C5A2 and CF34–8C5A3 model turbofan engines, perform the following:

(i) For engines with 6,000 flight hours or more since new on the effective date of this AD, perform an initial inspection of the OBV bleed air manifold link rod assemblies, OBV fuel fittings, and OBV fuel tubes within 880 flight hours after the effective date of this AD.

(ii) For engines with less than 6,000 flight hours since new on the effective date of this AD, perform an initial inspection of the OBV bleed air manifold link rod assemblies, OBV fuel fittings, and OBV fuel tubes within 880 flight hours time in service or 6,880 flight hours since new, whichever occurs later.

(iii) Thereafter, repeat the inspection of the OBV bleed air manifold link rod assemblies, OBV fuel fittings, and OBV fuel tubes within 880 flight hours since the last inspection.

(iv) Use the Accomplishment Instructions, Paragraph 3.B., of GE CF34–8C S/B 75–0020, R04, dated May 10, 2019, to perform the inspections in paragraphs (g)(2)(i) through (iii) of this AD.

(v) Replace any parts according to the criteria in paragraph (g)(1)(iv) of this AD after the inspection required by paragraphs (g)(2)(i), (ii), or (iii) of this AD.

(3) For all affected engines, the reporting instructions in GE SB CF34–8C S/B 75–0020, R04, dated May 10, 2019, are not required by this AD.

(h) Credit for Previous Actions

(1) For engines identified in paragraph (g)(1) of this AD, you may take credit for the inspection of the OBV bleed air manifold link rod assemblies and the OBV fuel fittings required by paragraph (g)(1)(i) of this AD if you performed this inspection before November 30, 2017 (the effective date of AD 2017–23–06) using GE SB CF34–8C SB 75–0019, Revision 01, dated October 24, 2017, or R00, dated August 4, 2017.

(2) For all affected engines, you may take credit for the inspection of the OBV bleed air manifold link rod assemblies and the OBV fuel fittings required by paragraph (g)(1)(i) or (g)(2)(i) of this AD if you performed this inspection before the effective date of this AD using GE SB CF34–8C SB 75–0020, Revision 03, dated December 14, 2018.

(3) You are still required to perform the repeat inspections and any replacements, as needed, required by paragraphs (g)(1)(ii) through (g)(1)(iv) of this AD.

(i) 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 39.19. 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 paragraph (j) of this AD. 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.

(j) Related Information

For more information about this AD, contact Michael Richardson-Bach, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *michael.richardson-bach@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) General Electric Company (GE) Service Bulletin CF34–8C SB 75–0020, R04, dated May 10, 2019.

(ii) [Reserved]

(3) For GE service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.*

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued in Burlington, Massachusetts, on November 6, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–24898 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31281; Amdt. No. 3878]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for

operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 18, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 18, 2019.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on November 1, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME

or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
5–Dec–19	ND	Tioga	Tioga Muni	9/7699	9/26/19	This NOTAM, published in Docket No. 31279, Amdt No. 3876, TL 19–25 (84 FR 59294; November 4, 2019), is hereby rescinded in its entirety.
5–Dec–19	CA	Palm Springs	Palm Springs Intl	9/1390	10/24/19	RNAV (RNP) Y RWY 31L, Amdt 1B.
5–Dec–19	CA	Palm Springs	Palm Springs Intl	9/1391	10/24/19	RNAV (RNP) Z RWY 13R, Amdt 1.
5–Dec–19	NC	Charlotte	Charlotte/Douglas Intl	9/1741	10/24/19	ILS OR LOC RWY 18R, ILS RWY 18R (SA CAT I), ILS RWY 18R (CAT II), ILS RWY 18R (CAT III), Amdt 2.
5–Dec–19	VA	Franklin	Franklin Rgnl	9/8979	10/24/19	Takeoff Minimums and Obstacle DP, Amdt 2A.
5–Dec–19	CA	Fresno	Fresno Yosemite Intl	9/9029	10/24/19	LOC Y RWY 11L, Amdt 3.
5–Dec–19	OH	West Union	Alexander Salamon	9/9048	10/23/19	RNAV (GPS) RWY 5, Orig-B.
5–Dec–19	OH	West Union	Alexander Salamon	9/9052	10/23/19	RNAV (GPS) RWY 23, Orig-B.
5–Dec–19	TX	Breckenridge	Stephens County	9/9054	10/23/19	RNAV (GPS) RWY 17, Amdt 1.
5–Dec–19	TX	Breckenridge	Stephens County	9/9055	10/23/19	RNAV (GPS) RWY 35, Amdt 1.
5–Dec–19	TX	Coleman	Coleman Muni	9/9056	10/23/19	RNAV (GPS) RWY 15, Amdt 1.
5–Dec–19	TX	Corsicana	C David Campbell Field-Corsicana Muni.	9/9073	10/23/19	RNAV (GPS) RWY 14, Orig-C.
5–Dec–19	TX	Corsicana	C David Campbell Field-Corsicana Muni.	9/9074	10/23/19	RNAV (GPS) RWY 32, Amdt 1.
5–Dec–19	VA	Franklin	Franklin Rgnl	9/9256	10/24/19	RNAV (GPS) RWY 27, Amdt 1B.
5–Dec–19	VA	Franklin	Franklin Rgnl	9/9258	10/24/19	RNAV (GPS) RWY 9, Amdt 1B.

[FR Doc. 2019–24453 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31280; Amdt. No. 3877]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 18, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 18, 2019.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA

forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on November 1, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 5 December 2019*

Akutan, AK, Akutan, Takeoff Minimums and Obstacle DP, Amdt 1
Akutan, AK, Akutan, ZEBUV ONE, Graphic DP
Atwater, CA, Castle, ILS OR LOC RWY 31, Amdt 3
Atwater, CA, Castle, RNAV (GPS) RWY 13, Amdt 1
Atwater, CA, Castle, RNAV (GPS) RWY 31, Amdt 1
Atwater, CA, Castle, VOR/DME RWY 31, Amdt 1B, CANCELLED
El Monte, CA, San Gabriel Valley, RNAV (GPS)–B, Orig
El Monte, CA, San Gabriel Valley, VOR OR GPS–B, Amdt 3A, CANCELLED
Mountain View, CA, Moffett Federal Afld, ILS OR LOC RWY 32R, Amdt 2
Mountain View, CA, Moffett Federal Afld, RNAV (GPS) RWY 32R, Orig-A
Mountain View, CA, Moffett Federal Afld, TACAN RWY 32R, Amdt 1A
Sacramento, CA, Sacramento Mather, ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I), ILS RWY 22L (SA CAT II), Amdt 7
Boone, IA, Boone Muni, Takeoff Minimums and Obstacle DP, Amdt 6
Hammond, LA, Hammond Northshore Rgnl, ILS OR LOC RWY 18, Amdt 5
Hammond, LA, Hammond Northshore Rgnl, VOR RWY 18, Amdt 4, CANCELLED
Hammond, LA, Hammond Northshore Rgnl, VOR RWY 31, Amdt 5, CANCELLED
Bedford, MA, Laurence G Hanscom Fld, ILS OR LOC RWY 29, Amdt 9B
Bedford, MA, Laurence G Hanscom Fld, RNAV (GPS) RWY 23, Orig-E
Choteau, MT, Choteau, NDB OR GPS RWY 23, Orig-C, CANCELLED
Choteau, MT, Choteau, RNAV (GPS) RWY 15, Orig
Choteau, MT, Choteau, RNAV (GPS) RWY 33, Orig
Choteau, MT, Choteau, Takeoff Minimums and Obstacle DP, Amdt 2
Williston, ND, Sloulin Fld Intl, ILS OR LOC RWY 29, Amdt 4C, CANCELLED
Williston, ND, Sloulin Fld Intl, RNAV (GPS) RWY 11, Orig, CANCELLED
Williston, ND, Sloulin Fld Intl, RNAV (GPS) RWY 29, Orig, CANCELLED
Williston, ND, Sloulin Fld Intl, VOR RWY 11, Amdt 13A, CANCELLED
Morristown, NJ, Morristown Muni, ILS OR LOC RWY 23, Amdt 12
Morristown, NJ, Morristown Muni, RNAV (GPS) Z RWY 23, Amdt 2
Boulder City, NV, Boulder City Muni, RNAV (GPS) RWY 27, Orig
Boulder City, NV, Boulder City Muni, Takeoff Minimums and Obstacle DP, Orig
Monticello, NY, Sullivan County Intl, ILS OR LOC RWY 15, Amdt 6
Monticello, NY, Sullivan County Intl, VOR RWY 33, Amdt 4
Cambridge, OH, Cambridge Muni, RNAV (GPS) RWY 4, Orig-E
Cambridge, OH, Cambridge Muni, RNAV (GPS) RWY 22, Orig-E
Columbus, OH, Rickenbacker Intl, ILS OR LOC RWY 5R, ILS RWY 5R (SA CAT I), ILS RWY 5R (CAT II), Amdt 3C
Steubenville, OH, Jefferson County Airpark, RNAV (GPS) RWY 14, Amdt 1A
Steubenville, OH, Jefferson County Airpark, RNAV (GPS) RWY 32, Amdt 1B
El Reno, OK, El Reno Rgnl, RNAV (GPS) RWY 17, Amdt 1
El Reno, OK, El Reno Rgnl, RNAV (GPS) RWY 35, Amdt 1
El Reno, OK, El Reno Rgnl, VOR/DME RWY 35, Amdt 2, CANCELLED
Fairview, OK, Fairview Muni, RNAV (GPS) RWY 35, Orig

Fairview, OK, Fairview Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Mc Alester, OK, Mc Alester Rgnl, RNAV (GPS) RWY 2, Amdt 1A
Hermiston, OR, Hermiston Muni, VOR–A, Amdt 4A
La Grande, OR, La Grande/Union County, NDB–B, Amdt 1
Waco, TX, TSTC Waco, ILS OR LOC RWY 17L, Amdt 13C
Waco, TX, TSTC Waco, NDB RWY 35R, Amdt 12A
Waco, TX, TSTC Waco, RNAV (GPS) RWY 17L, Amdt 2
Waco, TX, TSTC Waco, RNAV (GPS) RWY 35R, Amdt 2A
Waco, TX, TSTC Waco, Takeoff Minimums and Obstacle DP, Orig-A
Beckley, WV, Raleigh County Memorial, ILS OR LOC RWY 19, Amdt 7
Beckley, WV, Raleigh County Memorial, RNAV (GPS) RWY 19, Amdt 1C
Beckley, WV, Raleigh County Memorial, RNAV (GPS) RWY 28, Amdt 1C
Lander, WY, Hunt Field, RNAV (GPS) RWY 22, Orig
Lander, WY, Hunt Field, Takeoff Minimums and Obstacle DP, Orig

RESCINDED: On October 1, 2019 (84 FR 51971), the FAA published an Amendment in Docket No. 31274, Amdt No. 3871, to Part 97 of the Federal Aviation Regulations under section 97.37. The following entry for Atwood, KS, effective December 5, 2019, is hereby rescinded in its entirety:

Atwood, KS, Atwood-Rawlins County, City-County, Takeoff Minimums and Obstacle DP, Orig-A

[FR Doc. 2019–24454 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0893]

RIN 1625–AA08

Special Local Regulation; Beauty and the Beast Triathlon; Christiansted Harbor, St. Croix, Virgin Island

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of Christiansted Harbor, St Croix, Virgin Islands during the Beauty and the Beast Triathlon. Approximately 150 competitive swimmers are anticipated to participate in the race. The special local regulation is necessary to ensure the safety of race participants, participant vessels, and the general public during the event. The special local regulation establishes a race area, where all persons and vessels, except those persons and vessels who are participating in or supporting the race, will be prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This rule is effective from December 8, 2019 from 6:30 a.m. through 10:00 a.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0893 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 LCDR Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management division, U.S. Coast Guard; telephone 787–729–2374, email *Pedro.L.Mendoza@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 doing so would be impracticable and contrary to the public interest. The event is scheduled for December 8, 2019, and the Coast Guard was notified of the event on November 6, 2019. The Coast Guard did not have adequate time or information to timely process the course race and propose a special local regulation. Any delay in the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to minimize potential hazards to the race participants, participant vessels, spectators and the general public.

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 impracticable and contrary to public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this marine event. Immediate action is needed protect participants, spectators, and other persons and vessels during the triathlon.

III. Legal Authority and Need for Rule

The Coast Guard is Issuing this rule under authority in 46 U.S.C. 70041. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Beauty and the Beast Triathlon on December 8, 2019.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation. VI TRI is sponsoring the Beauty and the Beast Triathlon—a triathlon with approximately 150 competitors. The swim portion of the race will take place at Christiansted Harbor, St. Croix, Virgin Islands. Small vessel craft including small boats and kayaks will be operating in the immediate area as safety platforms.

This special local regulation encompasses certain waters of Christiansted Harbor, St Croix, Virgin Islands. The special local regulation will be enforced from 6:30 a.m. until 10:00 a.m. on December 8, 2019. During the enforcement period, the special local regulation will consist of a race area, which will exclude the presence of any and all non-race participants and non-safety vessels. Non-participants and non-safety vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the area unless authorized by the Captain of the Port (COTP) San Juan by telephone at (787) 289–2041 or a designated representative via VHF radio on Channel 16.

If authorization is granted by the COTP San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative. The Coast Guard will provide notice of the regulated areas by Broadcast Notice to Mariners, and on-scene designated representatives.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for a three and a half hour period and is thus limited in time; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area, without authorization from the COTP San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race areas, during the enforcement period if authorized by the COTP San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Broadcast Notice to Mariners.

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 special local regulation may be small entities, for the reason 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. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 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 creation of a special local regulation in conjunction with a regatta or a marine parade to ensure the safety of race participants, participant vessels and the general public during the event. It is categorically excluded from further review under paragraph L61 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T799–0893 to read as follows:

§ 100.T799–0893 Special Local Regulation; Beauty and the Beast Triathlon; Christiansted Harbor, St. Croix, Virgin Islands.

(a) *Regulated areas.* The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Triathlon swim race area.* All waters of Christiansted Harbor encompassed within the following points: Starting at point 1 in position 17°44.93′ N, 64°42.17′ W; thence east northeast to Point 2 in position 17°45.254′ N, 64°41.953′ W; thence south-southeast to point 3 in position 17°45.239′ N, 64°41.935′ W; thence south-southwest to point 4 in position 17°44.895′ N, 66°42.008′ W; thence northwest to point 5 in position 17°44.851′ N, 64°42.172′ W; and northeast back to origin.

(2) [Reserved]

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and Local officers designated by or assisting the Captain of the Port (COTP) San Juan in the enforcement of the regulated areas.

(c) *Regulations.* (1) Except for those persons and vessels participating in the race or enforcing the special local regulation in this section, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within a 25-yard radius of the area.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, remain within the regulated area by contacting the COTP San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the COTP San Juan or a designated representative, all persons and vessels, receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative.

(3) Vessels are prohibited from entering or transiting in the spectator area at speeds that cause wake.

(d) *Information broadcasts.* The Coast Guard will provide notice of the regulated areas by Broadcast Notice to Mariners and on-scene designated representatives.

(e) *Enforcement period.* This section will be enforced from 6:30 a.m. until 10:00 a.m. on December 8, 2018.

Dated: November 12, 2019.

E.P. King,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2019–24888 Filed 11–15–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0898]

RIN 1625–AA00

Safety Zone; Sunken Vessel Salvage; Port Sutton Channel; Tampa, Florida

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 150-foot radius of a sunken vessel, in Port Sutton Channel in Tampa, FL. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the sunken vessel and its salvage. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port St. Petersburg.

DATES: This rule is effective without actual notice from November 18, 2019 through December 1, 2019. For the purposes of enforcement, actual notice will be used from November 12, 2019 through November 18, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0898 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 Marine Science Technician First Class Michael Shackleford, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Michael.D.Shackleford@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. Immediate action is needed to provide for the safety of vessel traffic in the port and to provide a safe work area around the vessel that sunk on November 11, 2019. There is insufficient time to publish a NPRM.

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 impracticable because immediate action is needed to respond to the incident.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port St. Petersburg (COTP) has determined that potential hazards associated with the sunken vessel in Port Sutton Channel, Florida will be a safety concern for anyone within a 150 foot-radius of the sunken vessel. This rule is needed to protect personnel and vessels in the navigable waters within the safety zone while the vessel remains sunk.

IV. Discussion of the Rule

This rule establishes a safety zone from 5 p.m. on November 12, 2019 through 9 a.m. on December 1, 2019. The safety zone will cover all navigable waters within a 150-foot radius of a sunken vessel in Port Sutton Channel. The duration of the zone is intended to protect personnel and vessels in these navigable waters while the sunken vessel is salvaged. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) The safety zone will be enforced for 20 days; (2) although persons and vessels are prohibited to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide notification of the safety zone to the local maritime community by a Broadcast Notice to Mariners.

B. Impact on Small Entities

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

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 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 lasting 20 days that will prohibit entry within a 150-foot radius of a sunken vessel in Port Sutton Channel. It is categorically excluded from further review under paragraph L60(d) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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.T07–0898 to read as follows:

§ 165.T07–0898 Safety Zone; Sunken Vessel; Port Sutton Channel, Tampa, FL.

(a) *Regulated area.* The following area is established as a safety zone. All

waters of Port Sutton Channel within a 150-foot radius of a sunken vessel located at 27°54′14″ N, 082°24′57″ W, in Tampa, FL.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(d) *Enforcement period.* This section will be enforced daily from 5 p.m. on November 12, 2019 through 9 a.m. on December 1, 2019.

Dated: November 12, 2019.

Matthew A. Thompson,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2019–24905 Filed 11–15–19; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register

Vol. 84, No. 222

Monday, November 18, 2019

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0869; Product Identifier 2019–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–19–08 and AD 2018–19–02, which apply to Airbus Defense and Space S.A. Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, and C–212–DF airplanes. AD 2018–19–02 requires repetitive inspections of the rudder pedal control system support box and shaft and applicable corrective actions; accomplishing those actions terminates the requirements of AD 2017–19–08. Since AD 2018–19–02 was issued, the FAA has determined that a modification must be done in order to address the unsafe condition. This proposed AD would continue to require repetitive inspections and applicable corrective actions; this proposed AD would also require a modification of the rudder pedal adjustment system; as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. 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 January 2, 2020.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0869.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0869; 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, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0869; Product Identifier 2019–NM–162–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The FAA issued AD 2018–19–02, Amendment 39–19402 (83 FR 46857, September 17, 2018) (''AD 2018–19–02''), which applied to certain Airbus Defense and Space S.A. Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, and C–212–DF airplanes. AD 2018–19–02 requires repetitive inspections of the rudder pedal control system support box and shaft and applicable corrective actions. The FAA issued AD 2018–19–02 to address failure of the rudder pedal control system support structure, which could result in reduced controllability of the airplane. Accomplishing the actions required by AD 2018–19–02 terminates all of the requirements of AD 2017–19–08, Amendment 39–19038 (82 FR 43835, September 20, 2017) (''AD 2017–19–08''). This proposed AD would supersede both AD 2017–19–08 and AD 2018–19–02.

Actions Since AD 2018–19–02 Was Issued

Since AD 2018–19–02 was issued, the FAA has determined that a modification must be done in order to address the unsafe condition.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0221, dated September 5, 2019 (''EASA AD 2019–0221'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Defense and Space S.A. Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, C–212–DD, C–212–DF, and C–212–EE airplanes. Model C–212–DD and C–212–EE airplanes are not certified by the FAA and are not included on the U.S. type certificate

data sheet; this proposed AD therefore does not include those airplanes in the applicability. EASA AD 2019–0221 supersedes EASA AD 2018–0051, dated March 2, 2018 (which corresponds to FAA AD 2018–19–02).

This proposed AD was prompted by a determination that a modification must be done in order to address the unsafe condition. The FAA is proposing this AD to address failure of the rudder pedal control system support structure, which could result in reduced controllability of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0221 describes procedures for repetitive inspections of the rudder pedal control system support box and shaft, and a modification of the rudder pedal adjustment system. The modification is the applicable corrective action and is also terminating action for the repetitive inspections.

This material 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.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the agency evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0221 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD. Accomplishing the modification of the rudder pedal adjustment system specified in EASA AD 2019–0221 would terminate the repetitive inspections specified in EASA AD 2019–0221.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0221 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0221 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0221 that is required for compliance with EASA AD 2019–0221 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0869 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 37 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2018–19–02	8 work-hours × $85 per hour = $680	$0	$680	$25,160
New proposed actions	9 work-hours × $85 per hour = $765	20,000	20,765	768,305

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
9 work-hours × $85 per hour = $765	$20,000	$20,765

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance

with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA 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 this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

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 removing Airworthiness Directive (AD) 2017–19–08, Amendment 39–19038 (82 FR 43835, September 20, 2017) and AD 2018–19–02, Amendment 39–19402 (83 FR 46857, September 17, 2018), and adding the following new AD:

Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.): Docket No. FAA–2019–0869; Product Identifier 2019–NM–162–AD.

(a) Comments Due Date

The FAA must receive comments by January 2, 2020.

(b) Affected ADs

This AD replaces AD 2017–19–08, Amendment 39–19038 (82 FR 43835, September 20, 2017) and AD 2018–19–02, Amendment 39–19402 (83 FR 46857, September 17, 2018).

(c) Applicability

This AD applies to Airbus Defense and Space S.A. Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, and C–212–DF airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0221, dated September 5, 2019 (''EASA AD 2019–0221'').

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by reports of failures of the rudder pedal control system support structure. The FAA is issuing this AD to address failure of the rudder pedal control system support structure, which could result in reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0221.

(h) Exceptions to EASA AD 2019–0221

(1) Where EASA AD 2019–0221 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0221 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus Defense and Space S.A.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) For information about EASA AD 2019–0221, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0869.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206 231 3220.

Issued in Des Moines, Washington, on November 6, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24708 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0867; Product Identifier 2019–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2011–09–06, which applies to all Airbus SAS Model A330–200 Freighter series airplanes; Model A330–200, and –300 series airplanes; and Model A340–200, and –300 series airplanes. AD 2011–09–06 requires repetitive inspections and operational checks of the spring function of the emergency exit door slider mechanism, applying corrosion inhibitor, and corrective actions. Since the FAA issued AD 2011–09–06, the agency has determined that additional airplanes are affected by the unsafe condition, and certain compliance times can be extended. This proposed AD would retain the actions specified in AD 2011–09–06, with extended repetitive compliance times and additional airplanes in the applicability, as

specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. 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 January 2, 2020.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0867.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0867; 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, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0867; Product Identifier 2019–NM–131–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this proposed AD.

Discussion

The FAA issued AD 2011–09–06, Amendment 39–16668 (76 FR 22005, April 20, 2011) (''AD 2011–09–06''), which applies to all Airbus SAS Model A330–200 Freighter series airplanes; Model A330–200, and –300 series airplanes; and Model A340–200, and –300 series airplanes. AD 2011–09–06 requires repetitive inspections and operational checks of the spring function of the emergency exit door slider mechanism, applying corrosion inhibitor, and corrective actions. The FAA issued AD 2011–09–06 to address girt bars that attach the escape slide to the fuselage that are not in a locked position, which could result in slides detaching from the door after inflation, and which could, during an emergency, impair a safe evacuation of the cabin and possibly result in injuries.

Actions Since AD 2011–09–06 Was Issued

Since the FAA issued AD 2011–09–06, the agency has determined that additional airplanes are affected by the unsafe condition, and the repetitive compliance times can be extended.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0155, dated July 3, 2019 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter series airplanes; Model A330–200, –300, and –900 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted a determination that additional airplanes are affected by the unsafe condition. In addition, the FAA has determined that the repetitive interval times can be extended. The MCAI supersedes EASA AD 2010–0135, dated July 5, 2010 (which corresponds to FAA AD 2011–09–06).

The FAA is proposing this AD to address a report that an escape slide deployment test found a girt bar that was not in a locked position and was detached from the airplane, which could result in slides detaching from the door after inflation, and which could, during an emergency, prevent a safe evacuation of the cabin and possibly result in injuries. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2011–09–06, this proposed AD would retain all requirements of AD 2011–09–06, with extended repetitive intervals for the functional check and lubrication of the door girt bar slider of each passenger/crew door and passenger compartment emergency exit. Those requirements are referenced in EASA AD 2019–0155, which, in turn, is referenced in paragraph (g) of this proposed AD.

Explanation of Revised Terminology

Where AD 2011–09–06 identifies the actions as repetitive inspections and operational checks, application of corrosion inhibitor, and repair or replacement if necessary, the MCAI identifies those same actions as repetitive functional checks and lubrication and repair or replacement if necessary. The required actions have not changed, and the service information referenced in the MCAI has not changed from that specified in AD 2011–09–06.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0155 describes procedures for repetitive functional checks and lubrication of the door girt bar slider of each passenger/crew door and passenger compartment emergency exit, and corrective actions (repair or replacement). This material 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.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to the FAA's agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0155 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0155 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0155 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0155 that is required for compliance with EASA AD 2019–0155 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0867 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 111 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2011–09–06	3 work-hours × $85 per hour = $255	None	$255	$28,305
New proposed actions	2 work-hours × $85 per hour = $170	None	170	18,870

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85 per girt bar replacement	$2,160	$2,245

* The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repair specified in this proposed AD.

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA 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 this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

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 removing Airworthiness Directive (AD) 2011–09–06, Amendment 39–16668 (76 FR 22005, April 20, 2011), and adding the following new AD:

Airbus SAS: Docket No. FAA–2019–0867; Product Identifier 2019–NM–131–AD.

(a) Comments Due Date

The FAA must receive comments by January 2, 2020.

(b) Affected ADs

This AD replaces AD 2011–09–06, Amendment 39–16668 (76 FR 22005, April 20, 2011) (''AD 2011–09–06'').

(c) Applicability

This AD applies to the Airbus SAS Model airplanes identified in paragraphs (c)(1) through (7) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A330–223F, and –243F airplanes.

(2) Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–941 airplanes.

(5) Model A340–211, –212, and –213 airplanes.

(6) Model A340–311, –312, and –313 airplanes.

(7) Model A340–541 and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report that an escape slide deployment test found a girt bar that was not in a locked position and was detached from the airplane. This AD was also prompted by a determination that additional airplanes not identified in AD 2011–09–06 are affected by the unsafe condition. The FAA is issuing this AD to address this condition, which could result in slides detaching from the door after inflation, and could, during an emergency, prevent a safe evacuation of the cabin and possibly result in injuries.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0155, dated July 3, 2019 (''EASA AD 2019–0155'').

(h) Exceptions to EASA AD 2019–0155

(1) Where EASA AD 2019–0155 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2019–0155 refers to February 17, 2001, as an effective date, this AD requires using March 19, 2002 (the effective date of AD 2002–02–07, Amendment 39–12635 (67 FR 6370, February 12, 2002)) for all airplanes identified in paragraph (1) of EASA AD 2019–0155, except for Model A330–223F and –243F airplanes. For Model A330–223F and –243F airplanes, use May 5, 2011 (the effective date of AD 2011–09–06).

(3) The ''Remarks'' section of EASA AD 2019–0155 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0155 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0155 that contains RC procedures and tests: Except as required by paragraphs (i) and (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA Airworthiness Directive 2019–0155, dated July 3, 2019, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0867.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

Issued in Des Moines, Washington, on November 6, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24706 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0868; Product Identifier 2019–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. 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 January 2, 2020.

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 Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0868; 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, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0868; Product Identifier 2019–NM–152–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments the agency receives, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0200R1, dated August 29, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, except those on which the Supplemental Structural Inspection Program (SSIP) (Dassault Service Bulletin 730) has been embodied into the airplane's maintenance program. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0868.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary relating to safe life limits and certification maintenance requirements. The FAA is proposing this AD to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Relationship Between Proposed AD and AD 2010–26–05

This NPRM does not propose to supersede AD 2010–26–05 Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05''). Rather, the FAA has determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Accomplishment of the proposed actions would then terminate paragraph (g)(1) of AD 2010–26–05 only for Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes on which the SSIP has not been embodied into the airplane's existing maintenance or inspection program.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 20 Retrofit 731 Maintenance Manual, Revision 13, dated January 1, 2019. This service information describes airworthiness limitations for safe life limits and certification maintenance requirements. 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.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 56 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or

inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA 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 this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

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 adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2019–0868; Product Identifier 2019–NM–152–AD.

(a) Comments Due Date

The FAA must receive comments by January 2, 2020.

(b) Affected ADs

This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05'').

(c) Applicability

This AD applies to Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category, except those on which the Supplemental Structural Inspection Program (SSIP) (Dassault Service Bulletin 730) has been embodied into the airplane's existing maintenance or inspection program.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 20 Retrofit 731 Maintenance Manual, Revision 13, dated January 1, 2019. The initial compliance time for doing the tasks is at the time specified in Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 20 Retrofit 731 Maintenance Manual, Revision 13, dated January 1, 2019, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Action for AD 2010–26–05

Accomplishing the actions required by this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05 only for Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes on which the SSIP has not been embodied into the airplane's existing maintenance or inspection program.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0200R1, dated August 29, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0868.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on November 6, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24707 Filed 11–15–19; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2018–0026]

RIN 0960–AI27

Rules Regarding the Frequency and Notice of Continuing Disability Reviews

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise our regulations regarding when and how often we conduct continuing disability reviews (CDR), which are periodic reviews of eligibility required for benefit continuation. The proposed rules would add a category to the existing medical diary categories that we use to schedule CDRs and revise the criteria for assigning each of the medical diary categories to cases. The proposed rules would also change the frequency with which we perform a CDR for claims with the medical diary category for permanent impairments. The revised changes would ensure that we continue to maintain appropriate stewardship of the disability program and identify medical improvement (MI) at its earliest point.

DATES: To ensure your comments are considered we must receive your comments by January 17, 2020.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2018–0026 so that we may associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2018–0026 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 221(i) of the Social Security Act (Act) provides that, when we determine a person is disabled, we periodically review the case to ensure that the individual continues to meet the disability eligibility requirements of the Act. We must complete these periodic reviews at least once every 3 years, except when we determine the requirement should be waived, or when we determine that the disability is permanent, in which case, we can perform the review when we deem appropriate. We call the periodic reviews required under the Act ''continuing disability reviews'' (CDR).

Section 221(i)(2) of the Act also requires that we report this activity to Congress annually. In the most recent report we submitted to Congress, we reported that:

. . . we spent $717 million to complete 1,971,812 periodic CDRs. Of this total, we completed 1,172,799 mailer CDRs. We also completed 799,013 full medical reviews. . . . Our Office of the Chief Actuary (OCAct) . . . estimates that the periodic CDRs completed in FY 2015 will result in a present value of $14.3 billion in lifetime net Federal program benefits saved. For FY 2015, the estimated ratio of net program savings to administrative costs is approximately $19.9 to $1.[1]

A. Why We Conduct CDRs—A Brief History

We conduct CDRs to determine whether a person who receives Social Security disability benefits[2] under title II of the Act or Supplemental Security Income (SSI) payments under title XVI of the Act continues to meet the disability or blindness requirements of the law.[3]

Prior to the Social Security Disability Amendments of 1980 (1980 Amendments),[4] we did not conduct CDRs on all of our beneficiaries to ensure that they continued to meet the Act's definition of disability. Instead, our procedures at the time provided that we conducted CDRs only on a limited set of beneficiaries who had conditions that we expected to improve.[5] In the 1970s, the disability incidence rate (the number of disability awards in relation to the population) increased significantly, with substantial increases in the cost of the disability program. During this period, the Social Security Amendments of 1972 (1972 Amendments) extended Medicare coverage to disability beneficiaries, with the opportunity for improved disability outcomes.[6] Congress held numerous hearings and considered a package of legislative actions to strengthen the integrity of the disability program and improve program administration. The 1980 Amendments added section 221(i) to the Act, which required us to conduct CDRs at least once every 3 years for all title II disability beneficiaries with

[1] Social Security Administration, *Annual Report on Medical Continuing Disability Reviews, Fiscal Year 2015* (2019). Available at: *https://www.ssa.gov/legislation/FY%202015%20CDR%20Report.pdf.*

[2] We pay three benefits based on disability under title II: disability insurance benefits (DIB), disabled widow(er) benefits, and childhood disability benefits.

[3] Sec. 221(i)(2) of the Act; 42 U.S.C. 421(i)(2); 20 CFR 404.1590(a), 416.990(a).

[4] Public Law 96–265, section 311, 94 Stat. 441, 460.

[5] H.R. Rep. No. 96–944, at 60 (1980) (Conf. Rep.) Available at *https://www.ssa.gov/history/pdf/Downey%20PDFs/Social%20Security%20Disability%20Amendments%20of%201980%20Vol%202.pdf.*

[6] Public Law 92–603, sec. 201, 86 Stat. 1329, 1371.

nonpermanent impairments, and at our discretion for all title II disability beneficiaries with permanent impairments.[7] Section 221(i) of the Act established the periodic review or CDR requirement as one of the most valuable program integrity tools that allows us to maintain good stewardship of taxpayer dollars by ensuring only those who continue to meet our standards for disability continue to receive benefits.

In 1983, Congress amended section 221(i) of the Act to allow us to determine how many CDRs we conduct annually in each State based on the backlog of pending reviews, the projected number of new disability applications, and State staffing levels.[8]

In October 1984, Congress passed the Social Security Disability Benefits Reform Act of 1984, which mandated that we publish regulations establishing standards to be used in determining the frequency of CDRs.[9] Congress did so for several reasons. First, Congress expressed concern that people who are found eligible for benefits after a lengthy administrative appeal not find themselves subjected to a second eligibility review after only a relatively brief period. On the other hand, Congress was also concerned that we not neglect our responsibility to review the cases of even those beneficiaries who have impairments that we categorized as permanent.[10]

In May 1986, we published final rules that revised four sections and added one new section to our regulations that set forth the standards for conducting CDRs in title II disability and title XVI SSI cases.[11] In the 1986 final rules, we explained that, although section 221(i) of the Act applied only to title II disability cases, we would apply the new rules applied to title XVI SSI cases to provide consistency in the operation of the disability programs. We did this based on our broad regulatory authority under title XVI of the Act, sections 1631(d)(1) and 1633, and the legislative history of the 1980 Amendments.[12]

When we implemented the current rules in 1986, we established a process of administrative controls to keep track of the review cycle for each case, including the impairment(s) and its type (permanent or nonpermanent) and the review category assigned. We refer to this process of controls as ''CDR diaries.''

Since we published the 1986 final rules, we have revised our rules to reflect statutory changes. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [13] requires us to conduct CDRs at age 1 for children with low birth weight when low birth weight is a contributing factor material to our determination that they were disabled.[14] The Balanced Budget Act of 1997 [15] modified the requirement for a CDR at age 1 to allow the Commissioner to schedule the CDR at a later date if the child's impairment is not expected to improve by age 1 and to revise our definition of a permanent impairment for title XVI child recipients.[16] We incorporated these provisions into our rules on February 11, 1997, and September 11, 2000, respectively.[17]

The Ticket to Work and Work Incentives Improvement Act of 1999 [18] included two provisions that affect the scheduling of CDRs. Under the first provision, we will not initiate a CDR while the person is using a Ticket to Work.[19] Under the second provision, we will not initiate a CDR based solely on work activity for beneficiaries who have been entitled to benefits under title II for at least 24 months. We will initiate regularly scheduled CDRs that are not triggered by work.[20]

B. When and How We Conduct CDRs

We conduct periodic program integrity reviews to ensure title II beneficiaries and title XVI SSI disability recipients continue to meet each program's respective eligibility criteria. After we initially find that a claimant is disabled, we schedule the periodic review required by the Act to determine if the person is still medically eligible for payments based on disability. As we explained earlier, this evaluation is known as a CDR. The frequency of a medical CDR depends on the beneficiary's prospective MI. MI is categorized into one of three ''medical diary categories.'' [21]

1. *Medical Improvement Expected (MIE).* The medical diary category that requires us to conduct a CDR most frequently is the MIE medical diary category. We generally conduct a CDR on a case with a MIE diary in not less than 6 months, but not more than 18 months.[22] We use the MIE diary category for cases in which we expect the person's disabling impairment(s) to improve, so that the person will be able to engage in substantial gainful activity (SGA). We also use the MIE diary category for title XVI SSI childhood disability cases in which we expect the child's impairment(s) to improve, so the impairment(s) no longer results in marked and severe functional limitations.[23] Examples of impairments that receive a MIE diary include fractures, cancers with bone marrow or stem cell transplantation, chronic kidney disease with a kidney transplant, and low birth weight. We set an MIE diary for most infants who are allowed based on their low birth weight because we are required by the Act to review such cases when they reach age 1 unless the facts of the case indicate that medical improvement before age 1 is not expected.[24] We set the diary for all other cases receiving a MIE diary based on the facts of the case, with most diaries set at 12 months.

2. *Medical Improvement Possible (MIP).* The MIP medical diary category requires us to conduct a CDR regularly, but less frequently than for claims in the MIE diary category. For cases in the MIP diary category, we conduct a CDR at least once every 3 years.[25] We use the MIP diary category for those cases in which any medical improvement is possible, that is, nonpermanent impairments. We use this diary category for impairments in both adults and children for which we cannot predict improvement of the impairment(s) based on current experience and the facts of the case.[26] Examples of impairments that frequently receive a MIP diary include Crohn's Disease (regional enteritis), sickle cell disease,

[7] *Id.*

[8] Public Law 97–455, sec. 3, 96 Stat. 2497, 2499; sec. 221(i)(2) of the Act.

[9] Public Law 98–460, sec. 15, 98 Stat. 1794, 1808.

[10] ''Conversely, with the number of people now classified administratively as being permanently impaired approaching 40 percent of the disabled-worker benefit rolls, the Committee is concerned that the responsibility to assess the continuing eligibility of such beneficiaries not be neglected. A failure to periodically review eligibility in these cases could seriously undermine the intent of the 1980 legislation.'' S. Rep. No. 98–466, at 28 (1984). Available at *https://www.ssa.gov/history/pdf/Downey%20PDFs/Downey%20Book%201984%20PL%2098-460.pdf.*

[11] 51 FR 16818, May 7, 1986; 20 CFR 404.1589, 404.1590, 416.989, 416.989a, 416.990.

[12] 51 FR at 16819. In the final rules, we note that ''[t]he report of the Senate Committee on Finance states: ''The committee believes that such [periodic review] procedures should be applied on the same basis to the DI and SSI programs.''

[13] Public Law 104–193, sec. 212(c), 110 Stat. 2105, 2193.

[14] 62 FR at 6430, 65 FR at 54790.

[15] Public Law 105–33, sec. 5522(a), 111 Stat. 251, 622.

[16] 62 FR at 6430, February 11, 1997.

[17] 62 FR 6430, Feb. 11, 1997; 65 FR 54790, Sept. 11, 2000.

[18] Public Law 106–170, sec. 111(a), 113 Stat. 1860, 1881.

[19] 42 U.S.C. 1320b–19(i), 20 CFR 411.165.

[20] 71 FR 66856, Nov. 17, 2006.

[21] 20 CFR 404.1590(b)(1)–(2), 416.990(b)(1)–(2).

[22] 20 CFR 404.1590(c), (d); 416.990(c), (d).

[23] *See* section 1614(a)(4)(B)(i) of the Act.

[24] *See* section 1613(a)(3)(H)(iv) of the Act.

[25] 20 CFR 404.1590(d), 416.990(d).

[26] 20 CFR 404.1590(c), 416.990(c).

chronic ulcerative colitis, epilepsy, and schizophrenia.

3. *Medical Improvement Not Expected (MINE).* The MINE medical diary category requires us to conduct a CDR less frequently than the preceding two diary categories.[27] Under this category, we conduct a CDR for a title II disability or a title XVI case at least once every 7 years, but no more frequently than once every 5 years.[28] We use the MINE diary category for cases with disabling impairments that, based on medical knowledge and practices, and our administrative experience, we determine to be ''at least static, but more likely to be progressively disabling either by itself or by reason of impairment complications, and unlikely to improve so as to permit the person to engage in substantial gainful activity.'' [29] We use this category for title XVI disabled children who have an impairment(s) that is unlikely to improve to the point that they no longer have marked and severe functional limitations.[30] Based on our analysis of case outcomes for CDRs on older beneficiaries, we also use this category for cases in which the person would be age 54½ or older when a CDR diary would be due. We provide examples of impairments that we consider permanent in the current rule, including amyotrophic lateral sclerosis (ALS), Parkinsonian Syndrome (Parkinson's disease), diffuse pulmonary fibrosis in a person age 55 or over, and amputation of the leg at the hip. We provide additional guidance about permanent impairments in our current operating instructions.[31]

We establish the medical diary category when we first determine that a person is disabled under our rules. We notify the beneficiary about the timing of the initial CDR in the award notice we send. We also notify the beneficiary about the timing of the next CDR in the notice that we send about the CDR determination. When we conduct a CDR, we may change the medical diary category for future reviews based on the evidence we receive during the CDR.

We may also revise the frequency of review for certain impairments because of improved tests, treatment, or other medical advances concerning the impairments.[32] When we change the diary category for specific impairments, we incorporate the changes into our employee operating instructions, which are publically accessible.

For people who are found eligible to receive or continue to receive disability benefits based on a decision by an administrative law judge, the Appeals Council, or a Federal court, we do not conduct a CDR earlier than 3 years after that decision unless the case meets the criteria for a MIE diary.[33] In any case, however, we may conduct a CDR earlier than the diary date if a question of continuing disability is raised.[34]

When a medical review diary matures, we conduct periodic CDRs using one of two methods. We decide whether to initiate a full medical review (FMR) or send a mailer after profiling all cases to identify the likelihood of MI. We send cases with a higher likelihood of MI to the State Disability Determination Services (DDS) for FMRs. For those cases with a lower likelihood of MI, we send mailers to obtain more information from the beneficiaries, which we evaluate to determine if there is any indication of MI. If we find an indication of MI, we send the case to a DDS for a FMR. Otherwise, we set a new medical review diary and schedule the case for a future CDR. If a mailer results in a deferral, we reset the diary date based on the original category. If a FMR results in a continuance, we will determine whether there is a change in classification of the impairment as permanent or nonpermanent and set a new diary accordingly. We use the mailer process for approximately 65 percent of the periodic CDRs we conduct each year.

II. The Changes We Are Proposing

We want to ensure that we continue to identify MI at its earliest point through the CDR process. We also want to have the flexibility to adjust the scheduling of CDRs when there have been advances in treatment for a person's impairment(s) that improve the ability to work or, for children receiving title XVI payments, that improve overall health and functioning. Therefore, we are proposing to make three changes to our current rules on when and how often we conduct CDRs. First, we propose to add a fourth medical diary category. Next, we propose to revise the criteria we follow to assign a medical diary to each case. Finally, we propose to retain the frequency for the MIE and MIP diary categories (6 to 18 months and 3 years, respectively) and revise the frequency with which we perform a CDR for the MINE diary category.

The flexibility these proposed changes would allow us to determine MI at an earlier point than we can under our current rules. Consequently, we expect that the changes we are proposing would enhance program integrity and ensure that only those who continue to qualify for benefits will receive them.

A. Expanding the Medical Diary Categories From Three to Four

When we evaluate a person's continuing disability during a scheduled review, we consider whether there has been MI in the condition that resulted in the finding of disability. We use the medical diary categories to capture MI at the earliest point.

We propose adding a new medical diary category, the Medical Improvement Likely (MIL) diary category. When we assign a case to the MIL diary category, we would review it approximately every two years, which is less frequently than cases in the MIE diary category, but more frequently than cases in the MIP and MINE diary categories. We schedule cases for a FMR or a mail questionnaire based on our predictive model that identifies the cases most likely to exhibit MI (*i.e.,* where MI is most likely to have occurred).

This proposed expansion of the diary categories reflects changes brought by our experience over time administering CDRs in the existing three categories. When we analyzed CDR case outcomes for MIE diaries, we noticed that there were some types of cases where the MIE category resulted in a continuance for the first CDR but resulted in a cessation [35] for the subsequent CDR.[36] This was often an indication that the first CDR was conducted too early to identify MI. We also realized that our employee operating instructions already recognize that the 6 to 18 month period for MIE diaries is not adequate for some impairments we expect to improve.[37] In particular, we set longer MIE diaries (2

[27] *Id.*

[28] 20 CFR 404.1590(d), 416.990(d).

[29] 20 CFR 404.1590(c), 416.990(c).

[30] 20 CFR 416.990(c).

[31] Program Operations Manual System (POMS) DI 26525.045 at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0426525045.*

[32] 20 CFR 404.1590(e), 416.990(e).

[33] 20 CFR 404.1590(f), 416.990(f). We may also establish a diary before 3 years if the person should be scheduled for a vocational reexamination diary or if a question of continuing disability arises under 20 CFR 404.1590(b) or 416.990(b).

[34] Additional guidance for initiating a CDR is in 20 CFR 404.1590(b)(3)—(10) and 416.990(b)(3)–(10). In most instances, we will identify the CDR issue at the field office level. If there is any question about the appropriateness of initiating a CDR, the field office will request assistance from SSA's regional or central office staff or the state disability determination services before taking any action.

[35] A cessation is a determination or decision that the disabled individual no longer meets the definition of disability and is not eligible to continue to receive benefits or payments *see* 20 CFR 404.1597 and 416.995.

[36] *See* the Supporting Document ''Cessation Rates by Impairment'' under Docket No. SSA–2018–0026 at: *www.regulations.gov.*

[37] POMS DI 26525.030 at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0426525030.*

years) for several impairments, such as leukemia, lymphoma, and malignant solid tumors in children. Based on the number of cases that seemed to fall between the MIE and MIP diary periods, we analyzed CDR outcomes for certain conditions, their assigned diary categories, and their associated MI rates. We identified several conditions that could have diaries in either the MIE or MIP categories. The MI rates were similar between both diary categories, suggesting that the MIP diary may not have captured MI at the optimum time.[38] As a result, we are proposing to add a fourth category between MIE and MIP that would allow us to align our CDRs more directly to when certain conditions are more likely to medically improve. Additionally, adjusting the frequency of review for several diary categories reflects our experience for what timeframes are more likely to result in identifying MI at the earliest point, as we discuss in section C.

For many disabling impairments, the key element for MI is a person's receipt of treatment that can decrease the severity of the impairment and its effects. When people do not receive adequate treatment, any MI in the disabling impairment(s) may not occur when we would otherwise expect it for impairments likely to improve. This is especially important in light of the data documenting the percentage of individuals with unmet health care needs. In 2015, 31.4 percent of people with two or more chronic conditions delayed, or did not obtain, needed medical care due to a cost or other non-cost reason (even if they had health insurance).[39] Scheduling a CDR under the MIE category (6 to 18 months) may be premature when MI does not occur as expected due to unmet health care needs. The MIL diary category will allow us to assess MI after some beneficiaries benefit from access to health care through Medicare or Medicaid to determine if they continue to be eligible for benefits.

When we identify and evaluate MI at its earliest point, beneficiaries know the CDR outcome and can make plans for their return to the labor force within a shorter period of time. We believe that there may be positive employment effects as a result of these proposed rules, although we cannot currently quantify them. For example, using our administrative data[40] on entitlement periods and earnings for a group of beneficiaries and recipients whose benefits terminated due to a 1997 statutory change, a researcher at the National Bureau of Economic Research looked at the effect of the loss of benefit eligibility on work activity during the year of benefit termination and the next 11 years (1997 through 2008).[41] Overall, about 22 percent returned to work at an SGA level during the first three years following benefit termination.

In many cases, shortening the time a person spends out of the labor force may improve work outcomes. Our analysis of our administrative data confirms that the majority of all working-age people in the general population[42] who spend one year or more out of the work force[43] do not return to work at an SGA level.[44] However for those people who do return to the work force, employment rates are higher the shorter the time a person is out of the work force. For example, in 2013, 35.5 percent of the 40-year-old adults who had been out of the work force for 1 year returned to work at an SGA level. The percentage of the 40-year-olds who returned to work at an SGA level dropped to 27.1 percent after 2 years out of the work force, 17 percent after 3 years, and to only 7.4 percent after 7 years. In the same year, 30.7 percent of the 50-year-old adults out of the work force for 1 year returned to work at an SGA level, 23.5 percent after 2 years, 14 percent after 3 years, and only 5.5 percent after 7 years out of the work force.[45] Although the data shows a modest correlation between the length of time outside of the workforce and likelihood of reentering at an SGA level, the data does not provide evidence of causality between the two.

The employment response to Social Security Disability Income (SSDI) and SSI income loss is supported by recent research by our Office of Research, Demonstration, and Employment Support (ORDES), that looked at earnings for the 5-year period after SSDI and SSI beneficiaries had their benefits ceased following a FMR.[46] The ORDES researchers found that ''[t]he majority of ceased beneficiaries have some earnings in the 5 years after a FMR cessation.''[47] In this research, the researchers also found that the percentage of former beneficiaries with earnings from work 5 years after a FMR cessation declines with age from ''[n]early 90% of ceased beneficiaries aged 18 to 30'' to ''below 60% for beneficiaries aged 50 to 59.''[48] They also analyzed employment outcomes based on the type of diaries established on the cases and found that beneficiaries who had a MIE diary set (with a higher probability of MI) had higher rates of employment and earnings following benefit termination than those who had a MIP or MINE diary.

Further, there is evidence that parents of SSI children who medically improve offset the loss of SSI benefits through earned income. Research on the effect of SSI payments on household income and earnings found that ''. . . a [household] loss of $1,000 in the child's SSI payment [due to the loss of payments after a CDR[49]] increases parental earnings—by $700 to $1,400.''[50] Furthermore, there was ''. . . some evidence that the volatility [variability] of parental earnings decreases in response to the child's removal from SSI.''[51] The evidence did not demonstrate a similar rise in income from other unearned income sources, including other disability income sources. The evidence also showed that the loss of the child's SSI payments decreased the number of SSDI and SSI applications from other members of the household. These responses to the loss of SSI payments suggest that there may be a shift in the reliance on SSDI and SSI as a permanent, reliable income source for the household.

[38] *See* the Supporting Document ''Cessation Rates by Diary Category'' under Docket No. SSA–2018–0026 at: *www.regulations.gov.*

[39] Ward, B.W., ''Barriers to health care for adults with multiple chronic conditions: United States, 2012–2015.'' NCHS data brief, no. 275. Hyattsville, MD: National Center for Health Statistics, 2017.

[40] Supplemental Security Record—March and June 1996 DA&A Extracts; Supplemental Security Record—Longitudinal File; Master Beneficiary Record—810 File; Disability Master File/831 File; Numident File; Master Earnings File. *See* Moore, T. J., ''The employment effects of terminating disability benefits,'' *Journal of Public Economics,* vol. 124(C), 2015, Appendix A.

[41] *Id.,* pp. 30–43.

[42] This group includes people who are not SSA beneficiaries, as well as people who are SSA beneficiaries.

[43] ''Time out of the labor market'' means years without earnings above $1,000.

[44] *See* SSA Office of Research, Evaluation, and Statistics (ORES) analysis of data from the Continuous Work History Sample, Likelihood of Returning to Employment by Age and Time Out of the Labor Market. Available at regulations.gov as supporting and related material for docket SSA–2018–0026.

[45] *Id.*

[46] Hemmeter, J. and Bailey, M.S., ''Earnings after DI: evidence from full medical continuing disability reviews,'' IZA Journal of Labor Policy, vol. 5 (1), 1–22. doi:*http://dx.doi.org/10.1186/s40173-016-0066-9.*

[47] *Id.,* p. 15.

[48] *Id.,* p. 12.

[49] The loss of benefits was due to MI in the child's conditions identified through the CDR process.

[50] Deshpande, M., ''The effect of disability payments on household earnings and income: Evidence from the SSI children's program, The Review of Economics and Statistics, 98(4), (2016), p. 639. Available at: *https://www.mitpressjournals.org/doi/pdf/10.1162/REST_a_00609.*

[51] *Id.*

B. Revising the Criteria We Follow To Assign Each Case to Each Diary Category

We propose revising the criteria we use to assign a diary for a case. We provided broad descriptions of the types of cases in each diary category when we established the three diary categories in 1986.[52] We have provided detailed guidance on specific impairments to be assigned to each category in our employee operating instructions.[53] Although we intend to continue that practice, we will also revise our guidance on the types of impairments considered in the three existing diary categories to accommodate the addition of the MIL diary category. In making these revisions, we will consider advances in medical technology and treatment that has improved outcomes for many impairments. For example, improvements in medication regimens for individuals with human immunodeficiency virus (HIV) infection have resulted in a change from a disease that was invariably fatal to a chronic condition that ''allows high levels of functioning and prolonged survival.'' [54] When we revised our rules for evaluating HIV in 2016,[55] we revised our operating instructions for setting CDR diaries. We now establish the CDR diary based on the facts of the case and no longer set a MINE diary automatically. We have only made one other change in diary category for a specific impairment: Changing lung transplants from MIE to MIP—lengthening the review period based on outcomes and mortality data. Prior to these two recent changes, the last set of changes we made were in the mid- to late-1990s based on administrative data.

We also propose to modify the criteria for the existing diary categories (MIE, MIP, and MINE) and establishing criteria for the new category as described below. We initially selected the medical conditions based on when our predictive model suggests improvement and medical evidence. We solicit public comment on information that would help inform impairment classification to most effectively align medical criteria with the correct diary category.

1. *MIE diary:* We currently set an MIE diary for a case if we expect the disabling impairment to improve. Several factors can prompt an MIE diary, such as current significant, sustained, and progressive improvement; recent or planned interventions or treatment that should result in significant and sustained MI; onset of the disabling impairment within the last 12 months with no irreversible organ or structural damage and favorable response to current treatment; or recent or planned surgery that is expected to resolve the impairment.[56] We also establish a MIE diary for favorable determinations and decisions based on medical listings that include a specified period of disability as set out in the regulations (*e.g.,* 3.03, *Asthma,* 6.04, *Chronic kidney disease,* with kidney transplant, 103.03, *Asthma,* and 106.04, *Chronic kidney disease,* with kidney transplant) and for most cases allowed based on an infant's low birth weight.

We propose to continue to use the MIE diary category for allowances we make based on medical listings that include a specified period of disability as indicated above and for allowances based on an infant's low birth weight. With the exception of claims we allow based on low birth weight, the criteria for establishing MIE diaries will be the same for adults and children.

We will publish and include in our publicly accessible employee operating instructions those impairments for which an MIE diary is appropriate because we expect them to improve.[57] We will still evaluate whether disability continues for a person with an impairment or combination of impairments in the MIE category using our existing rules.

We may revise the frequency of review for certain impairments because of improved tests, treatment, or other medical advances concerning the impairments.[58] We may also revise the frequency of review for certain impairments based on our predictive modeling. When we change the diary category for specific impairments, we will update the list of impairments in the MIE, MIL, and MINE diary categories that we maintain in our employee operating instructions, which are publicly accessible.[59]

When combined with the frequency changes described in section C, we anticipate completing about 1.2 million FMRs (out of approximately 7.3 million total), as well as 56,000 mailer deferral reviews (out of approximately 12 million total) from fiscal years (FY) 2020–2029 in the MIE category. Additionally, of the 1.2 million FMRs, 746,000 would affect title II beneficiaries, and 459,000 would affect title XVI recipients (including 240,000 child CDRs,[60] 15,000 age 18 redeterminations,[61] and 204,000 adult medical reviews over 10 years). Similarly, of the 56,000 mailer deferral reviews, review for 35,000 title II beneficiaries and 22,000 recipients would result in deferrals.[62]

We based the workload estimates on the impairments we expect to include in the MIE diary category as explained in this NPRM. We identified the impairments to be included in the MIE diary category on our recent data and experience with CDR outcomes.[63] Once we implement the final rules, we may change the impairments included in the MIE category based on the comments we receive on this NPRM, advances in medical knowledge, our predictive modeling, and our data on CDR outcomes.

2. *MIL diary:* This is a new diary category. We propose to use the MIL diary category, instead of the MIE or MIP diary categories, to conduct reviews for specific impairments that typically do not result in permanent, irreversible structural damage and are amenable to improving with treatment. This category will apply to impairments in both adults and children, and will include some claims that currently fall into the MIE and MIP diary categories. Some examples of claims that we expect to include in this category are favorable determinations and decisions for both adults and children based on cancer listings that include a specified minimum period of disability (for example, leukemia, lymphoma), anxiety disorders, speech impairments, and malignant solid tumors in children. This category will also include cases in which we make a favorable determination or decision based on the

[52] 51 FR 16818 (May 7, 1986).

[53] POMS DI 26525.000 at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0426525000.*

[54] Institute of Medicine (2010). *HIV and Disability: Updating the Social Security Listings.* Washington, DC: The National Academies Press. Retrieved from: *https://www.nap.edu/read/12941/chapter/1#ix.*

[55] 81 FR 86915, December 2, 2016.

[56] POMS DI 26525.025 at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0426525025.*

[57] POMS at: *https://secure.ssa.gov/poms.nsf/Home?readform.*

[58] 20 CFR 404.1590(e), 416.990(e).

[59] POMS DI 26525.000 at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0426525000.*

[60] This figure includes 115,000 CDRs for low birth weight infants.

[61] Age 18 redeterminations are considered a part of the CDR workload for planning and budget purposes. However, the assigned diary category does not affect the selection for review. Furthermore, all age 18 redeterminations receive a FMR.

[62] The total mailer deferral reviews does not equal the sum of components due to rounding.

[63] The impairments tentatively identified for inclusion in the MIE diary category are included in the Supporting Document ''Underlying Assumptions on Impairments in CDR Diary Categories,'' under Docket No. SSA–2018–0026 at: *www.regulations.gov.* These characteristics were used in the underlying assumptions to estimate changes in the programmatic and administrative cost for this proposed rule.

inability to adjust to other work (*i.e.,* allowances at step 5 of the sequential evaluation process [64]). We would include step 5 allowances in the MIL diary category unless we would establish a MINE diary based on the impairment and specific case characteristics identified in section B.4 below.

We will also include some childhood disability claims in this category for children who are approaching a chronological age with key developmental activities, for example, age 6 with a transition into formal education, and at age 12 with a transition into adolescence.

We will publish and include in our publicly accessible employee operating instructions those impairments that for which an MIL diary is appropriate because they are amenable to treatment and likely to improve.[65] As in any other case, we will evaluate whether disability continues for a person with an impairment or combination of impairments in the MIL category using our existing rules.

When combined with the frequency changes described in section C, we anticipate completing about 1.8 million FMRs (out of approximately 7.3 million total), as well as 2.6 million mailer deferral reviews (out of approximately 12 million total) from FYs 2020–2029 in the MIL category. Additionally, of the 1.8 million FMRs, 579,000 would affect title II beneficiaries, and 1.2 million would affect title XVI beneficiaries (including 627,000 child CDRs, 152,000 age 18 redeterminations, and 406,000 adult CDRs over 10 years). Similarly, of the 2.6 million mailer deferral reviews, reviews of 1.8 million title II beneficiaries and 814,000 title XVI recipients would result in deferrals.

Our Office of the Chief Actuary based the workload estimates on the impairments we expect to include in the MIL category as explained in this NPRM. We identified the impairments to be included in the MIL diary category on our recent data and experience with CDR outcomes. Once we implement the final rules, we may change the impairments included in the MIL category based on the comments we receive on this NPRM, medical advances, predicative modeling, and our data on CDR outcomes.[66]

3. *MIP diary:* We currently establish a MIP diary when the case does not meet the criteria for establishing a MIE, MINE, or vocational reexamination diary.[67] We also establish MIP diaries for most favorable determinations based on cancer, except when we based the favorable determination on a cancer listing that includes a specified minimum period of disability. For example, under listing criterion 13.06, *Leukemia,* we consider the person ''under a disability until at least 24 months from the date of diagnosis or relapse.''

Although we propose using specific claim characteristics to determine cases in the MIE, MIL, and MINE diary categories, most cases would receive a MIP diary because the impairment(s) does not meet the criteria for establishing a MIE, MIL, or MINE diary. In effect, it would be the diary of ''last resort'' for impairments that do not fit into the other three diary categories. We would retain our current policy using the MIP diary category for cases that are allowed based on meeting or equaling a cancer listing if section 13.00H2 applies, that is, ''we will consider an impairment(s) . . . disabling until at least 3 years after onset of complete remission.'' [68]

When combined with the frequency changes described in section C, we anticipate completing about 3.7 million FMR (out of approximately 7.3 million total), as well as 6.5 million mailer deferral reviews (out of approximately 12 million total) from FYs 2020–2029 in the MIP category. Additionally, of the 3.7 million FMRs, 1.3 million would affect title II beneficiaries, and 2.4 million would affect title XVI beneficiaries (including 1.1 million child CDRs, 427,000 age 18 redeterminations, and 908,000 adult CDRs over 10 years). Similarly, of the 6.5 million mailer deferral reviews, reviews of 4.7 million title II beneficiaries and 1.9 million title XVI recipients would result in deferrals.[69]

These estimates are based on the assumptions that, if the case does not meet any of the MIE or MIL criteria, then current rules for MIP diary category continue to apply and the diary will be determined according to current rules.

4. *MINE diary:* We currently set a MINE diary when the person has a chronic or progressive impairment or a combination of impairments, with permanent, irreversible structural damage or functional loss for which there is no known effective therapy, treatment, or surgical intervention. Generally, impairments with permanent, irreversible structural damage or functional loss will meet or medically equal a listing in the Listing of Impairments.[70] Both children and adults may have an impairment in the MINE diary category. Examples of impairments in the MINE diary category that occur in both children and adults include muscular dystrophy, Down syndrome, cerebral palsy, and chronic kidney disease with dialysis. Examples of impairments in the MINE diary category that generally occur only in adults include amyotrophic lateral sclerosis, multiple sclerosis, and Huntington's disease. We may also set a MINE diary currently for a case where the person has an impairment, or combination of impairments, that is static or progressive, and, when considered with vocational factors, may be considered permanent.

We propose to retain the category criteria for cases with a chronic or progressive impairment, or combination of impairments, with permanent, irreversible structural damage or functional loss and for which there is no known effective therapy, treatment, or surgical intervention. Most of the impairments we consider permanent will meet or equal a listing in the Listing of Impairments.[71] For impairments that do not meet or equal a listing, we propose to retain consideration of the interaction of a person's age, functional limitations resulting from the impairment(s), and the time since the person last engaged in SGA when we decide if the person's impairment(s) is permanent and, thus, subject to a MINE diary. For example, we would consider a person's schizophrenia to be a permanent impairment and subject to a MINE diary if the person was age 46½ at the time of review and the onset was at least five years before the determination.[72]

We currently identify 10 impairments that would receive a MINE diary based on the interaction of age and functional limitations and an additional seven based on the interaction of age,

[64] See 20 CFR 404.1520(a)(4)(v) and 416.920(a)(4)(v).

[65] POMS at: *https://secure.ssa.gov/poms.nsf/Home?readform.*

[66] The impairments or other case characteristics, tentatively identified for inclusion in the MIL diary category are included in the Supporting Document ''Underlying Assumptions on Impairments in CDR Diary Categories,'' under Docket No. SSA–2018–0026 at: *www.regulations.gov.* These characteristics were used in the underlying assumptions to estimate changes in the programmatic and administrative cost for this proposed rule.

[67] A vocational reexamination diary is set to review a case at a later date because the person is undergoing vocational therapy, training, or an educational program that is expected to improve the ability to work to the extent that the person is no longer disabled.

[68] 20 CFR part 404, subpart P, appendix 1.

[69] The total mailer deferral reviews does not equal the sum of components due to rounding.

[70] *Id.*

[71] *Id.*

[72] POMS DI 26525.045B at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0426525045.*

functional limitations, and time out of the workforce. Step 5 allowances based on these 17 impairments would continue to receive a MINE diary. The table below describes our proposed sub-regulatory guidance for the 17 impairments that will be assigned a MINE diary based on vocational factors in combination with specific impairments. These impairments are subject to change with advancements in medical treatments and findings from our predictive model.

Age and functional limitations	Age, functional limitations, and time out of the workforce
Amyotrophic lateral sclerosis	Depressive, bipolar and related disorders.
Angina	Huntington's disease.
Late effects of injuries to the nervous system	Intellectual disorder.
Multiple sclerosis	Late effects of cerebrovascular disease.
Other diseases of the spinal cord	Neurocognitive disorders.
Parkinsonian syndrome	Other cerebral degenerations.
Peripheral arterial disease	Schizophrenia spectrum and other psychotic disorders.
Phlebitis	
Rheumatoid arthritis	
Spondylitis	

When combined with the frequency changes described in section C, we anticipate completing about 559,000 FMRs (out of approximately 7.3 million total), as well as 2.8 million mailer deferral reviews (out of approximately 12 million total) from FYs 2020–2029 in the MINE category. Additionally, of the 559,000 FMRs, 223,000 would affect title II beneficiaries, and 336,000 would affect title XVI recipients (including 33,000 child CDRs, 188,000 age 18 redeterminations, and 115,000 adult CDRs over 10 years). Similarly, of the 2.8 million mailer deferral reviews, reviews of 2.0 million title II beneficiaries and 826,000 title XVI recipients would result in deferrals.

These estimates are based on the assumptions that, if the case does not meet any of the proposed criteria for the MIE and MIL diary categories, then current rules for the MINE diary category continue to apply and the diary will be determined according to current rules.

C. The Frequency of a CDR for Each of the Four Medical Diary Categories

Finally, we propose to retain two and revise one of our existing medical diary categories rules on how often we perform a CDR. The following table summarizes the differences between the current and proposed policies:

Diary category	Current policy	Proposed policy
MIE	6–18 months	6–18 months (unchanged).
MIL	NA	2 years.
MIP	3 years	3 years (unchanged).
MINE	5 to 7 years	6 years.

As stated earlier, unless a question of continuing disability is raised in a particular case, we currently schedule CDRs to be performed every 6–18 months for cases in the MIE diary category, at least once every 3 years for cases in the MIP diary category, and no less frequently than once every 7 years but no more frequently than once every 5 years for cases in the MINE diary category.[73] We propose to retain the current timeframes for cases in the MIE diary category (6–18 months) and the MIP diary category (at least once every 3 years) because we structured the new diary category to identify the cases likely to improve between 18 months and 3 years. The timeframe for cases in the proposed MIL diary category will be at least once every 2 years.

We propose to revise the timeframe for cases in the MINE diary category from no less frequently than once every 7 years but no more frequently than once every 5 years, to at least once every 6 years. When we published the current rules in 1986, we stated that ''[a]ll individuals with permanent impairments will be assigned a 7-year review cycle.'' [74] We also noted that the rules established flexibility in the frequency of review ''to permit assigning different review periods to different permanent impairment categories should future experience indicate it to be more appropriate to review certain impairments on different time cycles than others.'' [75]

Since we began using the current rules in 1986, we have not used a shorter review period for permanent impairments. When we have identified the need to change the diary categories for specific impairments, it has involved a change in classification from permanent to nonpermanent impairments. For example, we changed the overall classification of HIV from a permanent to nonpermanent impairment. We have not identified any permanent impairments for which a 5-year review period is medically appropriate. Based on this experience, we believe that maintaining the variable period of review for permanent impairments is not necessary. Therefore, we propose to set the review period for permanent impairments, that is, the MINE diary, at 6 years in order to identify such improvement at its earliest point while providing enhanced consistency and clarity surrounding the review cycle's timeline.

We propose to revise the timeframes for the frequency of the medical diary categories as described above for the same reasons we propose to expand the medical diary categories, to ensure that we continue to identify MI at its earliest point so that beneficiaries who have medically improved and are no longer disabled return to the workforce at the earliest point possible.

As a result of the addition of the MIL category and the change in frequency for certain categories, we expect the following workload shifts in the anticipated number of full medical CDRs completed over the 10-year period from FYs 2020–2029:

Diary category	CDRs under current category [1]	CDRs under proposed category [1]	Net change [1]	Percent change vs. current category total
MIE	986	1,205	219	22.2

[73] 20 CFR 404.1590(c), (d), 416.990(c), (d).

[74] 51 FR 16821 (May 7, 1985).

[75] *Id.*

Diary category	CDRs under current category [1]	CDRs under proposed category [1]	Net change [1]	Percent change vs. current category total
MIL	.....	1,764	1,764	.....
MIP	4,605	3,738	−867	−18.8
MINE	559	559	.....	.....
Total	6,150	7,267	1,116	18.1

[1] Calculated in thousands.

Although we are proposing to revise the criteria for assigning diary categories to cases and to revise the frequency of CDRs for some cases, we are not changing the manner in which we conduct CDRs. We will continue to decide whether to initiate a FMR or send a mailer after profiling all cases to identify the likelihood of MI, as described in section I.B. above.

D. Additional Technical Changes

We propose to remove §§ 404.1577 *Disability defined for widows, widowers, and surviving divorced spouses for monthly benefits payable for months prior to January 1991,* 404.1578 *How we determine disability for widows, widowers, and surviving divorced spouses for monthly benefits payable for months prior to January 1991,* and 404.1579 *How we will determine whether your disability continues or ends.* The rules in these sections apply to determining disability or continuing disability for widows, widowers, or surviving divorced spouses monthly benefits [76] payable for months prior to January 1991. All widows, widowers, and surviving divorced spouses who were affected by this regulation have reached full retirement age and are receiving monthly benefits based on age, not disability. Therefore, the regulations are obsolete and no longer needed.

We also propose to revise § 404.1511 *Definition of disabling impairment,* which refers to the standard for widows, widowers, and surviving divorced spouses for monthly benefits for months prior to January 1991. In alignment with the removal of § 404.1579, we propose to revise § 404.1501 *Scope of subpart,* § 404.1505 *Basic definition of disability,* § 404.1529 *How we evaluate symptoms, including pain,* and § 404.1593 *Medical evidence in continuing disability review cases,* which refer to § 404.1579. Finally, we propose to revise § 404.335 *How do I become entitled to widow's or widower's benefits?,* § 404.336 *How do I become entitled to widow's or widower's benefits as a surviving divorced spouse?,* and § 404.1576 *Impairment-related work expenses,* which refer to § 404.1577 or § 404.1578.

We propose to revise current §§ 404.1590(f)–(g) and 416.990(f)–(g) (proposed §§ 404.1590(e)–(f) and 416.990(e)–(f)) to improve readability. We also propose to remove the reference to the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98–460) in current §§ 404.1590(g) and 416.990(g) because the reviews required by this law were a one-time workload and have been completed.

We propose to make conforming changes in proposed §§ 404.1590(h) and 416.990(h) to reflect the redesignation of current §§ 404.1590(b)(4)–(b)(8), 404.1590(i), 416.990(b)(4)–(b)(8), and 416.990(i).

E. What Rules Are Not Changing

We are not changing the Medical Improvement Review Standard that we use to determine whether a person continues to meet the disability requirements of the Act.[77]

The rule that we will not initiate a medical CDR during any period in which a person is using a ticket under the Ticket to Work program remains in place with no change.[78] The primary purpose of this provision is to ensure that Ticket to Work program participants are not inhibited in their attempts to work or pursue an employment plan by the fear that such activities will increase the likelihood that their benefits will be terminated in a medical review. This provision allows people to seek the services they need to work without increasing the likelihood that their benefits will be terminated by a CDR. This protection from a CDR will remain available for people who are using a ticket to work, and the incentive to participate enhanced.

We are also not changing the rule that exempts work activity as the sole basis for initiating a medical CDR for people who work and receive benefits based on disability under title II of the Act.[79] This protection will continue for people who work and have received disability benefits under title II. As noted in section I.A. above, we will initiate regularly scheduled medical CDRs that are not triggered by work.

III. Other Considerations

A. How Long These Proposed Rules Would Remain in Effect

If we publish these proposed rules as final rules, they would remain in effect until we revise or rescind them.

B. Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. Therefore, in addition to substantive comments on these proposed rules, we invite comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Is there clarity surrounding how diary assignments would change?
- Do we have the correct classifications for impairments that would shift into the MIL or other diary categories?
- Have we organized the material to suit the needs of the reader?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of those relevant comments we received along with responses and

[76] See 20 CFR 404.335(c).

[77] 42 U.S.C. 423(f); 20 CFR 404.1594, 416.994, 416.994a.

[78] 42 U.S.C. 1320b–19; 20 CFR 404.1590(h), 411.165–411.226, 416.990(h).

[79] 42 U.S.C. 421(m); 20 CFR 404.1590(i), 416.990(i).

an explanation of how we will apply the new rules.

IV. Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) on the significance of these proposed rules. Because the projected 10-year administrative costs of these proposed rules are $1.8 billion, we determined that this NPRM meets the criteria for a significant economic regulatory action under Executive Order 12866, section 3(f)(1), as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Executive Order 13132 (Federalism)

We analyzed this NPRM in accordance with the principles and criteria established by Executive Order 13132, and determined that the proposed rules will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this NPRM will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this NPRM will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Executive Order 13771

Based upon the criteria established in Executive Order 13771, we have identified the anticipated program costs and administrative costs as the following. These estimates are based on the sub-regulatory assumptions detailed in the diary category descriptions in the preceding pages and the supplemental document titled: ''Underlying Assumptions on Impairments in CDR Diary Categories.''

Anticipated Costs to Our Programs

We estimate, based on the best available data, that this proposed rule, assuming that rediarying under the proposal would be implemented for all medical determinations or decisions made on or after June 1, 2020, would result in a net increase of roughly 2.6 million additional CDRs over the period from FY 2020–2029—1.1 million (an 18.4 percent increase) additional FMRs and 1.5 million additional CDR mailer reviews. The additional FMRs are estimated to result in a net reduction in Old-Age, Survivors, and Disability Insurance benefit payments of $2.0 billion and a net decrease in federal SSI payments of $0.6 billion over that same period.

Anticipated Costs to the Public

As discussed previously, we anticipate conducting an additional 1.1 million additional full medical reviews from FYs 2020–2029 and an additional 1.5 million CDR mailer reviews when we implement these proposed rules following publication of final rules. We estimate that these additional CDRs will result in increased public ''opportunity costs'' of $16,352,000 over a 10-year period. This figure represents an estimated hourly average Disability Insurance (DI) payment (in lieu of an hourly wage, since respondents to this collection are not generally employed) of $10.22 multiplied by the additional annual burden hours resulting from the increased use of the two CDR Information Collection Requests (ICR) (OMB No. 0960–0072, full medical review and OMB No. 0960–0511, CDR Mailer) × 10 (representing a 10-year period). To clarify, this figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete a CDR ICR; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete OMB No. 0960–0072 or OMB No. 0960–0511 as a result of this policy.

In some, though not all, cases, we may need to ask respondents' medical offices to provide us with updated medical records to supplement the CDR documentation submitted by the respondents. The time these offices' administrative staff spend to gather and submit files to us represents another potential source of opportunity costs. However, since we do not have data on the percentage of cases in which we need to request additional information, it is not currently possible for us to estimate lost opportunity costs in this area. However, if the public wishes to submit comments on this issue, we will take them under consideration for future opportunity cost calculations.

The ''Paperwork Reduction Act'' section below in the preamble provides full burden calculations, including the time burden computations that informed the theoretical cost figure above. As discussed in that section, we are soliciting any additional feedback on assumptions made regarding the time burden of this collection and the theoretical opportunity cost to beneficiaries.

Anticipated Administrative Costs to SSA

Our Office of Budget, Finance, and Management estimates increased administrative program integrity costs, in addition to current costs, of approximately $1.8 billion for the 10-year period from FYs 2020–2029. The costs are driven largely by a projected net increase of roughly 2.6 million CDRs over the 10-year timeframe. This NPRM assumes the fully-loaded costs of performing the full medical CDRs, work CDRs, and mailers, consistent with methodology used in the budget.

Paperwork Reduction Act

We use two existing OMB-approved ICRs as part of the medical review process: OMB No. 0960–0072 (''Continuing Disability Review Report,'' which is the full CDR form) and OMB No. 0960–0511 (''Disability Report Update,'' which is the abbreviated mailer CDR). We will not be changing these ICRs in any way to support these proposed rules. However, because the core policy of these proposed rules will cause a change in the frequency of use of these forms, increasing their public reporting burden for the first 10 years after implementation of the final rules, we are seeking OMB re-approval under the Paperwork Reduction Act for these ICRs. While the public is able to comment on any aspects of these ICRs, since we are only changing their frequency of use, not their content, comments speaking to the former issue would be most useful.

Below are charts showing current burden estimates (time and associated opportunity costs) for both ICRs, as well as the total expected increase (the difference between the current and new estimates) resulting from implementation of the final rules. These estimates also helped to drive the opportunity cost figures cited in the ''Anticipated Costs to the Public'' section above.

TABLE 1—CURRENT AND PROJECTED NEW ANNUAL BURDEN FIGURES FOR CDR ICR OMB NO. 0960–0072

["Full" CDR; Form SSA–454]

	Number of respondents	Response time (minutes)	Burden hours (respondents × response time/60)	Opportunity costs/hour	Total opportunity costs (burden hours × opportunity cost per hour)
Current Burden	703,000	60	703,000 hours	* $10.22	$7,184,660.
Projected New Annual Burden Upon Publication of a Final Rule for this Proposal.	813,000	60	813,000 hours	* 10.22	8,308,860.
Burden Change Resulting from Regulation.	110,000		+110,00 burden hours		+$1,124,200 opportunity costs.

TABLE 2—CURRENT AND PROJECTED NEW ANNUAL BURDEN FIGURES FOR CDR ICR OMB NO. 0960–0511

["Mailer" CDR; Form SSA–455]

	Number of respondents	Response time (minutes)	Burden hours (respondents × response time/60)	Opportunity costs/hour	Total opportunity costs (burden hours × opportunity cost per hour)
Current Burden	1,100,000	15	275,000 hours	* $10.22	$2,810,500
Projected New Annual Burden Upon Publication of a Final Rule for this Proposal.	1,300,000	15	325,000 hours	* 10.22	3,321,500
Burden Change Resulting from Regulation.	200,000		50,000 burden hours		+$511,000

* Calculated based on average DI payments.

Total Costs Associated With Implementation of These Proposed Rules Upon Publication in Final

- *Time Burden:* 160,000 burden hours (110,000 burden hour increase for OMB No. 0960–0072 plus 50,000 burden hour increase for OMB No. 0960–0511);
- *Opportunity Cost Burden:* $1,635,200 ($1,124,200 burden-associated opportunity cost increase for OMB No. 0960–0072 plus $511,000 for burden-associated opportunity cost increase for OMB No. 0960–0511).

We are submitting an ICR for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

You can submit comments until January 17, 2020, which is 60 days after the publication of this NPRM. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security Disability Insurance; 96.002, Social Security Retirement Insurance; 96.004, Social Security Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI).

Andrew Saul,

Commissioner of Social Security.

For the reasons stated in the preamble, we propose to amend 20 CFR, chapter III, part 404, subparts D and P, and part 416, subpart I, as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950)

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

■ 1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, and 902(a)(5)).

■ 2. Amend § 404.335 by revising the paragraph (b) introductory text and removing paragraph (b)(4):

§ 404.335 How do I become entitled to widow's or widower's benefits?

* * * * *

(b) You apply, except that you need not apply again if you meet one of the conditions in paragraphs (b)(1) through (3) of this section:

* * * * *

■ 3. Amend § 404.336 by revising the paragraph (b) introductory text and removing paragraph (b)(4):

§ 404.336 How do I become entitled to widow's or widower's benefits as a surviving divorced spouse?

* * * * *

(b) You apply, except that you need not apply again if you meet one of the conditions in paragraphs (b)(1) through (3) of this section:

* * * * *

Subpart P—Determining Disability and Blindness

■ 4. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202. 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a—(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 5. Amend § 404.1501 by revising paragraph (i) and the first sentence of paragraph (j) to read as follows:

§ 404.1501 Scope of subpart.

* * * * *

(i) In §§ 404.1581 through 404.1587 we discuss disability due to blindness.

(j) Our rules on when disability continues and stops are contained in §§ 404.1588 through 404.1598. * * *

* * * * *

■ 6. Amend § 404.1505 by revising paragraph (b) to read as follows:

§ 404.1505 Basic definition of disability.

* * * * *

(b) There are different rules for determining disability for individuals who are statutorily blind. We discuss these in §§ 404.1581 through 404.1587.

* * * * *

§ 404.1511 [Amended]

■ 7. Amend § 404.1511 by removing and reserving paragraph (b).

■ 8. Amend § 404.1529 by revising the last sentence of paragraph (d) introductory text to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

* * * * *

(d) * * * Section 404.1594 explains the procedure we follow in reviewing whether your disability continues.

* * * * *

■ 9. Amend § 404.1576 by revising paragraph (b)(1) to read as follows:

§ 404.1576 Impairment-related work expenses.

* * * * *

(b) * * *

(1) You are otherwise disabled as defined in §§ 404.1505 and 404.1581–404.1583;

* * * * *

§ 404.1577 [Removed and Reserved]

■ 10. Remove and reserve § 404.1577.

§ 404.1578 [Removed and Reserved]

■ 11. Remove and reserve § 404.1578.

§ 404.1579 [Removed and Reserved]

■ 12. Remove and reserve § 404.1579.

■ 13. Amend § 404.1590 by:

■ a. Revising paragraph (a);

■ b. Revising the introductory text of paragraph (b), and revising paragraph (b)(1);

■ c. Removing paragraph (b)(2);

■ d. Redesignating paragraphs (b)(3) through (b)(10) as (b)(2) through (b)(9);

■ e. Removing the parenthetical sentence in redesignated paragraph (b)(2);

■ f. Revising redesignated paragraph (b)(6);

■ g. Revising paragraph (c);

■ h. Removing paragraph (d);

■ i. Redesignating paragraphs (e) through (i) as paragraphs (d) through (h);

■ j. Revising the second sentence in newly redesignated paragraph (d);

■ k. Revising redesignated paragraphs (e) and (f);

■ l. Revising the introductory text of newly redesignated paragraph (h)(1), and paragraph (h)(1)(ii);

■ m. Revising the first sentence of newly redesignated paragraph (h)(2)(i);

■ n. Revising the first sentence of newly redesignated paragraph (h)(2)(ii);

■ o. Revising the first sentence of newly redesignated paragraph (h)(3);

■ p. Revising newly redesignated paragraph (h)(4); and

■ q. Revising newly redesignated paragraph (h)(5)(i).

The revisions to read as follows.

§ 404.1590 When and how often we will conduct a continuing disability review.

(a) *General.* We conduct continuing disability reviews to determine whether or not you continue to meet the disability requirements of the law. Payment of cash benefits or a period of disability ends if the medical or other evidence shows that you are not disabled as determined under the standards set out in section 223(f) of the Social Security Act. In paragraphs (b) through (f) of this section, we explain when and how often we conduct continuing disability reviews for most people. In paragraph (g) of this section, we explain special rules for some people who are participating in the Ticket to Work program. In paragraph (h) of this section, we explain special rules for some people who work.

(b) *When we will conduct a continuing disability review.* Except as provided in paragraphs (g) and (h) of this section, we will start a continuing disability review if—

(1) You have been scheduled for one of the following diary reviews:

(i) A medical improvement expected diary review;

(ii) A medical improvement likely diary review;

(iii) A medical improvement possible diary review; or

(iv) A medical improvement not expected diary review;

* * * * *

(6) Your employment network under the Ticket to Work program or State Vocational Rehabilitation Agency tells us that:

(i) * * *

* * * * *

(c) *Definitions.* As used in this section—

Medical improvement expected (MIE) diary refers to a diary set for a case, which we schedule for review because your impairment(s) is expected to improve. Generally, the MIE diary period is set for not less than 6 months or for not more than 18 months. We publish and maintain a list of impairments that we expect to improve in our employee operating instructions, which are publicly accessible.

Medical improvement likely (MIL) diary refers to a diary set for a case, which we schedule for review because your impairment(s) is likely to improve. We may also include determinations or decisions that we make at step 5 of the sequential evaluation process (see § 404.1520(a)(4)(v) and (g) of this chapter. Generally, the MIL diary period is set for 2 years. We publish and maintain a list of impairments that we consider likely to improve in our employee operating instructions, which are publicly accessible.

Medical improvement possible (MIP) diary refers to a diary set for a case, which we schedule for review because your nonpermanent impairment(s) will possibly improve but we cannot determine with certainty that it is likely to improve. Generally, the MIP diary period is set for 3 years. We will assign this diary if your impairment(s) is nonpermanent and is not on the lists of impairments that we publish and maintain for MIE and MIL diaries.

Medical improvement not expected (MINE) diary refers to a diary set for a case, which we schedule for review when we consider your impairment(s) permanent and for which we do not expect medical improvement in your impairment(s). We may consider the interaction of your age, consequences of your impairment(s), and lack of recent attachment to the labor market in determining whether to set a MINE diary. Generally, the MINE diary period is set for 6 years. We publish and maintain a list of impairments that we consider likely to improve in our employee operating instructions, which are publicly accessible.

Nonpermanent impairment means an impairment that we do not consider

permanent and for which improvement is expected, likely, or possible, but cannot be predicted based on current experience and the facts of the particular case. We assign cases with nonpermanent impairments to one of the following diary categories: MIE, MIL, and MIP.

Permanent impairment means an impairment for which we do not expect medical improvement. A permanent impairment is an extremely severe condition determined on the basis of our experience in administering the disability programs to be at least static, but more likely to be progressively disabling, either by itself or by reason of impairment complications, and unlikely to improve so as to permit you to engage in substantial gainful activity. Improvement which is considered temporary under § 404.1594(c)(3)(iv) of this subpart will not be considered in deciding if an impairment is permanent. We assign cases with permanent impairments to the MINE diary category.

Vocational reexamination diary refers to a case, which is scheduled for review at a later date because you are undergoing vocational therapy, training or an educational program which may improve your ability to work so that the disability or blindness requirement of the law is no longer met. Generally, the diary period will be set for the length of the training, therapy, or program of education.

(d) * * * A change in the classification of your impairment may change the frequency with which we will review your case. * * *

(e) *Review after administrative appeal.* If you were found eligible to receive or to continue to receive, disability benefit payments on the basis of a decision by an administrative law judge, the Appeals Council or a Federal court, we will not conduct a continuing disability review earlier than 3 years after that decision unless—

(1) Your case should be scheduled for a MIE, MIL, or vocational reexamination diary review; or

(2) A question of continuing disability is raised under paragraph (b) of this section.

(f) *Waiver of timeframes.* We will review all cases with a nonpermanent impairment at least once every 3 years unless we, after consultation with the State agency, determine that the requirement should be waived to ensure that only the appropriate number of cases are reviewed. We will base the appropriate number of cases we will review on such considerations as the number of pending reviews, the projected number of new applications, and projected staffing levels. We will grant such waiver only after good faith effort on the part of the State to meet staffing requirements and to process the reviews on a timely basis. We may also consider availability of independent medical resources. A waiver in this context refers to our administrative discretion to determine the appropriate number of cases to be reviewed on a State-by-State basis. Therefore, under certain circumstances, we may delay your continuing disability review longer than 3 years following our original determination or decision or other review. We would base the delay on our need to ensure that pending reviews and new disability claims workloads are accomplished within available medical and other resources in the State agency and that such reviews are done carefully and accurately.

* * * * *

(h) * * *

(1) *General.* Notwithstanding the provisions in paragraphs (b)(3), (b)(4), (b)(5)(ii), (b)(6)(ii), and (b)(7)(iii) of this section, we will not start a continuing disability review based solely on your work activity if:

* * * * *

(ii) You have received such benefits for at least 24 months (see paragraph (h)(2) of this section).

(2) *The 24-month requirement.* (i) The months for which you have actually received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability that you were due under title II of the Social Security Act, or for which you have constructively received such benefits, will count for the 24-month requirement under paragraph (h)(1)(ii) of this section, regardless of whether the months were consecutive. * * *

(ii) In determining whether paragraph (h)(1) of this section applies, we consider whether you have received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act for at least 24 months as of the date on which we start a continuing disability review. * * *

(3) *When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months.* Even if you meet the requirements of paragraph (h)(1) of this section, we may still start a continuing disability review for a reason(s) other than your work activity. * * *

(4) *Reviews to determine whether the work you have done shows that you are able to do substantial gainful activity.* Paragraph (h)(1) of this section does not apply to reviews we conduct using the rules in §§ 404.1571–404.1576 of this subpart to determine whether the work you have done shows that you are able to do substantial gainful activity and are, therefore, no longer disabled.

(5) * * *

(i) You provide us evidence that establishes that you met the requirements of paragraph (h)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and

* * * * *

■ 14. Amend § 404.1593 by revising the last sentence of paragraph (a) to read as follows:

§ 404.1593 Medical evidence in continuing disability review cases.

(a) * * * See § 404.1594.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

■ 15. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Sec. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 16. Amend § 416.990 by:
■ a. Revising paragraph (a);
■ b. Revising the introductory text of paragraph (b), and paragraph (b)(1);
■ c. Removing paragraph (b)(2);
■ d. Redesignating paragraphs (b)(3) through (b)(10) as (b)(2) through (b)(9);
■ e. Removing the parenthetical sentence in newly redesignated paragraph (b)(2);
■ f. Revising newly redesignated paragraph (b)(6);
■ g. Revising paragraph (c);
■ h. Removing paragraph (d);
■ i. Redesignating paragraphs (e) through (i) as paragraphs (d) through (h);
■ j. Revising the second sentence in newly redesignated paragraph (d);
■ k. Revising newly redesignated paragraphs (e) and (f);
■ l. Revising newly redesignated paragraph (h) by revising the introductory text of paragraph (h)(1);

■ m. Revising newly redesignated paragraph (h)(1)(ii);
■ n. Revising the first sentence of newly redesignated paragraph (h)(2)(i);
■ o. Revising the first sentence of newly redesignated paragraph (h)(2)(ii);
■ p. Revising the first sentence of newly redesignated paragraph (h)(3); and
■ q. Revising newly redesignated paragraph (h)(4)(i).

§ 416.990. When and how often we will conduct a continuing disability review.

(a) *General.* We conduct continuing disability reviews to determine whether or not you continue to meet the disability or blindness requirements of the law. Payment ends if the medical or other evidence shows that you are not disabled or blind as determined under the standards set out in section 1614(a) of the Social Security Act if you receive benefits based on disability or § 416.986 of this subpart if you receive benefits based on blindness. In paragraphs (b) through (f) of this section, we explain when and how often we conduct continuing disability reviews for most people. In paragraph (g) of this section, we explain special rules for some individuals who are participating in the Ticket to Work program. In paragraph (h) of this section, we explain special rules for some people who work and have received social security benefits as well as supplemental security income payments.

(b) *When we will conduct a continuing disability review.* Except as provided in paragraphs (g) and (h) of this section, we will start a continuing disability review if—

(1) You have been scheduled for one of the following diary reviews:

(i) A medical improvement expected diary review;

(ii) A medical improvement likely diary review;

(iii) A medical improvement possible diary review; or

(iv) A medical improvement not expected diary review;

* * * * *

(6) Your employment network under the Ticket to Work program or State Vocational Rehabilitation Agency tells us that:

(i) * * *

* * * * *

(c) *Definitions.* As used in this section—

Medical improvement expected (MIE) diary refers to a diary set for a case, which we schedule for review because your impairment(s) is expected to improve. Generally, the MIE diary period is set for not less than 6 months or for not more than 18 months. We publish and maintain a list of impairments that we expect to improve in our employee operating instructions, which are publicly accessible.

Medical improvement likely (MIL) diary refers to a diary set for a case, which we schedule for review because your impairment(s) is likely to improve. We also include determinations made at step 5 of the sequential evaluation process (see §§ 416.920(a)(4)(v) and (g) of this chapter). Generally, the MIL diary period is set for 2 years. We publish and maintain a list of impairments that we consider likely to improve in our employee operating instructions, which are publicly accessible.

Medical improvement possible (MIP) diary refers to a diary set for a case, which we schedule for review because your impairment(s) will possibly improve but we cannot determine with certainty that it is likely to improve. Generally, the MIP diary period is set for 3 years. We will assign this diary if your impairment(s) is nonpermanent and is not on the lists of impairments that we publish and maintain for MIE and MIL diaries.

Medical improvement not expected (MINE) diary refers to a diary set for a case, which we schedule for review when we consider your impairment(s) permanent and for which we do not expect medical improvement in your impairment(s). We may consider the interaction of your age, consequences of your impairment(s), and lack of recent attachment to the labor market in determining whether to set a MINE diary. Generally, the MINE diary period is set for 6 years. We publish and maintain a list of impairments that we consider permanent in our employee operating instructions, which are publicly accessible.

Nonpermanent impairment means an impairment that we do not consider permanent and for which improvement is expected, likely, or possible, but cannot be predicted based on current experience and the facts of the particular case. We assign cases with nonpermanent impairments to one of the following diary categories: MIE, MIL, and MIP.

Permanent impairment means an impairment for which we do not expect medical improvement. A permanent impairment is an extremely severe condition determined on the basis of our experience in administering the disability programs to be at least static, but more likely to be progressively disabling either by itself or by reason of impairment complications, and unlikely to improve so as to permit you to engage in substantial gainful activity, or if you are a child, unlikely to improve to the point that you will no longer have marked and severe limitations. Improvement which is considered temporary under § 416.994(b)(2)(iv)(D) or § 416.994a(c)(3) of this subpart, will not be considered in deciding if an impairment is permanent. We assign cases with permanent impairments to the MINE diary category.

Vocational reexamination diary refers to a case, which is scheduled for review at a later date because the individual is undergoing vocational therapy, training or an educational program which may improve his or her ability to work so that the disability or blindness requirement of the law is no longer met. Generally, the diary period will be set for the length of the training, therapy, or program of education.

(d) * * * A change in the classification of your impairment may change the frequency with which we will review your case. * * *

(e) *Review after administrative appeal.* If you were found eligible to receive or to continue to receive, disability benefit payments on the basis of a decision by an administrative law judge, the Appeals Council or a Federal court, we will not conduct a continuing disability review earlier than 3 years after that decision unless—

(1) Your case should be scheduled for a MIE, MIL, or vocational reexamination diary review; or

(2) A question of continuing disability is raised under paragraph (b) of this section.

(f) *Waiver of timeframes.* We will review all cases with a nonpermanent impairment at least once every 3 years unless we, after consultation with the State agency, determine that the requirement should be waived to ensure that only the appropriate number of cases are reviewed. We will base the appropriate number of cases we will review on such considerations as the number of pending reviews, the projected number of new applications, and projected staffing levels. We will grant such waiver only after good faith effort on the part of the State to meet staffing requirements and to process the reviews on a timely basis. We may also consider availability of independent medical resources. A waiver in this context refers to our administrative discretion to determine the appropriate number of cases to be reviewed on a State-by-State basis. Therefore, under certain circumstances, we may delay your continuing disability review longer than 3-years following our original determination or decision or other review. We would base the delay on our need to ensure that pending reviews and new disability claims workloads are

accomplished within available medical and other resources in the State agency and that such reviews are done carefully and accurately.

* * * * *

(h) * * *

(1) *General.* Notwithstanding the provisions in paragraphs (b)(3), (b)(4), (b)(5)(ii), (b)(6)(ii), and (b)(7)(iii) of this section, we will not start a continuing disability review based solely on your work activity if:

* * * * *

(ii) You have received such benefits for at least 24 months (see paragraph (h)(2) of this section).

(2) * * * (i) The months for which you have actually received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability that you were due under title II of the Social Security Act, or for which you have constructively received such benefits, will count for the 24-month requirement under paragraph (h)(1)(ii) of this section, regardless of whether the months were consecutive. * * *

(ii) In determining whether paragraph (h)(1) of this section applies, we consider whether you have received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act for at least 24 months as of the date on which we start a continuing disability review. * * *

(3) *When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months.* Even if you meet the requirements of paragraph (h)(1) of this section, we may still start a continuing disability review for a reason(s) other than your work activity. * * *

(4) * * *

(i) You provide us evidence that establishes that you met the requirements of paragraph (h)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and

* * * * *

[FR Doc. 2019–24700 Filed 11–15–19; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0990; FRL–10002–03–Region 5]

Air Plan Approval; Ohio; Prevention of Significant Deterioration Greenhouse Gas Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), a revision to Ohio's State Implementation Plan (SIP), submitted by the Ohio Environmental Protection Agency (OEPA) on March 30, 2011 and amended on August 22, 2019. The proposed SIP revision modifies Ohio's Prevention of Significant Deterioration (PSD) program to establish emission thresholds for determining when stationary source projects are potentially subject to Ohio's PSD permitting requirements for greenhouse gas (GHG) emissions. Consistent with Ohio's August 22, 2019, request, EPA is not acting on the portion of Ohio's submittal that would allow for automatic rescission of certain rule provisions and permit terms and conditions if certain triggering events occurred (*i.e.,* the auto-rescission clause).

DATES: Comments must be received on or before December 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0990 at *http://www.regulations.gov,* or via email to *ogulei.david@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Angelbeck, Environmental Scientist, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9698, *angelbeck.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background for our Proposed Action
II. EPA's Analysis of the State's Submittal
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background for Our Proposed Action

This section briefly summarizes EPA's GHG-related actions that provide the background for this proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, background information is contained in what we call the GHG PSD SIP Narrowing Rule,[1] and in the preambles to the actions it cites.

A. GHG-Related Actions

EPA has undertaken a series of actions pertaining to the regulation of GHGs that establish the overall framework for this proposed action on the Ohio SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and the ''Cause or Contribute Finding,'' which EPA issued in a single final action;[2] the ''Johnson Memo Reconsideration;''[3] the ''Light-Duty Vehicle Rule (LDVR);''[4] and the ''Tailoring Rule.''[5] Taken together and in conjunction with the CAA, these actions established

[1] See ''Limitation of Approval of Prevention of Significant Deterioration provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

[2] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a)of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[3] See ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[4] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[5] ''Prevention of Significant Deterioration and Tile V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this limiting action in the GHG Tailoring Rule (Tailoring Rule), which more specifically established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a Federal Implementation Plan (FIP).[6] States without approved SIP programs must implement the Federal PSD requirements in 40 Code of Federal Regulations (CFR) 52.21. Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6).

As of January 2, 2011, GHG emissions were, for the first time, covered by the title V operating permit and PSD programs via the Tailoring Rule. In Step 1 of the Tailoring Rule (Step 1), EPA limited application of title V and PSD requirements to sources and modifications of GHG emissions, but only if they were subject to PSD or title V ''anyway'' due to their emissions of pollutants other than GHGs. These sources and modifications covered under Step 1 are commonly referred to as ''anyway sources'' and ''anyway modifications'', respectively.

In Step 2 of the Tailoring Rule (Step 2), which applied as of July 1, 2011, the PSD and title V requirements extended beyond the sources and modifications covered under Step 1 to apply to sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in the Federal PSD regulations. EPA generally described the sources and modifications covered by PSD under Step 2 of the Tailoring Rule as ''Step 2 sources and modifications'' or ''GHG only sources and modifications.''

In accordance with the phase-in process of the Tailoring Rule, EPA published Step 3 of the Tailoring Rule on July 12, 2012. See 77 FR 41051. In this rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions, thus the GHG thresholds remained the same as established in Steps 1 and 2 of the Tailoring Rule.

Federal courts have resolved several challenges to the Tailoring Rule and other EPA actions regarding GHGs. On June 26, 2012, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld the Endangerment Finding, LDVR, Tailoring Rule, and other actions pertinent to the regulation of GHGs under the PSD and title V programs. After an appeal of this case, on June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group (UARG)* v. *EPA, 134 S. Ct. 2427 (2014).* The Supreme Court upheld EPA's regulation of GHG Step 1 or ''anyway'' sources, but held that EPA may not treat GHGs as air pollutants for the purpose of determining whether a source is a major source or is undergoing a major modification and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated the PSD and title V permitting requirements for Step 2 sources and modifications.

In accordance with the Supreme Court's decision, on April 10, 2015, the D.C. Circuit issued an Amended Judgment[7] vacating the regulations that implemented Step 2 of the Tailoring Rule, but not the regulations that implement Step 1 of the Tailoring Rule. The 2015 Amended Judgment specifically vacated the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.'' Id. at 7–8.

In a subsequent rulemaking, on August 19, 2015, EPA removed from the CFR several provisions of the PSD and title V permitting regulations that were originally promulgated as part of the Tailoring Rule. See ''Prevention of Significant Deterioration and title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements'' (80 FR 50199, August 19, 2015). This ''good cause'' final rule removed from the Federal regulations the portions of the PSD permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (*i.e.,* 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources. On October 3, 2016, EPA proposed revisions to the PSD permitting regulations applicable to GHGs to address the GHG applicability threshold for PSD in order to fully conform with the 2014 UARG decision and the 2015 Amended Judgment, but those revisions have not been finalized. See 81 FR 68110.

B. Ohio's Actions

The Tailoring Rule requested all states to submit a letter to EPA, by August 2, 2010, explaining how the state intended to implement the GHG PSD and title V permitting requirements and whether it had authority to implement those requirements. 75 FR 31514 (June 3, 2010). On July 26, 2010, Ohio provided a letter to EPA confirming that the state has the authority to regulate GHGs in its PSD program. The letter provided that Ohio intended to apply the meaning of the term ''subject to regulation'' that EPA established in the Tailoring Rule. The letter also confirmed Ohio's intent to amend its air quality rules for the PSD program for GHGs to match the thresholds set in the Tailoring Rule. See

[6] Specifically, by action dated December 13, 2010, EPA finalized a ''SIP Call'' that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. See ''Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (Dec. 13, 2010). EPA has made findings of failure to submit that would apply in any state unable to submit the required SIP revision by its deadline, and finalizing FIPs for such states. See, *e.g.,* ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Findings of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,'' 75 FR 81874 (December 29, 2010); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan, ''75 FR 82246 (December 30, 2010).

[7] See Coalition for Responsible Regulation, Inc. v. EPA, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015).

the docket for this proposed rulemaking for a copy of Ohio's letter.

In the SIP Narrowing Rule, 75 FR 82536 (December 30, 2010), EPA withdrew its approval of certain provisions of Ohio's SIP, among other SIPs, to the extent that those provisions applied PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.[8] As a result, Ohio's current SIP provides the state with authority to regulate GHGs but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

Ohio's proposal to revise its SIP so as to limit PSD applicability to the higher GHG emissions thresholds in the Tailoring Rule is consistent with CAA section 110(a)(2)(E)(i), which requires states to provide necessary assurances that they have adequate funding and personnel to implement their SIPs. In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,[9] and no state, including Ohio, asserted that it did have adequate resources to do so.[10]

In the SIP Narrowing Rule, EPA found that the affected states, including Ohio, had a flaw in their SIPs at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.[11] Accordingly, for each affected state, including Ohio, EPA concluded, under CAA section 110(k)(6), that EPA's action in approving the SIP was in error, and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.[12] EPA recommended that states adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under state law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the federally-approved SIP by clarifying that the SIP only applies to sources at or above the Tailoring Rule thresholds.[13] Ohio revised its PSD and title V rules by creating Ohio Administrative Code (OAC) rules 3745–31–34 and 3745–77–11, respectively (Ohio's GHG rules) to ensure that its authority to implement GHG permitting requirements under the PSD and title V programs is consistent with the authority authorized by EPA in the Tailoring Rule. Ohio's rule revisions also incorporated the GHG PSD applicability thresholds that EPA established in the Tailoring Rule. Approval of Ohio's SIP revision would resolve a flaw in the SIP as addressed by the SIP Narrowing Rule.

II. EPA's Analysis of the State's Submittal

The regulatory revisions that OEPA submitted for approval on March 30, 2011, establish thresholds for determining which stationary sources and modifications become subject to permitting requirements for GHG emissions under OEPA's PSD program. Specifically, the submittal includes proposed changes to Ohio's PSD regulations and requests that EPA approve and incorporate into Ohio's federally-approved SIP OAC rule 3745–31–34, that Ohio adopted on March 21, 2011. Upon approval, this revision to Ohio's SIP will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule which will clarify the applicable GHG thresholds in the Ohio SIP.

Ohio is currently a SIP-approved state for the PSD program and has previously incorporated some elements of EPA's 2002 New Source Review (NSR) reform revisions, 67 FR 80186 (December 31, 2002) for PSD into its SIP, 75 FR 8496 (February 25, 2010). In a letter provided to EPA on July 26, 2010, Ohio notified EPA of its interpretation that the state currently has the authority to regulate GHGs under its PSD regulations. Ohio's PSD SIP, which EPA approved prior to the promulgation of the Tailoring Rule, applies to major stationary sources (having the potential to emit at least 100 tpy or 250 tpy or more of a regulated NSR pollutant, depending on the type of source) or modifications undertaken in areas designated attainment or unclassifiable with respect to the National Ambient Air Quality Standards.

On August 22, 2019, Ohio sent a letter to EPA requesting that EPA not act on OAC 3745–31–34(C) and (D) as well as OAC 3745–77–11, but to move forward with the approval of the remainder of OAC 3745–31–34 (OAC 3745–31–34(A),(B),(E),(F) and (G)), thus amending Ohio's March 30, 2011 SIP submittal. OAC 3745–31–34(C) and (D) would allow for automatic rescission of certain GHG rule provisions and permit terms and conditions if certain triggering events occurred. Such provisions are commonly referred to as ''auto-rescission'' provisions or clauses. Consistent with Ohio's request, EPA is not acting on the auto-rescission provisions in this proposed approval. Per Ohio's request, EPA is also not acting on OAC 3745–77–11, Ohio's GHG title V rule.

The Ohio rules at OAC 3745–31–34(A) and (B) both include the 100,000 tpy carbon dioxide equivalent (CO2e) Step 2 source threshold which EPA no longer uses or enforces per the 2014 UARG decision and 2015 Amended Judgment. EPA proposes to approve OAC 3745–31–34(A) and (B) even though they include the outdated 100,000 tpy CO2e Step 2 threshold because those rules no longer authorize the regulation of Step 2 sources. Paragraph OAC 3745–31–34(A) requires permits for new major stationary sources that will emit or have the potential to emit 100,000 tpy or more of CO2e, and for modifications of existing stationary sources that will result in a net emissions increase of 75,000 tpy or more of CO2e, as provided in the Ohio GHG rule and ''only to the extent required in 40 CFR Section 151.166.'' EPA interprets the phrase ''and only to the extent required in 40 CFR Section 51.166'' in Ohio's rule to mean that Ohio will only regulate GHGs to the extent required in 40 CFR 51.166 (the Federal requirements governing PSD provisions in SIPs). Therefore, Ohio will regulate the Step 1 sources (75,000 tpy CO2e threshold) and not the Step 2 sources (100,000 tpy threshold) as provided in 40 CFR 51.166. EPA notes that Ohio's August 26, 2014 guidance document titled ''July 2014 GHG Air Pollution Permitting Change, Engineering Guide #85'' describes how the UARG decision affects Ohio's GHG permitting program and how Ohio will no longer require PSD or title V for Step 2 sources in response to the UARG decision. Ohio's guidance document says Ohio will continue to require new or modified Step 1 sources to apply Best Available Control Technology (BACT) for GHGs and will continue to use the 75,000 tpy CO2e threshold to determine if the permits need to include BACT for GHGs until such time as EPA issues a revised threshold. Ohio's guidance document also explains that OAC 3745–31–34 will be implemented in line with the UARG decision and EPA's subsequent regulatory revisions.

[8] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 December 30, 2010).

[9] Tailoring Rule, 75 FR 31517.

[10] PSD SIP Narrowing Rule, 75 FR 82540.

[11] *Id.* at 82542.

[12] *Id.* at 82544.

[13] *Id.* at 82540.

For the above reasons, EPA finds that Ohio is properly regulating GHGs in accordance with the 2014 UARG decision and 2015 Amended Judgement. Although OAC 3745–31–34(A) and (B) contain the 100,000 CO2e tpy Step 2 threshold which the UARG decision says cannot be enforced, EPA is proposing to approve those rules because Ohio is not regulating the Step 2 sources, and is only regulating the Step 1 sources.

III. What action is EPA taking?

EPA is proposing to approve Ohio's March 30, 2011, SIP submittal, as amended on August 22, 2019, relating to PSD requirements for GHG-emitting sources in OAC 3745–31–34. Specifically, Ohio's proposed SIP revision would establish appropriate emissions thresholds for determining PSD applicability for new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule and the 2014 UARG decision. Per Ohio's August 22, 2019, amended SIP request, EPA is not acting on the OAC 3745–31–34(C) and (D) auto-rescission clause or OAC 3745–77–11, which is Ohio's GHG title V rule.

If EPA does approve Ohio's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into Ohio's SIP, then 40 CFR 52.1873(b), as included in EPA's SIP Narrowing Rule, which codifies EPA's limiting its approval of Ohio's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds, is no longer necessary. In this proposed action, EPA is proposing to amend 40 CFR 52.1873(b) to remove this unnecessary regulatory language.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio OAC 3745–31–34(A), (B), (E), (F) and (G) effective on March 31, 2011. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 31, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2019–24688 Filed 11–15–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 222
Monday, November 18, 2019

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 12, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

DATES: Comments regarding these information collections are best assured of having their full effect if received by December 18, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Agricultural Marketing Service

Title: AMS Grant Programs.

OMB Control Number: 0581–0240.

Summary of Collection: In 2016, OMB approved 0581–0240 which combined five grant programs (1) the Federal-State Marketing Improvement Program (FSMIP), (2) the Farmers Market, (3) the Local Food Promotion Program (FMLFPP), (4) the Specialty Crop Multi-State Program (SCMP), and (5) the Specialty Crop Block Grant Program (SCBGP) into a single collection package entitled AMS Grant Programs. This renewal request is to extend AMS' current approval to collect information for these five grant programs and to add four additional grant programs to this collection. The four new grant programs are the Dairy Business Innovation (DBI) Initiatives, Regional Food System Partnerships (RFSP), the Sheep Production and Marketing Grant Program (SPMGP), and the Acer Access and Development Program (Acer).

AMS Grant Programs are authorized pursuant to the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621, *et. seq.*) and are implemented through the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super Circular) (2 CFR 200).

Need and Use of the Information: The information collected is needed to certify that grant participants are complying with applicable program regulations, and the data collected are the minimum information necessary to effectively carry out the requirements of the program. The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and for AMS to administer these programs. The purpose of AMS Grant Programs is to provide grants to eligible entities. Without the required information, AMS will not be able to review, award, reimburse, or monitor grants to eligible applicants.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 11,161.

Frequency of Responses: Recordkeeping; Reporting: Annually; Semi-annually.

Total Burden Hours: 49,807.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–24844 Filed 11–15–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Foreign Agricultural Service (FAS) to request an extension of a currently approved information collection for the USDA Local and Regional Food Aid Procurement Program.

DATES: Comments on this notice must be received by January 17, 2020.

ADDRESSES: FAS invites interested persons to submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www/regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4159, Mailstop 1034, Washington, DC 20250. Comments may also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.
- *Email: FAD_Contact@usda.gov.* Include the document number in the subject line of the message.

Instructions: All submissions received must include the agency name and document number for this notice. All comments received will be posted

without change to *http://www/regulations.gov,* including any personal information provided. Persons with disabilities who require an alternative means for communication of information (*e.g.,* Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Benjamin Muskovitz, (202) 720–4221 or *FAD_Contact@FAS.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: USDA Local and Regional Food Aid Procurement Program.

OMB Number: 0551–0046.

Expiration Date of Approval: February 29, 2020.

Type of Request: Extension of a currently approved information collection.

Abstract: Under the USDA Local and Regional Food Aid Procurement Program, information will be gathered from applicants desiring to receive federal awards under the program to determine the viability of requests for resources to implement activities in foreign countries. Recipients of awards under the program must submit performance and financial reports until funds provided by FAS and commodities purchased with such funds are utilized. Documents are used to develop effective grant or cooperative agreements for awards under the program and assure that statutory requirements and program objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collection under the USDA Local and Regional Food Aid Procurement Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for the USDA Local and Regional Food Aid Procurement Program is 78 hours per response.

Type of Respondents: Private voluntary organizations, cooperatives, and intergovernmental organizations.

Estimated Number of Respondents: 22 per annum.

Estimated Number of Responses per Respondent: 17 per annum.

Estimated Total Annual Burden of Respondents: 29,172 hours.

Request for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection 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 on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578 or email at *Connie.Ehrhart@usda.gov.*

E-Government Act Compliance

FAS is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Dated: October 23, 2019.

Ken Isley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2019–24893 Filed 11–15–19; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Federal Economic Statistics Advisory Committee Meeting

AGENCY: Bureau of Economic Analysis, Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Economic Analysis is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC). The Committee advises the Under Secretary for Economic Affairs, the Directors of the Bureau of Economic Analysis (BEA) and the Census Bureau, and the Commissioner of the U.S. Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. Email Gianna Marrone, *gianna.marrone@bea.gov,* by December 6, 2019, to attend. An agenda will be accessible prior to the meeting at *https://www.census.gov/fesac.*

DATES: December 13, 2019. The meeting begins at approximately 9:00 a.m. and adjourns at approximately 3:30 p.m.

ADDRESSES: The meeting will be held at the Suitland Federal Center Auditorium, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, 4600 Silver Hill Road (BE–64), Suitland, MD 20746; phone (301) 278–9282; email *gianna.marrone@bea.gov.*

SUPPLEMENTARY INFORMATION: FESAC members are appointed by the Secretary of Commerce. The Committee advises the Under Secretary for Economic Affairs, BEA and Census Bureau Directors, and the Commissioner of the Department of Labor's BLS on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee is established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2).

The meeting is open to the public and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing by December 10, 2019, to Gianna Marrone, *gianna.marrone@bea.gov.*

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gianna Marrone, *gianna.marrone@bea.gov,* preferably two weeks prior to the meeting.

Due to security protocols, meeting attendees must arrive by 8:30 a.m. and present government-issued photo identification, wear their visitor's badge, and remain on the building's first floor.

Dated: October 9, 2019.

Kyle Hood,

Designated Federal Officer, Bureau of Economic Analysis.

[FR Doc. 2019–24873 Filed 11–15–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–835]

Finished Carbon Steel Flanges From Italy: Rescission of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on finished

Carbon steel flanges (steel flanges) from Italy for the period August 1, 2018, through July 31, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Olatunbosun Leigh, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0506.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on steel flanges from Italy for the period August 1, 2018, through July 31, 2019.[1] On September 3, 2019, Weldbend Corporation and Boltex Manufacturing Co., L.P. (the petitioners) timely filed a request for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2] Pursuant to this request and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of 27 companies.[3] On October 15, 2019, the petitioners timely filed a withdrawal of request for the administrative review with respect to all 27 companies.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioners, the only party to file a request for review, withdrew their request by the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping duty order on steel flanges from Italy for the period August 1, 2018, through July 31, 2019, in its entirety.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 37834 (August 2, 2019).

[2] *See* Letter from the petitioners, ''Finished Carbon Steel Flanges from ltaly: Petitioners' Request for 2018/2019 Administrative Review,'' dated September 3, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 53411 (October 7, 2019).

[4] *See* Letter from the petitioners, ''Finished Carbon Steel Flanges from Italy: Withdrawal of Request for Administrative Review,'' dated October 15, 2019.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of steel flanges from Italy. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 12, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–24902 Filed 11–15–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Hyundai Steel Company (Hyundai) and POSCO/POSCO Daewoo Co., Ltd. (POSCO/PDW), the two companies selected for individual examination, did not sell certain cold rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) in the United States at prices below normal value during the period of review (POR) September 1, 2017 through August 31, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, Paul Walker, or Marc Castillo, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475, (202) 482–0413, or (202) 482–5019, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated this administrative review on November 15, 2018.[1] We selected Hyundai Steel Company (Hyundai) and POSCO/POSCO Daewoo Co., Ltd. (POSCO/PDW) as mandatory respondents.

On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[2] On July 5, 2019, we extended the deadline for the preliminary results of this review by 90 days.[3]

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018).

[2] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[3] *See* Memorandum, ''Certain Cold Rolled Steel Flat Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of

Continued

Between August 15 and August 29, 2019, the petitioners[4] filed timely allegations that a particular market situation (PMS) with respect to Hyundai's and POSCO/PDW's prices and costs of production of cold-rolled steel in Korea during the POR.[5] On October 8, 2019, Hyundai and POSCO/PDW submitted comments on the PMS Allegations.[6]

On October 4, 2019, we extended the deadline for the preliminary results of this review by an additional 29 days, resulting in a deadline of November 8, 2019 for these preliminary results.[7]

For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[8] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached to this notice as an appendix. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The product covered by the *Order*[9] is cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea. For the full text of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For the reasons more fully explained in the proprietary PMS Memorandum, Commerce preliminarily finds that a cost-based PMS existed in Korea during the POR concerning the cost of hot-rolled coil (HRC) as a component of the cost of production for the cold-rolled steel that Hyundai Steel and POSCO/PDW produced.[10] Specifically, we quantified the impact of the PMS on the material cost of HRC and derived a corresponding adjustment factor that, when applied to the costs of HRC, accounts for the distortions induced by the observed PMS.[11] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have preliminarily calculated weighted-average dumping margins for Hyundai and POSCO/PDW that are zero. Accordingly, we have preliminarily assigned to the companies not individually examined (*i.e.,* Dongbu Steel Co., Ltd. and Dongbu Steel Incheon Steel Co., Ltd.) a margin of 0.00 percent.

Preliminary Results of Review

Commerce preliminarily determines that, for the period September 1, 2017 through August 31, 2018, the following weighted-average dumping margins exist:

Producer or exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.00
POSCO/POSCO Daewoo Co., Ltd.	0.00
Non-Examined Companies	0.00

Disclosure, Public Comment, and Opportunity to Request a Hearing

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[12] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Case and rebuttal briefs should be filed using ACCESS[14] and must be served on interested parties.[15] Executive

Antidumping Duty Administrative Review,'' dated July 5, 2019.

[4] The petitioners are ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

[5] *See* Petitioners' Letters, ''Cold-Rolled Steel Flat Products from the Republic of Korea: Cost-Based Particular Market Situation Allegation,'' dated August 15, 2019; ''Cold-Rolled Steel Flat Products from the Republic of Korea: Cost Adjustments and Price-Based Particular Market Situation Allegations for Hyundai,'' dated August 15, 2019; and ''Cold-Rolled Steel Flat Products from the Republic of Korea: Revised Price-Based Particular Market Situation Allegations for Hyundai,'' dated August 29, 2019. On September 23, 2019, the petitioners submitted a clarification to the PMS Allegations. *See* Petitioners' Letter, ''Cold-Rolled Steel Flat Products from the Republic of Korea: Factual Information to Clarify Aspects of Domestic Interested Parties' Particular Market Situation Allegation,'' dated September 23, 2019 (collectively, PMS Allegations).

[6] *See* Hyundai's and POSCO/PDW's Letter, ''Cold-Rolled Steel Products from the Republic of Korea: Particular Market Situation Comments and Rebuttal Factual Information,'' dated October 8, 2019.

[7] *See* Memorandum, ''Certain Cold Rolled Steel Flat Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated October 4, 2019.

[8] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Certain Cold Rolled Steel Flat Products from the Republic of Korea; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] *See Certain Cold Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432 (September 20, 2016) (*Order*).

[10] For a complete discussion, *see* Memorandum, ''2017–2018 Administrative Review of the Antidumping Duty Order on Cold-Rolled Steel from the Republic of Korea: Decisions on Particular Market Situation Allegations,'' dated concurrently with this memorandum (PMS Memorandum).

[11] *See* PMS Memorandum.

[12] *See* 19 CFR 351.309(d).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See generally* 19 CFR 351.303.

[15] *See* 19 CFR 351.303(f).

summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[16] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[17] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[18]

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review and the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported reliable entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [19]

For entries of subject merchandise during the POR produced by Hyundai and POSCO/PDW for which the producer did not know its merchandise was destined for the United States, or for any respondent for which we have a final determination of no shipments, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[20]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Hyundai, POSCO/PDW, and other companies listed in the final results of review will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 20.33 percent,[21] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: November 8, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Rates for Non-Examined Companies
5. Duty Absorption
6. Discussion of the Methodology
7. Adjustments to Cash Deposit Rates for Export Subsidies in Companion Countervailing Duty Review
8. Currency Conversion
9. Recommendation

[FR Doc. 2019–24903 Filed 11–15–19; 8:45 am]

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[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310(d).

[18] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[19] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[20] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[21] *See Certain Cold Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432 (September 20, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–847]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer or Jacob Garten, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860 or (202) 482–3342, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on heavy walled rectangular welded carbon steel pipes and tubes from Mexico.[1] This review covers 11 producers and exporters of the subject merchandise. Commerce selected two companies, Maquilacero, S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey, S.A. de C.V. (Prolamsa), for individual examination. The producers and/or exporters not selected for individual examination are listed in the ''Preliminary Results of the Review'' section of this notice.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[2] On June 10, 2019, Commerce extended the preliminary results of this review by 117 days, until November 6, 2019.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

Scope of the Order

The products covered by the order are certain heavy walled rectangular welded steel pipes and tubes from Mexico. Products subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS numbers and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.[4]

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Determination of No Shipments

Two of the companies under review, Ternium México, S.A. de C.V. (Ternium) and Tuberia Nacional S.A. de C.V. (TUNA), timely filed statements reporting that they made no shipments of subject merchandise to the United States during the period of review (POR). Based on the certifications submitted by Ternium and TUNA and our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that Ternium and TUNA had no shipments during the POR.[5] Commerce finds that it is not appropriate to preliminarily rescind the review with respect to these companies, but rather to complete the review with respect to them and issue appropriate instructions to CBP based on the final results of this review.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period September 1, 2017 through August 31, 2018:

Exporter/producer	Weighted-average dumping margin (percent)
Maquilacero, S.A. de C.V	4.08
Productos Laminados de Monterrey, S.A. de C.V	0.80

Review-Specific Average Rate Applicable to the Following Companies:[6]

Exporter/producer	Weighted-average dumping margin (percent)
Arco Metal, S.A. de C.V	1.85
Forza Steel, S.A. de C.V	1.85
Industrias Monterrey, S.A. de C.V	1.85
Perfiles y Herrajes LM, S.A. de C.V	1.85

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018).

[2] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[3] *See* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated June 10, 2019.

[4] For a full description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Ternium's Letter, ''Attn: Enforcement and Compliance,'' dated December 10, 2018; and TUNA's Letter, ''Heavy Walled Rectangular Weld Carbon Steel Pipes and Tubes from Mexico: Notice of No Sales,'' dated December 14, 2018; *see also* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes from Mexico (A–201–847),'' dated October 1, 2019.

[6] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

Exporter/producer	Weighted-average dumping margin (percent)
PYTCO, S.A. de C.V	1.85
Regiomontana de Perfiles y Tubos, S.A. de C.V	1.85
Tuberias Procarsa S.A. de C.V	1.85

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[7] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[8] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Case and rebuttal briefs should be filed using ACCESS.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[12] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[13]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[14]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries.[15]

Pursuant to 19 CFR 351.212(b)(1), where Maquilacero and Prolamsa reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average[16] of the cash deposit rates calculated for Maquilacero and Prolamsa, excluding any which are zero or *de minimis* or determined entirely based on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[17]

Further, if we continue to find in the final results that Ternium and TUNA had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under their antidumping duty case numbers (*i.e.,* at that exporter's rate) at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.91 percent, the all-others rate established in the LTFV investigation.[18] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.303.

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See* section 751(a)(3)(A) of the Act.

[15] *See* 19 CFR 351.212(b).

[16] This rate was calculated as discussed in footnote 6, above.

[17] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[18] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value,* 81 FR 47352, 47353 (July 21, 2016).

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 6, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2019–24852 Filed 11–15–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-The-Road Tires From the People's Republic of China: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2017

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

SUMMARY: Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of new pneumatic off-the-road tires from the People's Republic of China (China). In addition, we are rescinding this review with respect to three companies. The period of review (POR) is January 1, 2017 through December 31, 2017. Interested parties are invited to comment on these preliminary results.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang or Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5484 or (202) 482–1396, respectively.

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road (OTR) and off-highway use. For a full description of the scope of this order, *see* the Preliminary Decision Memorandum.[1]

Methodology

On September 4, 2008, Commerce issued a countervailing duty order on new pneumatic tires designed for OTR and off-highway use.[2] Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy (*i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient) and that the subsidy is specific.[3]

For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts otherwise available, pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided in the appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. On September 28, 2018, we received timely requests to conduct an administrative review from Triangle Tyre Co., Ltd. (Triangle), Laizhou Xiongying Rubber Industry Co., Ltd. (Xiongying), and Qingdao Jinhaoyang International Co., Ltd. (Jinhaoyang).[4] On October 1, 2018, Super Grip Corporation and Weihai Zhongwei Rubber Co., Ltd. (Zhongwei) each filed requests that Zhongwei be reviewed.[5] Xiongying, Jinhaoyang, and Triangle each timely submitted withdrawal requests within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order with respect to these entities. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this administrative review of the *OTR Tires China CVD Order* with respect to these three parties.

Preliminary Results of Review

As a result of this review, we preliminarily determine that, during the period January 1, 2017 through December 31, 2017, the following estimated countervailable subsidy rate exists:

Company	Subsidy rate (percent)
Weihai Zhongwei Rubber Co., Ltd. (Zhongwei)	24.49

Disclosure and Public Comment

Commerce will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[6] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[7] Rebuttal briefs must be limited

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[1] *See* ''Decision Memorandum for the Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China; 2017,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Countervailing Duty Order,* 73 FR 51627 (September 4, 2008) (*OTR Tires China CVD Order*).

[3] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[4] *See* Triangle's Letter, ''New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Administrative Review,'' dated September 28, 2018; Xiongying's Letter, ''Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Review,'' dated September 28, 2018; and Jinhaoyang's Letter, ''Jinhaoyang's Request for CVD Administrative Review Certain New Pneumatic Off-the-Road Tires from China (C–570–913),'' dated September 28, 2018.

[5] *See* Super Grip's Letter, ''New Pneumatic Off-the-Road Tires People's Republic of China Request for Administrative Review,'' dated October 1, 2018; *see also* Zhongwei's Letter, ''New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Administrative Review,'' dated October 1, 2018.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).

to issues raised in the case briefs.[8] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[10] Requests should contain the party's name, address and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[11] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[12] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Cash Deposit Requirement

On May 10, 2019, as a result of the five-year (sunset) review, Commerce revoked the *OTR Tires China CVD Order.*[13] In the *Revocation Notice,* Commerce stated that it intended to issue instructions to CBP to terminate the suspension of liquidation and to discontinue the collection of cash deposits on entries of subject merchandise, entered or withdrawn from warehouse, on or after February 4, 2019.[14] Furthermore, because the *OTR Tires China CVD Order* has been revoked as a result of the *Revocation Notice,* Commerce will not issue cash deposit instructions at the conclusion of this administrative review.

Notification of Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: November 12, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of Administrative Review
V. Use of Facts Otherwise Available and Application of Adverse Inferences
VI. Diversification of China's Economy
VII. Subsidies Valuation
VIII. Benchmarks and Discount Rates
IX. Analysis of Programs
X. Disclosure and Public Comment
XI. Recommendation

[FR Doc. 2019–24899 Filed 11–15–19; 8:45 am]

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[8] *See* 19 CFR 351.309(d)(2).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310.

[12] *See* 19 CFR 351.310(c).

[13] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders,* 84 FR 20616 (May 10, 2019) (*Revocation Notice*).

[14] *See Revocation Notice,* 84 FR at 20618.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–6274, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on heavy walled rectangular welded carbon steel pipes and tubes from Korea.[1] This review covers 21 producers and exporters of the subject merchandise. Commerce selected Dong-A Steel Company (DOSCO), HiSteel Co., Ltd (HiSteel), and Kukje Steel Co., Ltd. (Kukje Steel) for individual examination. DOSCO informed Commerce that it did not intend to respond to the questionnaire or participate as a mandatory respondent in this administrative review. The producers and/or exporters not selected for individual examination are listed in the ''Preliminary Results of the Review'' section of this notice.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[2] On June 10, 2019, Commerce extended the preliminary results of this review by 117 days, until November 6, 2019.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

Scope of the Order

The products covered by the order are certain heavy walled rectangular welded steel pipes and tubes from the Republic of Korea (Korea). Products subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018).

[2] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[3] *See* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Extension of Deadline for Preliminary Results of the 2nd Antidumping Duty Administrative Review,'' dated June 10, 2019.

Although the HTSUS numbers and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.[4]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Adverse Facts Available

Because mandatory respondent DOSCO failed to respond to Commerce's questionnaire, we preliminarily determine to apply facts otherwise available with adverse inferences (AFA) to this respondent, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. For further discussion, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period September 1, 2017 through August 31, 2018:

Exporter/producer	Weighted-average dumping margin (percent)
Dong-A Steel Company	53.80
HiSteel Co., Ltd	40.40
Kukje Steel Co., Ltd	51.27

Review-Specific Average Rate Applicable to the Following Companies: [5]

Exporter/producer	Weighted-average dumping margin (percent)
Ahshin Pipe & Tube Company	43.91
Bookook Steel Co., Ltd	43.91
Dongbu Steel Co., Ltd	43.91
Ganungol Industries Co. Ltd	43.91
Hanjin Steel Pipe	43.91
Husteel Co., Ltd	43.91
Hyosung Corporation	43.91
Hyundai Steel Co	43.91
Hyundai Steel Pipe Company	43.91
K Steel Co. Ltd	43.91
Miju Steel Manufacturing Co., Ltd	43.91
NEXTEEL Co., Ltd	43.91
POSCO DAEWOO	43.91
Sam Kang Industrial Co., Ltd	43.91
Sam Kang Industries Co., Ltd	43.91
Samson Controls Ltd., Co	43.91
SeAH Steel Corporation	43.91
Yujin Steel Industry Co. Ltd	43.91

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[12]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[13]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[14]

Pursuant to 19 CFR 351.212(b)(1), where HiSteel and Kukje Steel reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [15] of the cash deposit rates calculated for HiSteel and Kukje Steel, excluding any which are zero or *de minimis* or determined entirely based on adverse facts available. Because

[4] For a full description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See* section 751(a)(3)(A) of the Act.

[14] *See* 19 CFR 351.212(b).

[15] This rate was calculated as discussed in footnote 5, above.

DOSCO withdrew its participation from this review and reported no information to Commerce for this POR, we will instruct CBP to apply an assessment rate to all entries it produced and/or exported equal to the dumping margin of 53.80 percent, as indicated above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[16]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.24 percent, the all-others rate established in the LTFV investigation.[17] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 6, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Discussion of the Methodology
VI. Application of Facts Available and Use of Adverse Inference
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2019–24854 Filed 11–15–19; 8:45 am]

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[16] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865, 62866 (September 13, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) are being sold in the United States at prices below normal value. The period of review (POR) is September 1, 2017 through August 31, 2018. Interested parties are invited to comment on these preliminary results.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann or Julie Geiger, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0698 or (202) 482–2057, respectively.

SUPPLEMENTARY INFORMATION:

Background

These preliminary results are made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this administrative review on November 15, 2018.[1] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[2] Commerce selected Hyundai Steel Company (Hyundai Steel) and SeAH Steel Corporation (SeAH) as the two mandatory respondents in this review.[3] Commerce extended the time limit for completing the preliminary results of this administrative review, and the revised deadline is now November 8, 2019.[4] On August 6, 2019, Commerce received a timely filed allegation that a particular market situation (PMS) existed with respect to Hyundai Steel's and SeAH's costs of production of

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018) (*Initiation Notice*).

[2] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[3] *See* Memorandum, ''2017–2018 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea: Respondent Selection,'' dated February 15, 2019.

[4] *See* Memoranda, ''Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review'' dated July 1, 2019; ''Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated September 6, 2019; and ''Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated October 31, 2019.

OCTG in Korea during the POR. [5] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum, dated concurrently with these preliminary results and hereby adopted by this notice.[6]

A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The product covered by the *Order*[7] is OCTG from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(2) of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For the reasons more fully explained in the proprietary PMS Memorandum, Commerce preliminarily finds that a cost-based PMS existed in Korea during the POR concerning the cost of hot-rolled coil (HRC) as a component of the cost of production for the OCTG that Hyundai Steel and SeAH produced.[8] Specifically, we quantified the impact of the PMS on the material cost of HRC, and derived a corresponding adjustment factor that, when applied to the costs of HRC, accounts for the distortions induced by the observed PMS.[9] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have preliminarily calculated weighted-average dumping margins for Hyundai Steel and SeAH that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to the companies not individually examined (*see* Appendix II for a full list of these companies) a margin of 13.16 percent, which is the weighted average of Hyundai Steel's and SeAH's calculated weighted-average dumping margins.[10]

Preliminary Results of Review

Commerce preliminarily determines that, for the period September 1, 2017 through August 31, 2018, the following weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Hyundai Steel Company	0.77
SeAH Steel Corporation	17.04
Non-examined companies	13.16

Disclosure, Public Comment, and Opportunity To Request a Hearing

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using ACCESS [13] and must be served on interested parties.[14] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[15] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of

[5] *See* Domestic Interested Parties' Letter, ''Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation,'' dated August 6, 2019 (PMS Allegation).

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results in the 2017–2018 Administrative Review of Oil Country Tubular Goods from the Republic of Korea'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (*Order*).

[8] For a complete discussion, *see* Memorandum, ''2017–2018 Administrative Review of Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Decisions on Particular Market Situation Allegations,'' dated concurrently with this **Federal Register** *Notice* (PMS Memorandum).

[9] *See* PMS Memorandum.

[10] For more information regarding the calculation of this margin, *see* Memorandum, ''Preliminary Results of the 2017–2018 Administrative Review of Certain Oil Country Tubular Goods from the Republic of Korea; Calculation of the Margin for Non-Examined Companies,'' dated concurrently with this memorandum. As the weighting factor, we relied on the publicly ranged sales data reported in Hyundai Steel's and SeAH's quantity and value charts.

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See generally* 19 CFR 351.303.

[14] *See* 19 CFR 351.303(f).

[15] *See* 19 CFR 351.310(c).

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[16] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[17]

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, if the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported reliable entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [18]

For entries of subject merchandise during the POR produced by Hyundai Steel or SeAH for which the producer did not know its merchandise was destined for the United States, or for any respondent for which we have a final determination of no shipments, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[19]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the companies listed in the final results of review will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 5.24 percent,[20] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

The results of this review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: November 8, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Rates for Non-Examined Companies
V. Duty Absorption
VI. Affiliation
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

Appendix II

List of Companies Not Individually Examined

AJU Besteel Co., Ltd.
BDP International
Daewoo America
Daewoo International Corporation
Dong Yang Steel Pipe.
Dong-A Steel Co. Ltd.
Dongbu Incheon Steel.
DSEC.
Emdtebruecker Eisenwerk and Company
Hansol Metal.
Husteel Co., Ltd.
Hyundai RB
ILJIN Steel Corporation.
Jim And Freight Co., Ltd.
Kia Steel Co. Ltd.
KSP Steel Company
Kukje Steel
Kumkang Kind Co., Ltd.
Kurvers
NEXTEEL Co., Ltd.
POSCO Daewoo America
POSCO Daewoo Corporation
Samsung
Samsung C and T Corporation.
SeAH Besteel Corporation
Steel Canada
Sumintomo Corporation
TGS Pipe
Yonghyun Base Materials
ZEECO Asia

[FR Doc. 2019–24900 Filed 11–15–19; 8:45 am]

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[16] *See* 19 CFR 351.310(d).

[17] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[18] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[19] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[20] *See Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony With Final Determination,* 81 FR 59603 (August 30, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Rescission of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain tin mill products (tin mill products) from Japan for the period of August 1, 2018, through July 31, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Olatunbosun Leigh, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0506.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on tin mill products from Japan for the period August 1, 2018, through July 31, 2019.[1] On August 30, 2019, United States Steel Corporation (U.S. Steel), the petitioner, timely filed a request for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2] Pursuant to this request, and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of 11 companies.[3] On October 29, 2019, the petitioner timely filed a withdrawal of request for the administrative review with respect to all 11 companies.[4]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 37834 (August 2, 2019).

[2] *See* Letter from the petitioners, ''Tin Mill Products from Japan: Petitioners' Request for 2018/2019 Administrative Review,'' dated August 30, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 53411 (October 7, 2019).

[4] *See* Letter from the petitioners, ''Tin Mill Products from Japan A–588–854: Withdrawal of Request for Administrative Review,'' dated October 29, 2019.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioner, the only party to file a request for review, withdrew its request by the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping duty order on tin mill Products from Japan for the period August 1, 2018, through July 31, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of tin mill products from Japan. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 12, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–24901 Filed 11–15–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR026]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Jordan Cove Energy Project, Coos Bay, Oregon

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Jordan Cove Energy Project, LP (JCEP) for authorization to take marine mammals incidental to construction of the Jordan Cove Liquified Natural Gas (LNG) terminal and ancillary projects. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) allowing JCEP to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year Renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision. This project is being tracked on the Fast Act Permitting Dashboard which can be accessed at *https://www.permits.performance.gov/permitting-projects/jordan-cove-lng-terminal-and-pacific-connector-gas-pipeline.*

DATES: Comments and information must be received no later than December 18, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical

comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Daly@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the take of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review. Under the MMPA, take is defined as meaning to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On April 23, 2019, NMFS received a request from JCEP for an IHA to take marine mammals incidental to pile driving associated with the Jordan Cove LNG Project, Coos Bay, Oregon. The application was deemed adequate and complete on August 16, 2019. JCEP's request is for the take of a small number of seven species of marine mammals by Level B harassment. Neither JCEP nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. The IHA, if issued, would be effective from October 1, 2020 through September 30, 2021.

Description of Proposed Activity

Overview

JCEP is proposing to construct an LNG terminal in Coos Bay, install a pipeline, conduct dredging to allow for a broader operational weather window, widen the TransPacific Parkway (TPP) to facilitate construction traffic, and carry out two habitat-related compensatory mitigation projects. A subset of this work would occur under the proposed IHA. Pile driving is the primary means by which marine mammals within Coos Bay may be taken by Level B harassment. Work associated with the project may occur year-round beginning in October 2020; however, impact pile driving is restricted to the in-water work window established to protect salmonids (October 1 to February 15, annually). In-water vibratory pile driving may occur year-round. Pile driving at various locations may occur simultaneously; however, JCEP would only use one hammer at any given site.

Dates and Duration

JCEP currently anticipates that construction for the LNG Terminal would begin in 2020, with a target in-service date in the first half of 2024. JCEP is requesting take that may occur from the pile driving activities in the first year of construction (October 1, 2020 through September 30, 2021). Conformance to the ODFW regulatory in-water work window for dredging and in-water impact driving will be implemented to reduce impacts on listed fish species per other permitting authorities. The in-water work window is the period of October 1 to February 15, and the period outside the in-water work window is February 16 to September 30.

JCEP estimates pile driving may occur over 230 days from October 1, 2020 through September 30, 2021. The majority of this pile driving would be at the water's edge but would result in elevated in-water noise levels. Pile driving may occur from approximately 10 minutes to 5 hours per day depending on the pile driving location and pile driving method. At any given location, only one hammer will be used.

Specific Geographic Region

JCEP would construct the LNG terminal and ancillary projects within Coos Bay, Oregon. Coos Bay is an approximately 55.28 km^2 estuary in Coos County, Oregon, making it the second largest estuary in Oregon, and the sixth largest on the US west coast.

It is considered the best natural harbor between San Francisco Bay, California and the Puget Sound, Washington. The average depth of the Coos estuary is approximately 4 m (13 ft) while the shipping channel is approximately 13 m (45 ft) deep. The Coos estuary exhibits the typical features of a drowned river valley estuary type. It features a V-shaped cross section, a relatively shallow and gently sloping estuary bottom, and a fairly uniform increase in depth from the upper, river-dominated part of the estuary toward the mouth. Large expanses of intertidal sand and mud flats complement channels, eelgrass beds, vegetated marshes, and swamps to provide a diversity of estuarine habitats. From the entrance, the lower bay runs nine miles northeast then swings to the south after the McCullough Bridge in North Bend and widens into the tide-flat dominated upper bay. The Coos River enters the upper bay near the confluence with Catching Slough, about 27.35 km (17 mi) from the mouth of the estuary.

There are four distinct regions in the Coos estuary—Marine, Bay, Slough and Riverine—each based on distinct physical features and bottom types, salinity gradients, habitats, and dominant species. There are no distinct boundaries between the regions, but each has distinctive features.

The highly energetic Marine region extends from the Coos estuary mouth up to about river mile (RM) 2.5. Although the estuary entrance is protected by jetties, powerful waves nevertheless propagate through the mouth during winter storms. Water quality and salinity are similar to the open ocean in this region, but it is moderated by rain-fed river and stream flow during winter months.

The Bay region, divided into the Lower Bay and the Upper Bay, is characterized by broad, mostly unvegetated (except for intertidal eelgrass beds) tidal flats exposed at low tide and flooded by brackish water during higher tides. Tidal flats range from sandy to muddy throughout the bay, depending on currents and circulation. Sand may be either terrestrial (erosional) or carried into the lower bay from nearby ocean sources.

The Lower Bay region begins above RM 2.5 and extends to about the railroad bridge at RM 9. Water salinity in this region is slightly fresher than in the ocean, whose influence gradually diminishes throughout this zone as the distance from the ocean increases.

The Upper Bay begins at the railroad bridge (RM 9) and extends to the southeastern corner of Bull Island at RM 17. Although the shoreline has been drastically altered over the past 150 years, the upper bay still includes extensive tidal flats, many acres of which are used for commercial oyster cultivation. The shipping channel runs along the western shore of the upper bay to access the shipping terminals located along the developed shorelines of the cities of North Bend and Coos Bay.

The Coos Bay Federal Navigation Channel (FNC) is included in the Coos Bay Estuary Management Plan (CBEMP) and is zoned Deep-Draft Navigation Channel which is routinely dredged to an average depth of 11.5 m (38 ft)(MLLW) and width of 300 m (984 ft). The FNC is bounded by the North Spit on the west and north, and the mainland to the south and east. Along the mainland bounding the FNC are the communities of Charleston and Barview, and the cities of Coos Bay and North Bend. The Coos Bay FNC extends from the mouth of Coos Bay to the city of Coos Bay docks at about Channel Mile (CM) 15.1.

The peninsula within Coos Bay is heavily developed with concentrated urbanization and industrialization areas. A critical airport is located across from the proposed LNG terminal. Timber and fishing are the foundation of the county's economy and the Port of Coos Bay is one of the largest forest products shipper in the world. Some of the more commonly abundant fish include Pacific herring (*Clupea pallasii*), and the non-native American shad (*Alosa sapidissima*). Most fish species are migratory or seasonal, spending only part of their life in these waters. Other common seasonal marine fish species include surfperch (family *Embiotocidae*), lingcod (*Ophiodon elongatus*), rock greenling (*Hexagrammos lagocephalus*), sculpin, surf smelt (*Hypomesus pretiosus*), Pacific herring (*Clupea pallasii*), English sole (*Parophrys vetulus*), black rockfish (*Sebastes melanops*), northern anchovy (*Engraulis mordax*), eulachon (*Thaleichthys pacificus*), longfin smelt (*Spirinchus thaleichthys*), Pacific tomcod (*Microgadus proximus*), sandsole (*Psettichthys melanostictus*), and topsmelt (*Atherinops affinis*) (Monaco et. al 1990). Clams, crabs, oysters, and shrimp make up important components of these invertebrates in the bay. Some of the most abundant and commercially important of these species include bentnose clams (*Macoma nasuta*), Pacific oyster (*Crassostrea gigas*), Dungeness crab (*Metacarcinus magister*), and ghost shrimp (*Neotrypaea californiensis*) (Monaco et. al. 1990).

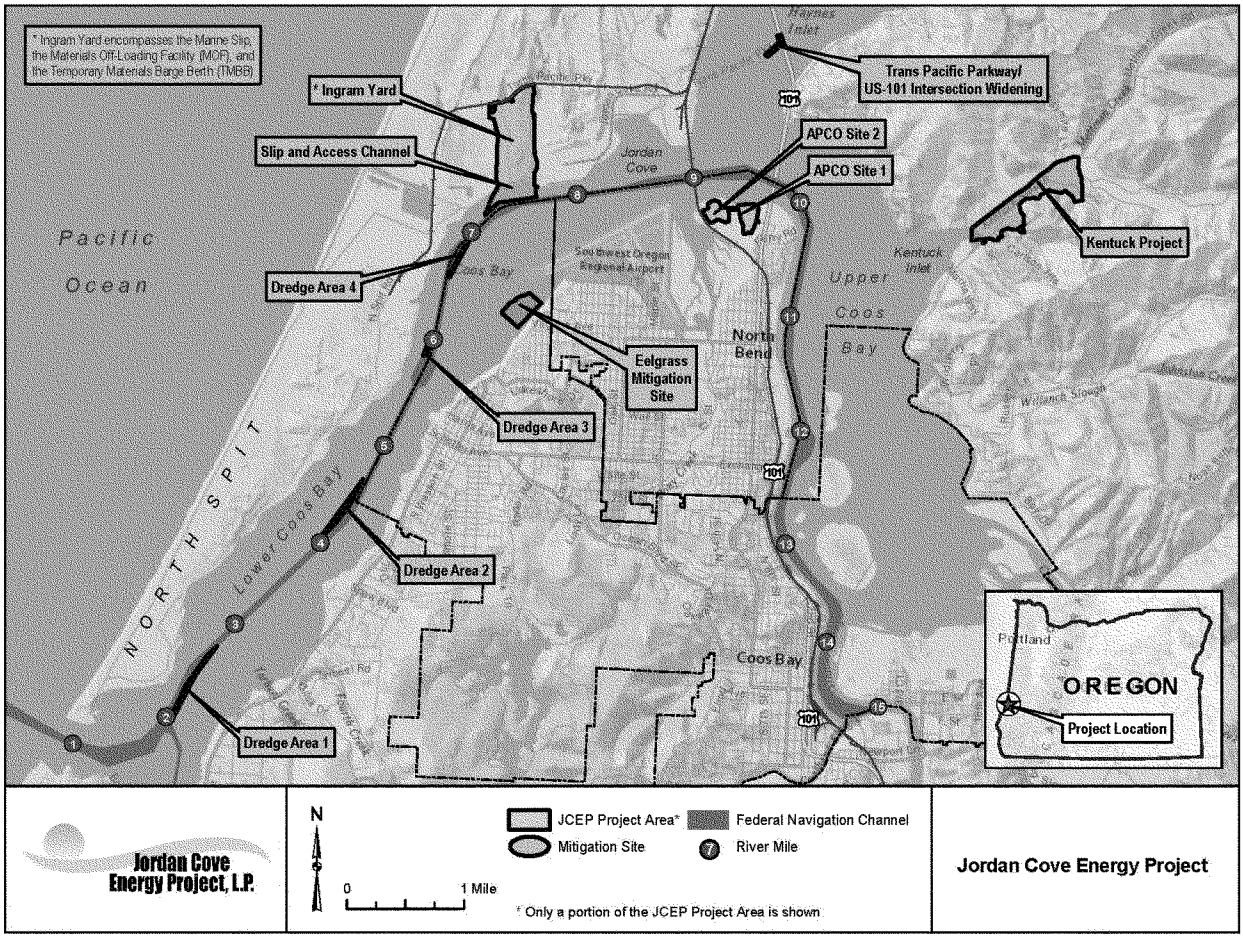

Figure 1. Jordan Cove LNG Terminal Project Area and Location of Ancillary Activities.

Detailed Description of Specific Activity

JCEP is proposing to construct an LNG facility on the bay side of the North Spit of Coos Bay at about Channel Mile (CM) 7.3, along the existing federal navigation channel. The LNG Terminal would be capable of receiving and loading ocean-going LNG carriers, to export LNG to Asian markets, and sized to export 7.8 million metric tons of LNG per annum. The LNG Terminal is located in what is referenced as Ingram Yard in Figure 1 and would include a gas conditioning plant, a utility corridor, liquefaction facilities (including five liquefaction trains), two full-containment LNG storage tanks, and LNG loading facilities. The LNG Terminal also would include a marine slip, access channel, material offloading facility (MOF), and temporary materials barge berth (TMBB), collectively referred to as the Marine Facilities. It is these Marine Facilities which are the focus of JCEP's application as these are within or connected to the waters of Coos Bay where marine mammals may be present.

Marine Slip

The marine slip would include the LNG carrier berth, west lay berth, a tsunami protection wall, a retaining wall, an LNG loading platform, and a tug dock. The new marine slip would be constructed by excavating an existing upland area, keeping an earthen berm on the southern side intact during construction. The marine slip would be separated from the waters of Coos Bay by the earthen berm. The earthen berm would be removed during the last year of construction.

The eastern and western sides of the slip would be formed from sheet pile walls. The sheet piles that would be installed at these locations are designed to be driven ''in the dry,'' to ensure structural integrity. To form these walls, sheet piles would be driven with a vibratory hammer into sandy soils that have been loosened with an auger drill prior to piling. The sheets would be installed in the upland area before excavating the material that eventually would be on the waterside of the sheet pile walls (*i.e.,* ''in the dry''); therefore, noise transmitted directly through water would be eliminated, and noise indirectly reaching the marine environment would be greatly reduced or eliminated. In addition, sheet piles would extend along the southwestern corner, beyond the marine slip. The construction methodology for this area would be similar to the eastern and western walls in the slip (*i.e.,* ''in the dry'' construction). For those piles that would be installed in the dry but near the shoreline (*e.g.,* the sheet piles at the southwestern wall or the MOF face), noise may indirectly propagate into the water.

Material Offloading Facility (MOF)

JCEP would construct a MOF to be used primarily for delivery of large and heavy material and equipment shipments during construction that cannot be transported by rail or road. The MOF would cover about 3 acres on the southeastern side of the slip, and vessels calling at the MOF also would use the access channel for navigation and berthing (Figure 1–2). The MOF

would be constructed using the same construction methods and sheet pile wall system as the eastern and western sides of the slip (see Section 1.2.1). The top of the MOF would be at elevation 13 feet North American Vertical Datum of 1988 (NAVD88), and the bottom of the exposed wall would be at the access channel elevation (−45 NAVD88 or −45 feet mean lower low water [MLLW]). The MOF would provide approximately 450 linear feet of dock face for the mooring and unloading of a variety of vessel types. Under the proposed IHA, all pile driving would be on sediment but close to the water's edge (within approximately 30 meters of the shoreline but still ''in-the-dry''). Given the potential propagation of sound through the water-laden sediments, these piles have been included in this analysis.

During sheet piling for the marine slip and MOF, soil would first be loosened with an auger prior to installation of the sheet piles. This auguring would be also done in-the-dry but it does not use any percussive force; therefore, it is not expected to generate vibration that may translate into underwater noise in excess of NMFS thresholds in the nearby waters of Coos Bay. In-water geotechnical boring, which is a similar non-percussive drilling method to the proposed auguring, produces sound levels of 145 decibels re: 1 microPascal (dB re:1μPa) or less at 1 meter (Erbe and McPherson 2017). Since this auguring would occur in-the-dry and at 10 meters or more from the water's edge, noise levels in Coos Bay from auguring are expected to be far less than NMFS harassment thresholds and therefore, auguring is not expected to result in harassment of marine mammals and is not discussed further.

To construct the MOF, earthwork equipment would first cut soil from the southern portion of the existing dune. Clean sand would be placed in the adjacent waterway, to create a work platform extending outside the MOF footprint. Riprap or other suitable material would be placed temporarily on the face of the slope, to protect sandy material from tidal erosion. Using the placed fill to position construction equipment, sheet piles would be driven near the edge of Coos Bay, but without direct contact with the marine environment, but close enough that noise may be generated into the water indirectly. Material from the front of the MOF would then be removed to achieve operational depth requirements after the sheet piles have relaxed and locked into place. After the sheet piles have relaxed, a topping-off operation would occur behind the sheet pile wall to approximate elevation +du13 (NAVD88) before concrete and rock are placed on top of the MOF.

A West Berth wall would be construction on the opposite side of the marine slip than the MOF and in a manner identical to the MOF (in-the-dry). The West Berth wall will consist of additional sheet piles installed with a vibratory driver after an auger is used to loosen the soil. Only the southern end of the West Berth wall is included in this analysis as those piles would be near enough to Coos Bay waters to potentially cause harassment to marine mammals (Table 1).

Temporary Materials Barge Berth (TMBB)

The TMBB would be an offloading facility that would be cut from the shoreline area near the western edge entrance to the slip (Figure 1–2 in JCEP's application), to facilitate early construction activities. A section large enough to receive and moor the end of an ocean-going barge would be excavated. Following the excavation work, up to six mooring piles would be installed. Piles would be vibrated in, to the maximum extent possible, and then would be impact-driven to depth if necessary. All piles would be installed within the footprint of the earthen berm and not driven in open water (*i.e.,* in-the-dry). These piles would be removed during the berm excavation to open the slip in Year 2 of the project which is not considered under this IHA.

TABLE 1—PILE DRIVING ASSOCIATED WITH THE LNG TERMINAL DURING THE 2020–2021 CONSTRUCTION SEASON

[Year 1]

Pile driving activity	Pile type	Size	Number of piles	Number of piles driven per day	Driving type	Water condition
TMBB	Pipe	24-in	6	1	Vibratory	In-the-dry.*
MOF	Sheet	N/A	1,869	13	Vibratory	In-the-dry.*
West Berth Southwest Wall	Sheet	N/A	113	13	Vibratory	In-the-dry.*

* Although these piles would not be driven directly in-water, they would be driven in water-laden sediments such that noise could propagate through the sediments into the water column, as modeled by JASCO (see Appendix D of JCEP's application).

Ancillary Activities

JCEP would also conduct ancillary activities to support LNG terminal construction. The purpose of these activities includes supporting infrastructure and dredge disposal. During the effective period of the IHA, pile driving would be required for the widening of the TransPacific Parkway (TPP) and U.S. Highway 101 (US–101) Intersection and at two sites used for dredge disposal. The purpose of the (TPP/US–101) widening work is to provide safe ingress/egress for construction traffic by creating a left-turn lane from TPP onto northbound US–101 and a right-turn lane from US–101 onto TPP. The dredge disposal sites would require a small amount of pile driving to construct the support trestle.

TransPacific Parkway/US–101 Intersection Widening

The TPP/US101 work would occur in the northern part of Coos Bay (Figure 1). Traffic surveys and studies of projected construction traffic have determined that the intersection of US–101 and TPP (Figure 1–1) would need to be improved to accommodate delivery of materials for LNG terminal construction and operation. These improvements would involve widening the TPP on the northern side to provide a left-turn lane onto northbound US–101, a wider turning radius from southbound US–101 onto the TPP, two 12-foot-wide travel lanes, a 14-foot-wide left-turn lane and widened shoulders with guardrails. The road bases of both the TPP and US–101 are causeways comprised of berms with two openings: One at the western end of TPP before it reaches land (approximately 90 meters wide) and one south of TPP along US–101 (approximately 210 meters wide). All the construction work related to the road improvements will be on the inside of the embayment of the road berms with limited connectivity to the rest of the Bay.

Embankment widening on the northern side of the causeway would be supported with a grid of approximately

1,150 untreated timber pilings. No treated timbers would be used. The untreated timber piles would be approximately 30 feet long and 14 inches in diameter at the top. The grid of timber pilings would be capped with a riprap embankment, providing a foundation to widen the roadway to the north. The timber pilings would be driven into the Bay mud using a vibratory and impact hammer within a temporary, outer sheet pile ''work isolation containment system'' (cofferdam). The sheet pile cofferdam would be installed with a vibratory hammer, and the work area would be surrounded by a turbidity curtain.

To create the cofferdam, approximately 311 sheet pile sections would be installed over approximately 11 days of pile-driving. The cofferdam is expected to be in place for approximately 1 year. After construction in the cofferdam is completed, the sheet piles would be cut at the mudline during low tides using a crane on the shoulder of the TPP. Removal of the cofferdam would be done during the Year 2 construction season.

To construct the timber pile grid, the contractor would construct a work access bridge as pile driving progresses parallel to the TPP, on the inside of the bermed road. The work bridge would consist of thirty-six 24-inch piles. The piles would be installed using a combination of vibratory and impact driving. A bubble curtain attenuator (BCA) would be used during impact driving as these piles will be in-water piles and installed during the ODFW in-water work window. The work bridge would be temporary and would be in place for approximately 1 year. Pile removal would be done using vibratory methods or cutting below the mudline during the Year 2 construction season which is not addressed in this IHA.

Dredging

Four permanent dredge areas adjacent to the federal navigation channel (FNC) would be dredged over multiple years to allow for navigation efficiency and reliability for vessel transit under a broader weather window (labeled as Dredge Areas 1 through 4 on Figure 1–1 in JCEP's application). We note the U.S. Army Corps of Engineers (USACE) dredges the federal navigation channel to maintain navigable depths, not JCEP; therefore dredging the FNC is not part of the specified activities.

Each of the dredge areas consists of expanding the depth immediately adjacent to an existing channel turn or bend. The access channel is maintained by the U.S. Army Corps of Engineers (USACE); maintenance dredging by the USACE is not part of the specified activity. The following dredging work has been identified by JCEP as part of the proposed project.

JCEP would dredge approximately 372,900 cubic yards (CY) of material, of which the majority is very soft sandstone or siltstone and the rest is sand, from four locations in Coos Bay (Dredge Areas 1–4 in Figure 1) over four years, including during the effective period of the proposed IHA. Dredge Area 1—JCEP proposes to widen the Coos Bay channel from the current width of 300 feet to 450 feet, thereby making it easier for all vessels transiting the area to make the turn into the estuary. In addition, the total corner cutoff on the Coos Bay Range side would be lengthened from the current 850 feet to about 1,400 feet from the turn's apex. Dredge Area 2—the current corner cutoff distance from the apex of this turn is about 500 feet, making it difficult for vessels to begin turning sufficiently early to be able to make the turn and be properly positioned in the center of the next channel range. JCEP proposes to widen the turn area from the Coos Bay Range to the Empire Range from the current width of 400 feet to 600 feet at the apex of the turn and lengthen the total corner cutoff area from the current 1,000 feet to about 3,500 feet. Dredge Area 3—JCEP proposes to add a corner cut on the west side in this area that would be about 1,150 feet, thereby providing additional room for vessels to make this turn. Dredge Area 4—JCEP proposes to widen the turn area here from the current 500 feet to 600 feet at the apex of the turn and lengthen the total corner cutoff area of the turn from the current 1,125 feet to about 1,750 feet, thereby allowing vessels to begin their turn in this area earlier.

Two methods of dredging are identified as the most practical, given the historical dredging practices in the region, the material types being dredged, and the location and condition of the placement sites. The primary method utilized will be hydraulic cutter suction dredging, but mechanical dredging via clamshell or excavator is also likely to be used to a limited extent.

JCEP has not requested, and NMFS does not propose to issue, take from the proposed dredging. NMFS has elected to include some mitigation to prevent physical injury or entrapment from dredging (see Proposed Mitigation section); however, marine mammals would unlikely be taken, by harassment, by dredging. Cetaceans are rare in Coos Bay and the only pinniped with common occurrence are harbor seals. USACE channel maintenance dredging is a common occurrence in Coos Bay and seals are likely habituated to this activity. Further, any dredging by JCEP would occur at least 500 m from any harbor seal haul-out, and dredging would not occur during the harbor seal pupping season. As such, dredging is not discussed further in this notice other than in the *Proposed Mitigation* section.

APCO 1 and APCO 2 Sites—Dredged Material Disposal Site Preparation

A primary location for disposal of dredged material from the NRIs would be at two APCO sites (APCO Site 1 and APCO Site 2, collectively referred to as the APCO sites) east of the Southwest Oregon Regional Airport (Figure 1). Management of dredge material at the APCO sites would require construction of a single-lane permanent bridge, and a temporary bridge would be needed to construct the permanent bridge (see Figure 1–5 in JCEP's application). The temporary work bridge would be approximately 30 feet wide and 280 feet long, begin and end on dry land, and would require installation of twelve 24-inch-diameter steel piles below the highest measured tide (HMT) boundary. These would be in-water piles and would be installed during the ODFW in-water work window (October 1–February 15). Steel piles would be driven with a vibratory hammer and may be tested with impact pile drivers to determine whether they have been set properly. If impact driving is necessary for installation due to substrate conditions, a BCA would be used. The temporary work bridge would be in place for less than 24 months and would be removed using vibratory methods. The permanent bridge would be 200 feet long and nearly 40.5 feet wide, would span the tidal mudflat, and would provide access to and from the disposal sites. Because the permanent bridge would span the tidal mudflat, no in-water pile driving would be required for its construction.

If dredged material is offloaded from a barge/scow, a temporary dredge offload facility would need to be constructed, to hydraulically transfer dredge material. Approximately 16 temporary in-water piles and/or spuds that would be 24 inches in diameter would be used to moor the facility and barges. Additionally, the Temporary Dredge Transfer Line will need to be placed across an eelgrass bed at the APCO sites to minimize impacts, so a support cradle for the Temporary Dredge Transfer Line will be needed which will require five 24-inch temporary piles. These five piles would be installed with a vibratory hammer during the in-water work window.

Table 2 summarizes the pile driving associated with the ancillary activities. Only the installation of piles associated with the TPP/US–101 widening and APCO Sites 1 and 2 would occur during the effective period of the IHA. All piles would be driven in the water except for the timber piles at the TPP/US–101, which would be driven behind a partially dewatered cofferdam. All impact driving of pipe piles would be done within a bubble curtain and driven during the ODFW in-water work window.

TABLE 2—PILE DRIVING ASSOCIATED WITH ANCILLARY ACTIVITIES

[TPP/US1010 Widening and APCO Sites 1 and 2]

Ancillary activity	Pile type	Size	Number of piles	Piles driven per day	Driving type
TPP/US–101 Widening:					
Roadway Grid	Timber	14-inch	1,150	20	Impact and vibratory.
Cofferdam	Sheet	NA	311	20	Vibratory.
Work Access Bridge.	Pipe	24-inch	36	4	Vibratory and Impact.
APCO 1 and APCO 2 Sites					
Temporary Work Bridge.	Pipe	24-inch	12	4	Vibratory.
Dredge Line Support Cradle.	Pipe	24-inch	5	4	Vibratory.
Dredge Offloading Area.	Pipe	24-inch	16	4	Vibratory.

Table 3 summarizes all pile installation work associated with the terminal and ancillary activities. At any given site, only one hammer would be operating although pile driving may be simultaneously occurring at multiple sites.

TABLE 3—TOTAL PILES ASSOCIATED WITH THE JORDAN COVE LNG TERMINAL AND ANCILLARY ACTIVITIES

Method	Pile type	In-the-dry vs in-water vs behind cofferdam?	Total piles	Location	Driving days [a]	Duration driving per day (min)
LNG Terminal						
Vibratory	Sheet Pile	In-the-dry	1,246	MOF (outside in water work window).	97	309
Vibratory	Sheet Pile	In-the-dry	623	MOF (inside in water work window).	48	309
Vibratory	Sheet Pile	In-the-dry	113	W. berth wall, 2.5% nearest berm (outside in water work window).	8.5	329
Vibratory	Pipe Pile	In-the-dry	6	TMBB mooring pile (inside in water work window).	10	9
Ancillary Activities (all would occur inside in-water work window)						
Impact	Timber	Behind cofferdam	1,150	TPP/US–101 intersection	60	50
Vibratory					60	100
Vibratory	Sheet Pile	In-water	311	TPP/US–101 intersection	16	100
Impact	Pipe Pile	In-water with BCA (for impact driving).	36	TPP/US–101 intersection	9	20
Vibratory					9	80
Vibratory	Pipe Pile	In-water	33	APCO sites	9	30

a. May occur concurrently with other pile-driving activities but only one pile hammer would be operating in any given area.
TPP/US–101—TransPacific Parkway/U.S. Highway 101.
MOF—Material Offloading Facility.
TMBB—Temporary Material Barge Berth.
LNG Terminal—Liquid Natural Gas Terminal.
BCA—Bubble Curtain Attenuation or equivalent.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Systematic marine mammal surveys in Coos Bay are limited; therefore, JCEP conducted seasonal multi-day surveys in support of the IHA application and relied on Oregon Department of Fish and Wildlife (ODFW) aerial surveys as well as anecdotal reports (*e.g.,* media reports) to better understand marine mammal presence in Coos Bay. Based on these data, seven marine mammal species comprising seven stocks have the potential to occur within Coos Bay during the project.

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 4 lists all species with expected potential for occurrence in Coos Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR) values, where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific Marine Mammal Stock Assessments 2018 (*e.g.,* Carretta *et al.,* 2019). All values presented in Table 4 are the most recent available at the time of publication and are available in the most recent SARs.

TABLE 4—MARINE MAMMAL SPECIES POTENTIALLY PRESENT WITHIN COOS BAY DURING LNG TERMINAL CONSTRUCTION

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N, N	26,960 (0.05, 25,849, 2016)	801	139
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	West Coast Transient	N, N	521 (-, 243, 2012)	2.4	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Northern CA/Southern OR	N, N	35,769 (0.52, 23,749, 2011)	475	≥0.6
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Northern elephant seal	*Mirounga angustirostris*	California breeding	N, N	179,000 (n/a, 81,368, 2010)	4,882	8.8
Steller sea lion	*Eumetopias jubatus*	Eastern U.S		41638 (-, 41,638, 2015)	498	247
California sea lion	*Zalophus californianus*	U.S	N, N	257,606 (n/a, 233,515, 2014)	14,011	≥321
Family Phocidae (earless seals):						
Pacific harbor seal	*Phoca vitulina*	Oregon/Washington Coastal	N, N	24,732 (unk, -, 1999) [5]	unk	unk

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case]

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] The minimum population estimate (NMIN) for the West Coast Transient stock of killer whales is derived from mark-recapture analysis for West Coast transient population whales from the inside waters of Alaska and British Columbia of 243 whales (95% probability interval = 180–339) in 2006 (DFO 2009), which includes animals found in Canadian waters.

[5] Because the most recent abundance estimate is >8 years old (1999), there is no current estimate of abundance available for this stock. However, for purposes of our analysis, we apply the previous abundance estimate (24,732) which accounts for animals in water during aerial surveys.

As described below, all seven species comprising seven stocks temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

Gray Whales

Gray whales are only commonly found in the North Pacific. Genetic comparisons indicate there are distinct

''Eastern North Pacific'' (ENP) and ''Western North Pacific'' (WNP) population stocks, with differentiation in both mtDNA haplotype and microsatellite allele frequencies (LeDuc *et al.* 2002; Lang *et al.* 2011a; Weller *et al.* 2013). Tagging, photo-identification and genetic studies show that some whales identified in the WNP off Russia have been observed in the ENP, including coastal waters of Canada, the U.S. and Mexico (*e.g.,* Lang 2010; Mate *et al.* 2011; Weller *et al.* 2012; Urbán *et al.* 2013, Mate *et al.* 2015). WNP gray whales are not expected to enter Coos Bay and therefore will not be discussed further.

From 2009 to 2013, researcher attached satellite tags to 35 gray whales off the coasts of Oregon and northern California from September to December 2009, 2012, and 2013 (Lagerquist *et al.,* 2019). These whales are members of the Pacific Coast Feeding Group (PCFG), a subset of gray whales in the ENP that feed off the PNW, during summer and fall. Tracking periods for the satellite-tagged whales in this study ranged from 3 days to 383 days. Feeding-area home ranges for the resulting 23 whales covered most of the near-shore waters from northern California to Icy Bay, Alaska, and ranged in size from 81 km^2 to 13,634 km^2. Core areas varied widely in size (11–3,976 km^2) and location between individuals, with the highest-use areas off Point St. George in northern California, the central coast of Oregon, and the southern coast of Washington. Tag data indicates whales primarily occupied waters predominantly over continental shelf waters less than 10 km from shore and in depths less than 50 m. Gray whales undertake annual migrations from northern feeding waters, primarily in the Bering, Chukchi, and western Beaufort seas during the summer, before heading south to breeding and calving grounds off Mexico over the winter. Between December and January, late-stage pregnant females, adult males, and immature females and males migrate southward. The northward migration occurs in two stages between February and late May. The first group, consisting of adult males and immature females, moves north in this stage, while females with calves spend more time in southern waters and travel north later (Calambokidis et al. 2014).

Gray whales enter larger bays such as San Francisco Bay during their northward and southward migration. Although Coos Bay is not a common stopping point, the Corvallis Gazette-Times (2000) reported that a gray whale (*Eschrichtius robustus*) entered Coos Bay and traveled 15 miles from the mouth into the estuary in June 2000. Furthermore, a local television station (KCBY, North Bend) reported a gray whale occurrence in Coos Bay in November 2009, although this has not been verified. The November 2009 observation likely occurred during the gray whale's southbound migration, while the observation in June 2000 probably was during the northbound migration, both of which occur in near-shore waters off the coast of Oregon.

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. This event has been declared an Unusual Mortality Event (UME). A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. As of September 30, 2019, 121 gray whales have stranded in the U.S. between Alaska and California with an additional 10 strandings in Canada and 81 in Mexico. Of the U.S. strandings, six of the animals have been found in Oregon. Full or partial necropsy examinations were conducted on a subset of the whales. Preliminary findings in several of the whales have shown evidence of emaciation. These findings are not consistent across all of the whales examined, so more research is needed. Threats to gray whales include ship strike, fishery gear entanglement, and climate change-related impacts such as reduction in prey availability, and increased human activity in the Arctic (Caretta *et. al.,* 2019).

Gray whales belonging to the ENP stock are not listed as endangered or threatened under the ESA nor designated as depleted or strategic under the MMPA. The stock is within its OSP range. Punt and Wade (2012) estimated the ENP population was at 85 percent of carrying capacity (K) and at 129 percent of the maximum net productivity level (MNPL), with a probability of 0.884 that the population is above MNPL and therefore within the range of its optimum sustainable population (OSP). In 2018, the IWC approved a 7-year quota (2019–2025) of 980 gray whales landed, with an annual cap of 140, for Russian and U.S. (Makah Indian Tribe) aboriginals based on the joint request and needs statements submitted by the U.S. and the Russian Federation. The U.S. and the Russian Federation have agreed that the quota will be shared with an average annual harvest of 135 whales by the Russian Chukotka people and 5 whales by the Makah Indian Tribe. Total takes by the Russian hunt during the past five years were: 143 in 2012, 127 in 2013, 124 in 2014, 125 in 2015, and 120 in 2016 (IWC). There were no whales taken by the Makah Indian Tribe during that period because their hunt request is still under review. Other sources of mortality and serious injury include commercial fishery interaction, ingestion of marine debris, and nearshore industrialization and shipping congestion throughout gray whale migratory corridors leading to increased exposure to pollutants and ship strikes, as well as a general habitat degradation. In addition, the Arctic climate which include part of this stock's range is changing significantly, resulting in a reductions in sea ice cover that are likely to affect gray whale populations (Johannessen *et al.* 2004, Comiso *et al.* 2008).

Killer Whales

Killer whales are found throughout the North Pacific. Along the west coast of North America, killer whales occur along the entire Alaskan coast (Braham and Dahlheim 1982), in British Columbia and Washington inland waterways (Bigg et al. 1990), and along the outer coasts of Washington, Oregon, and California (Green et al. 1992; Barlow 1995, 1997; Forney et al. 1995). Seasonal and year-round occurrence has been noted for killer whales throughout Alaska (Braham and Dahlheim 1982) and in the intracoastal waterways of British Columbia and Washington State, where whales have been labeled as 'resident,' 'transient,' and 'offshore' type killer whales (Bigg *et al.,* 1990) based on aspects of morphology, ecology, genetics, and behavior. Within the transient ecotype, association data (Ford et al. 1994, Ford and Ellis 1999, Matkin et al. 1999), acoustic data (Saulitis 1993, Ford and Ellis 1999) and genetic data (*e.g.,* Hoelzel et al. 1998) confirm that at least three communities of transient whales exist and represent three discrete populations: (1) Gulf of Alaska, Aleutian Islands, and Bering Sea transients, (2) AT1 transients, and (3) West Coast transients. For purposes of this analysis, we limit our assessment to West Coast transients based on project location.

Killer whales belonging to the transient stock have been documented as occurring in Coos Bay. In May 2017, a pair of killer whales was observed feeding on what was concluded to be a seal (AECOM 2017). The whales moved through the estuary northwards past Jordan Cove to the Highway 101 Bridge. However, the whales are not known to linger in the area and no biologically important habitat for this stock exists in Coos Bay. No killer whales were

observed during AECOM's November/December 2018 surveys.

Killer whales are not listed as endangered or threatened under the ESA nor designated as depleted or strategic under the MMPA. Primary threats include commercial fishery and vessel interactions. Human-caused mortality has been underestimated, primarily due to a lack of information on Canadian fisheries, and that the minimum abundance estimate is considered conservative (because researchers continue to encounter new whales and provisionally classified whales from western Alaska, southeastern Alaska, and off the coast of California were not included), resulting in a conservative PBR estimate.

Harbor Porpoise

In the Pacific Ocean, harbor porpoise are found in coastal and inland waters from Point Conception, California to Alaska and across to Kamchatka and Japan (Gaskin 1984). There are several stocks of harbor porpoise along the west coast of the U.S. and in inland waterways. While harbor porpoise are rare within Coos Bay, if present, animals are likely belonging to the Northern California/Southern Oregon stock which is delimited from Port Arena, California in the south to Lincoln City, Oregon, approximately 230 miles north of the project site. Use of Oregon estuaries by harbor porpoise are not common; especially in Coos Bay, are not common (*e.g.,* Bayer, 1985). No harbor porpoise were observed during the AECOM May 2017, or November/December 2018, vessel-based line transect surveys.

Harbor porpoise in northern California/southern Oregon are not listed as threatened or endangered under the ESA nor as depleted under the MMPA. The northern California portion of this harbor porpoise stock was determined to be within their Optimum Sustainable Population (OSP) level in the mid-1990s (Barlow and Forney, 1994), based on a lack of significant anthropogenic mortality. There are no known habitat issues that are presently of concern for this stock, although harbor porpoise are sensitive to disturbance by anthropogenic sound sources, such as those generated during the installation and operation of marine renewable energy facilities (Teilmann and Carstensen, 2012). The stock is not known to exceed 10 percent of the calculated PBR (15.1) and, therefore, can be considered to be insignificant and approaching zero mortality and serious injury rate (Carretta *et al.,* 2015).

Northern Elephant Seal

Northern elephant seals belonging to the California breeding stock are found occasionally in Oregon either resting or molting (shedding their hair) on sandy beaches. Elephant seals do not generally breed in Oregon, however there are a number of breeding sites in California such as Año Nuevo State Reserve. Cape Arago State Park, just south of the entrance to Coos Bay, is the only spot where northern elephant seals haul-out year-around in Oregon. The majority of the elephant seals seen in Oregon are sub-adult animals that come to shore to molt. Northern elephant seals regularly occur at haul-out sites on Cape Arago, approximately 3.7 miles south of the entrance to Coos Bay.

Scordino (2006) reported total counts (average, maximum, minimum) of harbor seal, elephant seal, California sea lion, and Steller sea lion at Cape Arago during each month surveyed between 2002 and 2005 (Figure 4–2 in JCEP's application). Abundance of elephant seals was low in all months, with a maximum of 54 animals reported in May (Scordino, 2006). No Northern elephant seals have been observed within Coos Bay; however, given their close proximity to the mouth of the estuary, they have been included in this analysis.

Northern elephant seals are not listed as endangered or threatened under the ESA nor designated as depleted under the MMPA. Because their annual human-caused mortality (≥8.8) is much less than the calculated PBR for this stock (4,882), northern elephant seals are not considered a ''strategic'' stock under the MMPA. Threats to Northern elephant seals include commercial and recreational fisheries, marine debris entanglement, direct intentional mortality and injury (*e.g.,* shootings), power plant entrainment; and oil/tar exposure (Carretta *et al.* 2014b). The population continues to grow, with most births occurring at southern California rookeries (Lowry et al. 2014). There are no known habitat issues that are of concern for this stock.

California Sea Lion

California sea lions are distributed along the North Pacific waters from central Mexico to southeast Alaska, with breeding areas restricted primarily to island areas off southern California (the Channel Islands), Baja California, and in the Gulf of California (Wright *et al.,* 2010). California sea lions are dark brown with broad fore flippers and a long, narrow snout. There are five genetically distinct geographic populations. The population seen in Oregon is the Pacific Temperate stock, which are commonly seen in Oregon from September through May (ODFW 2015).

Almost all California sea lions in the Pacific Northwest are sub-adult or adult males (NOAA 2008). The occurrence of the California sea lion along the Oregon coast is seasonal with lowest abundance in Oregon in the summer months, from May to September, as they migrate south to the Channel Islands in California to breed. During other times of the year, the primary areas where it comes ashore are Cascade Head, Tillamook County; Cape Arago, Coos County; and Rouge Reef and Orford Reef in Curry County.

The California sea lions stock has been growing steadily since the 1970s. The stock is estimated to be approximately 40 percent above its maximum net productivity level (MNPL = 183,481 animals), and it is therefore considered within the range of its optimum sustainable population (OSP) size (Laake *et al.* 2018). The stock is also near its estimated carrying capacity of 275,298 animals (Laake *et al.* 2018). However, there remain many threats to California sea lions including entanglement, intentional kills, harmful algal blooms, and climate change. For example, for each 1 degree Celsius increase in sea surface temperature (SST), the estimated odds of survival declined by 50 perfect for pups and yearlings, while negative SST anomalies resulted in higher survival estimates (DeLong *et al.* 2017). Such declines in survival are related to warm oceanographic conditions (*e.g.,* El Niño) that limit prey availability to pregnant and lactating females (DeLong *et al.* 2017). Changes in prey abundance and distribution have been linked to warm-water anomalies in the California Current that have impacted a wide range of marine taxa (Cavole *et al.* 2016).

California sea lions are not listed as endangered or threatened under the ESA nor designated as depleted under the MMPA Threats to this species include incidental catch and entanglement in fishing gear, such as gillnets; biotoxins, as a result of harmful algal blooms; intentional mortality (*e.g.,* gunshot wounds and other human-caused injuries), as California sea lions are sometimes viewed as a nuisance by commercial fishermen (NOAA 2016). Between 2013 to 2016, NMFS declared a UME for California sea lions in southern California. The likely cause was a change in the availability of sea lion prey, especially sardines, a high value food source for nursing mothers, is a likely contributor to the large number of strandings. Sardine spawning grounds shifted further offshore in 2012

and 2013, and while other prey were available (market squid and rockfish), these may not have provided adequate nutrition in the milk of sea lion mothers supporting pups, or for newly-weaned pups foraging on their own.

During the four-day 2017, May AECOM surveys, two California sea lions were observed while on-effort during the vessel-based line transect surveys while eight animals were observed off-effort. No California sea lions were observed during the three-day November/December 2018, surveys.

Steller Sea Lion

The Steller sea lion range extends along the Pacific Rim, from northern Japan to central California. For management purposes, Steller sea lions inhabiting U.S. waters have been divided into two DPS: The Western U.S. and the Eastern U.S. The population known to occur within the Lower Columbia River is the Eastern DPS. The Western U.S. stock of Steller sea lions are listed as endangered under the ESA and depleted and strategic under the MMPA. The Eastern U.S. stock was de-listed in 2013 following a population growth from 18,000 in 1979 to 70,000 in 2010 (an estimated annual growth of 4.18 percent) (NOAA 2013). A population growth model indicates the eastern stock of Steller sea lions increased at a rate of 4.76 percent per year (95 percent confidence intervals of 4.09–5.45 percent) between 1989 and 2015 based on an analysis of pup counts in California, Oregon, British Columbia, and Southeast Alaska (Muto *et al.,* 2017). This stock is likely within its Optimum Sustainable Population (OSP); however, no determination of its status relative to OSP has been made (Muto *et al.,* 2017).

Steller sea lions can be found along the Oregon coast year-round with breeding occurring in June and July. The southern coast of Oregon supports the largest Steller breeding sites in U.S. waters south of Alaska, producing some 1,500 pups annually. Near the entrance of Coos Bay, Steller sea lions can be found year round at Cape Arago State Park. Steller sea lions may occasionally enter Coos Bay; however, no long term residency patterns have been observed.

Threats to Steller sea lions include boat/ship strikes, contaminants/pollutants, habitat degradation, illegal hunting/shooting, offshore oil and gas exploration, and interactions (direct and indirect) with fisheries (Muto *et al.,* 2017).

During the four-day May 2017, AECOM surveys, a single Steller sea lion was observed while off-effort during the vessel-based line transect surveys. No Steller sea lions were observed during the three-day November/December 2018, surveys.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Baja California, north along the western coasts of the continental U.S., British Columbia, and Southeast Alaska, west through the Gulf of Alaska and Aleutian Islands, and in the Bering Sea north to Cape Newenham and the Pribilof Islands (Caretta *et al.,* 2014). Within U.S. west coast waters, five stocks of harbor seals are recognized: (1) Southern Puget Sound (south of the Tacoma Narrows Bridge); (2) Washington Northern Inland Waters (including Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca); (3) Hood Canal; (4) Oregon/Washington Coast; and (5) California. Seals belonging to the Oregon/Washington Coast stock are included in this analysis.

Harbor seals generally are non-migratory, with local movements associated with tides, weather, season, food availability, and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981). Harbor seals do not make extensive pelagic migrations, though some long distance movement of tagged animals in Alaska (900 km) and along the U.S. west coast (up to 550 km) have been recorded (Brown and Mate 1983, Herder 1986, Womble 2012). Harbor seals have also displayed strong fidelity to haulout sites (Pitcher and Calkins 1979, Pitcher and McAllister 1981).

The Pacific harbor seal is the most widespread and abundant resident pinniped in Oregon. They haul-out to rest at low tide on sand bars in most bays and estuaries along the Oregon coast. They are also found on nearshore rocks and islands usually within 3 miles of the coast. Females are mature at around age 4 and give birth to one pup each year. In Oregon, pups are born in late March through April. Nursing pups remain with their mothers for 4 to 6 weeks and are then weaned to forage and survive on their own. Pups are precocious at birth, capable of swimming and following their mothers into the water immediately after birth. Females leave their pups at haul-outs or along sandy beaches while searching for food.

Within Coos Bay, four harbor seal haul-out sites have been identified by ODFW; three of which have documented pup sightings. From the inlet to the upper Bay, these are South Slough (southeast of the entrance channel), Pigeon Point, Clam Island, and Coos Port (see Figure 4–1 in JCEP's application). The Clam Island and Pigeon Point haul-outs flank each side of the FNC. The Pigeon Point haulout is inundated at high tide but Clam Island and Coos Port are not; these haulouts are available at those locations during high tides. The closest haul-out to the LNG Terminal is the northern end of Clam Island, an estimated three miles from the project site. Some of the ancillary features are closer, such as the NRIs, which are about 0.5 to 1 mile from Clam Island. South Slough is well south of any activities involved with the project.

Harbor seals generally forage within close proximity to their haul-outs. For example, a study of radio tagged harbor seals in San Francisco Bay found that the majority of foraging trips were less than 10 km from their regular haul-out (Grigg et al. 2012), and a similar study in Humboldt Bay found that the majority of seals travelled 13 km or less to forage (Ougzin 2013). Both studies found that harbors seals typically forage at in relatively shallow water depths; a median value of 7 m was reported for the San Francisco Bay Study (Grigg et al. 2012).

It is suspected the ''resident'' population of 300–400 harbor seals use Coos Bay year-round with habitat use including breeding, pupping, and foraging. The most recent haul-out counts were conducted by ODFW in May and June 2014 (Table 5). In 2014, 333 seals were observed at Coos Bay haulouts in June (Wright, pers comm, August 27, 2019). May yielded slightly higher numbers, as expected since it is closer to peak pupping season; however, the South Slough haulout site was not surveyed in May due to fog. To account for animals in water and not counted in the survey, we applied a 1.53 correction factor to the total June count, as described in Huber et al. (2001) and was done by ODFW to estimate total number of seals along the Oregon and Washington Coast based on 2014 aerial haulout surveys (see *http://geo.maps.arcgis.com/apps/MapJournal/index.html?appid=1899a537f0a0464 99312b988df7ed405*). This yields a June Coos Bay harbor seal abundance of 509 (333 seals × 1.53).

TABLE 5—HARBOR SEAL COUNTS FROM AERIAL SURVEY DATA—ODFW MAY AND JUNE 2014

Haul-out site	May 22, 2014		June 5, 2014	
	Total	Pups	Total	Pups
Clam Island	287	87	214	40
Coos Port	48	7	75	14
Pigeon Point	17	6	0	0
South Slough	n/a (fog)	n/a (fog)	44	8
Coos Bay Total	352	100	333	62
Coos Bay Total (with correction factor)	539	n/a	509	n/a

JCEP also sponsored marine mammal presence and abundance data collection throughout Coos Bay in 2017 and 2018. Appendix A of JCEP's application contains the field reports from those efforts. These surveys were vessel-based line transect surveys. Observations made by AECOM during May 2017 site-specific surveys found similar patterns to the ODFW aerial surveys. More than 300 observations of harbor seals were recorded in the estuary over the four days of survey. AECOM conducted additional surveys during November and December 2018 to establish a fall/winter local abundance estimate for harbor seals. A maximum of 167 seals were hauled-out between the Clam Island and Pigeon Point haul-outs at any one time. ODFW indicates it is likely many harbor seals are year-round residents in Coos Bay and rely on these waters for all life stages and behaviors including, by not limited to, breeding, pupping, and foraging.

Harbor seals are not listed as endangered or threatened under the ESA nor designated as depleted under the MMPA. Current threats include commercial fisheries, research fisheries, gillnet tribal fishery, direct mortality (*e.g.,* shootings), and ship strike. The stock was previously reported to be within its Optimum Sustainable Population (OSP) range (Jeffries et al. 2003, Brown et al. 2005), but in the absence of recent abundance estimates, this stock's status relative to OSP is unknown.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 6.

TABLE 6—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The phocid pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Seven marine mammal species (three cetacean and four pinniped (three otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities—please refer to Table 4. Of the cetacean species that may be present, one is classified as low-frequency cetaceans (*i.e.,* all mysticete species), one is classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and one is classified as high-

frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is represented by the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

As described in Jasco (2019), during impact pile driving, acoustic energy is created upon impact and travels through the water along different paths. These paths are (1) from the top of the pile where the hammer hits, through the air, into the water; (2) from the top of the pile, down the pile, radiating directly in the pile from the length of pile below the waterline; (3) from the top of the pile, down the pile, radiating directly into the water from the length of pile below the waterline, and (4) down the pile radiating into the ground, travelling through the ground, radiating back into the water. Farther away from the pile, ground-borne energy prevails although it is greatly suppressed. Vibratory hammers sit on top of the pile and, using counter-rotating eccentric weights, drives the pile into the ground without striking it. Therefore, noise pathways from vibratory driving do not include number 1 above. Horizontal vibrations are cancelled out while vertical vibrations are transmitted into the pile. In general, sound increases with pile size (diameter and wall thickness), hammer energy, and ground hardness.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz

and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Underwater ambient sound in Coos Bay is comprised of sounds produced by a number of natural and anthropogenic sources and varies both geographically and temporally. Human-generated sound is a significant contributor to the ambient acoustic environment in Coos Bay. During AECOM's 2017 and 2018 marine mammal line transect surveys, they also collected acoustic data to identify background sound levels in Coos Bay. Understanding the acoustic habitat of the Bay is important for identifying the potential severity of impact of the proposed acoustic stressor (in this case pile driving) on marine mammals. Twenty acoustic recordings were made between May 4–10, 2017. Background noise levels ranged from 109.6–169.7 dB rms with a median of 124.7 dB rms (Appendix A of JCEP's application). The highest level (169.7 dB rms) was recorded during active loading of a container vessel at the Roseburg Forest Products Chip Terminal on 4 May 2017 in Jordan Cove. The lowest ambient noise levels were recorded on 4 May 2017, also near Jordan Cove, with a calculated rms noise level of 109.6 dB re 1μPa. Eighteen acoustic recordings were made between November 26–28, 2018, during the line transect field survey. The ambient noise levels ranged from 84.7–134.9 rms dB re 1μPa with a median of 120.5 rms dB, with the highest levels recorded on 28 November 2018 in the Lower Estuary (Appendix A of JCEP's application).

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The impulsive sound generated by impact hammers is characterized by rapid rise times and high peak levels. Vibratory hammers produce non-impulsive, continuous noise at levels significantly lower than those produced by impact hammers. Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (*e.g.,* Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Potential Effects of Underwater Sound—Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from anthropogenic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to pile driving.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that pile driving may result in such effects. Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level

underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The construction activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects and therefore are not likely to occur.

Threshold Shift—NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of TS is customarily expressed in dB (ANSI 1995, Yost 2007). A TS can be permanent (PTS) or temporary (TTS). As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral). When analyzing the auditory effects of noise exposure, it is often helpful to broadly categorize sound as either impulsive—noise with high peak sound pressure, short duration, fast rise-time, and broad frequency content—or non-impulsive. When considering auditory effects, vibratory pile driving is considered a non-impulsive source while impact pile driving is treated as an impulsive source.

TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see NMFS 2018 for review). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

NMFS defines TTS as a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Finneran 2014 for a review), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000; Finneran *et al.,* 2002).

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals of cetaceans and pinnipeds. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species sensitivity, state of maturity, experience with the same or similar stressors, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* signal properties, whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is

appropriately considered as a progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial, rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity. As described above, the background noise levels in Coos Bay are typically around 120 dB rms; therefore, harbor seals would likely be more habituated to elevated noise levels.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Nowacek *et al.;* 2004, Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.*, 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and

whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

The frequency range of the potentially masking sound is important in determining any potential impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects of JCEP's Activity—As described previously (see ''Description of Active Acoustic Sound

Sources''), JCEP proposes to conduct pile driving, including impact and vibratory driving, in Coos Bay. Both vibratory and impact pile driving near the water's edge (in the dry) may occur year round; however, in-water impact pile driving would only occur during the ODFW in-water work window (October 1–February 15). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): changing durations of surfacing and dives, number of blows or respirations per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could lead to effects on growth, survival, or reproduction, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are extremely unlikely in this area. The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007). However, some of the harbor seals in Coos Bay have likely become habituated to anthropogenic noises in the developed Bay area. As described above, the background noise conditions of the Bay are already elevated (with median levels at or above NMFS Level B harassment thresholds) and harbor seals are likely habituated to these noise levels. Further, if other activities such as active loading of a container vessel at the Roseburg Forest Products Chip Terminal, those activities may mask pile driving noises to some degree.

Whether impact or vibratory driving, sound sources would be active for relatively short durations, with relation to potential for masking. The frequencies output by pile driving activity are lower than those used by most species expected to be regularly present for communication or foraging. We would expect any masking to occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would result in permanent effects to a very small portion of Coos Bay used by marine mammals, primarily the area of the proposed LNG Terminal. The TPP/US–101 site would be permanently widened; however, this northern area is less commonly used by marine mammals than other parts of the bay and all impacts would occur inside the existing berm which acts as the roadway

Temporary impacts include increased noise levels during pile driving, resulting in impacts tothe acoustic habitat, but meaningful impacts are unlikely. There are no known foraging hotspots (although harbor seals likely primarily forage within the bay in general), or other ocean bottom structures of significant biological importance to marine mammals present in the marine waters in the vicinity of the project area. For harbor seals resident to Coos Bay, their daily acoustic habitat would have elevated noise levels during pile driving; however, these noise levels would likely be only a minor increase when considering anthropogenic sources in Coos Bay and would only occur when pile driving is occurring. The most severe noise levels from impact pile driving would not occur during time of sensitive biological importance such as the pupping season.

Impacts to the water column and substrates during pile driving and dredging are anticipated, but these would be limited to minor, temporary suspension of sediments leading to increased turbidity in the immediate area of pile driving and dredging. This increased turbidity could impair visibility during foraging; however, is not expected to have any effects on individual marine mammals because, as described above, these activities would not occur near any critical foraging hotspots.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More

commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The in-water impact pile driving work window is designed to reduce impacts to marine mammal prey such as salmonids; therefore, any effects on prey are also expected to be minor.

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected. It is also not expected that the industrial environment of the Naval installations provides important fish habitat or harbors significant amounts of forage fish.

For transient killer whales, impacts to their prey (*e.g.,* harbor seals) is not anticipated to be affected as seals are not expected to abandon the Coos Bay and therefore would remain available to killer whales. Further, killer whales do not forage on harbor seals in any great numbers in Coos Bay as transient killer whales are not common to Coos Bay.

As described in the preceding, the potential for pile driving or dredging to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*e.g.,* shutdown zone measures) discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

JCEP's proposed activity includes the use of continuous, non-impulsive (vibratory pile driving) and intermittent, impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms), respectively, are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

These thresholds are provided in Table 7 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 7—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

JCEP investigated potential source levels associated with their proposed pile driving activities. For piles driven in-water, JCEP used data from Caltrans (2015) to estimate source levels and in consideration of use of bubble curtains (required per ODFW regulations) and derive estimated distances to the appropriate NMFS Level B harassment isopleth (160 dB for impact driving, 120 dB for vibratory driving) using a practical (15logR) spreading model (Table 8).

TABLE 8—ESTIMATED SOURCE LEVELS FOR PILES DRIVING AND CORRESPONDING LEVEL B HARASSMENT ISOPLETHS AND AREAS

Pile type/method/location	Source levels at 10 meters (dB)			160/120 dB RMS threshold (Level B harassment)	
	Peak	RMS	SEL	Distance to Level B threshold (m) [2]	Area (sq. km) [2]
LNG Terminal					
Sheet piles/24-in pipe piles (in-the-dry)	See Appendix D is JCEP's application			1,914	2.49/3.14
Ancillary Activities					
24-inch Pipe Piles at TPP/US–101—Impact with BCA	[1] 196	[1] 183	[1] 170	341	0.136
14-inch Timber Piles at TPP/US–101—Impact within cofferdam.	180	170	160	46	0.002
24-inch Pipe Piles at TPP/US–101, and APCO sites—Vibratory.	.....	165	165	10,000	TPP/US101—1.18. APCO—0.40.
14-inch Timber Piles at TPP/US–101—Vibratory	.....	162	162	6,310	1.18
Sheet Piles at TPP/US–101—Vibratory	.....	160	160	4,642	1.18

[1] Assumes a 7dB bubble curtain reduction from unattenuated sources in Caltrans (2015).
[2] Distance to threshold is calculated whereas area accounts for cutoffs from land.

For piles driven close to the water's edge but out of water (in water laden sediments) at the MOF, JCEP contracted JASCO to conduct more sophisticated acoustic modeling to determine if sound propagation through the sediment would contribute to elevated noise levels in-water above NMFS harassment thresholds. Appendix D in JCEP's application contains the full modeling report for vibratory pile driving, respectively, near the water's edge (within 9 m (30 feet)) at the MOF (note Appendix C contains impact pile driving model; however, no impact driving piles in-the-dry would occur under the proposed IHA). The model methods, in summary, included use of a full-wave numerical sound propagation model to simulate the transmission of vibratory pile driving noise through water-saturated soils into the water. Source levels for vibrating sheet piles were based on published hydrophone measurements of in-water sheet pile driving.

To model sound propagation from vibratory pile driving, JASCO used a modified version of the RAM parabolic-equation model (Collins 1993, 1996). The environmental data and source levels were input to underwater noise modeling software to estimate the underwater noise received levels (RL) that would be present in the water near the pile driving. The maximum modeled

Level B harassment threshold distance for vibratory pile driving in-the-dry at the LNG Terminal site is 1,914 m. We note Jasco conservatively applied the findings from the vibratory model for piles set back 30 ft (9 m) from the water's edge to all piles that are to be installed within 100 ft (30 m) of the water's edge. The model predicted that the Level A harassment thresholds for all hearing groups would not be reached during vibratory pile driving at the Terminal (all in-the-dry piles) when considering five hours of vibratory pile driving per day (see Table 5–2 in Appendix B in JCEP's application).

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that an ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth from in-water sources that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that exact distance the whole duration of the activity, it could incur PTS. Inputs used in the User Spreadsheet for all the in-water pile driving work and the resulting isopleths are reported in Table 9. We note none of the peak source levels exceed any Level A harassment threshold.

TABLE 9—NMFS USER SPREADSHEET INPUTS FOR IN-WATER PILE DRIVING

[User spreadsheet input]

	24-in steel impact	14-in timber impact	24-in steel vibratory	Sheet vibratory	14-in timber vibratory
Spreadsheet Tab Used	(E.1) Impact pile driving.	(E.1) Impact pile driving.	(A) Non-Impulse-Stat-Cont.	(A) Non-Impulse-Stat-Cont.	(A) Non-Impulse-Stat-Cont.
Source Level (Single Strike/shot SEL/rms)	170 dB	160 dB	165 dB	160 dB	162 dB.
Weighting Factor Adjustment (kHz)	2 kHz	2 kHz	2.5 kHz	2.5 kHz	2.5 kHz.
(a) Number of strikes per pile	200	100	N/A	N/A	N/A.
(a) Number of piles per day or activity duration	4	20	0.5 hours	1.67 hours	1.67 hours.
Propagation (xLogR)	15	15	15	15	15.
Distance of source level measurement (meters)+	10	10	10	10	10.

The resulting Level A isopleths for in-water pile driving for each marine mammal hearing group are presented in Table 10 (the following discussion does not apply to in-the-dry piles as that was modeled by Jasco). The User Spreadsheet calculates a very small zone (less than 6 m) when considering 1.67 hours of vibratory driving piles in-water (this time does not include time it takes to reset the hammer to new piles) and JCEP would implement a minimum 10 m shutdown zone. Therefore, NMFS has determined there is no potential for Level A take during any of the vibratory pile driving scenarios. During impact hammering in open water (which occurs only at the TPP/US–101 site), the potential for Level A take remains very small; however, it is greater than during vibratory driving. JCEP anticipates it could install up to 20 14-in timber piles per day. This could take several hours over the course of the entire day to reset piles; however, the resulting isopleth for all 20 piles is less than 56 meters for all species. When considering the installation of five 14-in timber piles (a more reasonable but still lengthy amount of time when considering animal movement), the Level A isopleth distance is also very small. Similarly, impact driving 24-in steel pipe piles at the TPP/US–101 site when considering the installation of four piles per day results in a small Level A harassment distance when using the User Spreadsheet. JCEP proposes to install 36 24-in piles over 9 days at this location to construct the work access bridge. The 36 piles installed at the TPP/US–101 site are located in an area that is behind a berm with infrequent harbor seal presence. For a seal to incur PTS, it must remain 63 m from the pile for the time it takes for four piles to be installed. These piles would only be proofed with the impact hammer; therefore, vibratory driving would occur first and then the hammer would have to be reset. In total, the amount of time it may take to install four piles is several hours. JCEP is proposing shutdown zones equal to or greater than the calculated Level A harassment isopleth distance for all pile driving. Because the zones are small and consider several hours in duration, NMFS believes the potential for Level A harassment is *de minimis* and is not proposing to issue take of any marine mammal by Level A harassment.

TABLE 10—CALCULATED LEVEL A HARASSMENT ISOPLETHS BASED ON NMFS USER SPREADSHEET FOR IN-WATER PILE DRIVING

Project element requiring pile installation	Source levels at 10 meters (dB)		Distance to Level A threshold [1] (m)				
	Peak [2]	RMS (vibratory)/ SEL (impact)	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids	Otariids
LNG Terminal							
Sheet Piles at MOF/ South West Berth wall and 24-inch TMBB Mooring Piles—Vibratory (in water/in the dry).	(4)	(4)	NE	NE	NE	NE	NE
Ancillary Activities							
24-inch Pipe Piles at TPP/US–101—Impact with BCA.	201	170 SEL	117.0	4.2	139.3	62.6	4.6
14-inch Timber Piles at TPP/US–101—Impact within cofferdam.	180	160 SEL	46.4	1.7	55.3	24.8	1.8
24-inch Pipe Piles at TPP/US–101 and APCO sites—Vibratory in water.	191	165 RMS	8.0	0.7	11.8	4.8	0.3
14-inch Timber Piles at TPP/US–101—Vibratory within cofferdam.	172	162 RMS	11.2	1.0	16.5	6.8	0.5
Sheet Piles at TPP/US–101—Vibratory in water.	175	160 RMS	8.2	0.7	12.2	5.0	0.4

[1] Level A thresholds are based on the NMFS 2018 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing; cSEL threshold distances are shown. See footnote 3 below.
[2] All distances to the peak Level A harassment thresholds are not met.
[3] Since these piles will be driven on land, source values at 10 m are not available; distances are calculated by JASCO modeling.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Harbor Seals

Over the last several decades, intermittent and independent surveys of harbor seal haul-outs in Coos Bay have been conducted. The most recent aerial survey of haul-outs in Washington and Oregon occurred in 2014 by ODFW. Those surveys were conducted during a time when the highest number of animals would be expected to haul out (*i.e.,* the latter portion of the pupping season [May and June] and at low tide). Based on logistic population growth models, harbor seal populations of the Oregon Coast had reached carrying capacities during the late 1980s and early 1990s (Brown et al. 2005). Using these data, an estimation of the number of seals using the Coos Bay estuary haul-outs can be made by simply dividing the area of the Coos Bay estuary by the estimated population size.

The Coos Bay estuary has an area of 55.28 square kilometers, as measured using geographic information system (GIS) files available from the Coastal Atlas (2018). We used the ODFW 2014 June aerial survey data yielding 333 observed individuals to estimate harbor seal density in Coos Bay during the February 15–September 30 timeframe. We did not apply the corrected abundance of 509 seals because those data are collected during times with higher abundance than the rest of the season. Therefore, we used the straight counts which, when considering a timeframe of February through September, is likely more representative of long-term abundance. The resulting density is 6.2 seals/km^2.

AECOM conducted surveys during November and December 2018, to determine a fall/winter estimate for harbor seals. This survey included 3 days of aerial (drone) flyovers at the Clam Island and Pigeon Point haul-outs to capture aerial imagery. In addition, vessel-based transect surveys over a 3-day period, using the same survey methods as the May 2017, surveys. This field effort observed a maximum of 167 harbor seals hauled out at the Clam Island and Pigeon Point sites on any one day for a resulting density of 3.0 seals/km^2 when estimating take for the October 1–February 15th work window.

Other Pinnipeds

No data are available to calculate density estimates for non-harbor seal pinnipeds; therefore, JCEP applies a presence/absence approach considering group size for estimating take for California sea lions, Steller sea lions, and Northern elephant seals. As described in the *Description of Marine Mammals* section, no haulouts for California sea lions and Steller sea lions exist within Coos Bay where harassment from exposure to pile driving could occur; however, these species do haul out on the beaches adjacent to the entrance to Coos Bay. These animals forage individually and seasonal use of Coos Bay have been observed, primarily in the spring and summer when prey are present. For this reason, JCEP estimates one California and Steller sea lion may be present each day of pile driving.

Northern elephant seals are not common in Coos Bay and also forage/travel individually. JCEP estimates one individual may be present within a given ensonified area greater than the NMFS harassment threshold one day for every seven days of pile driving.

Cetaceans

Similar to pinnipeds other than harbor seals, it is not possible to calculate density for cetaceans in Coos Bay as they are not present in great abundance and therefore JCEP estimates take based on a presence/absence approach and considers group size. During migration, gray whales species typically travels singly or as a mother and calf pair. This species has been reported in Coos Bay only a few times in the last decade and thus take of up to two individuals is requested as a contingency. The typical group size for transient killer whales is two to four, consisting of a mother and her offspring (Orca Network, 2018). Males and young females also may form small groups of around three for hunting purposes (Orca Network, 2018). Previous sightings in Coos Bay documented a group of 5 transient killer whales in May 2007 (as reported by the Seattle Times, 2007) and a pair of killer whales were observed during the 2017 May surveys. Considering most pile driving would occur outside the time period killer whales are less likely to be present, JCEP assumes that a group of three killer whales come into Coos Bay and could enter a Level B harassment zone for one day up to five times per year which would allow for a combination of smaller (*e.g.,* 2 animals) or larger (*e.g.,* 5 animals) groups.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Harbor Seals

ODFW and AECOM survey data suggest approximately 300 to 400 harbor seals are resident to Coos Bay. We also anticipate there is some flux between Coos Bay haulouts and nearby coastal haulouts, which likely contributes to the higher abundance estimates during the pupping season. Given the residency patterns, the standard approach for estimating take is likely insufficient to enumerate the number of harbor seals potentially taken by the specified activity. However, we do not believe that every harbor seal in the estuary (300 to 400 individuals) would be taken every day of pile driving given distances from haulouts to Level B harassment zones and pile driving durations within a day. Therefore, an approach balancing these two extremes needed to be developed.

NMFS typically relies on a standard calculation where estimated take = density × ensonified area × number of pile driving. This is considered a static approach in that it accounts for any given moment of pile driving—a snapshot in time. Typically, this approach allows for a sufficient amount of take from a typical pile driving project and we find it suitable for the Ancillary Activities because they would be limited in duration or would occur in areas where harbor seals are not expected to traverse frequently. However, the inputs described above are not directly applicable for estimating harbor seal take resulting from the vibratory pile driving that is planned at the LNG Terminal, because (1) vibratory driving at the Terminal may be occurring for several hours per day, (2) Coos Bay is narrow and level B noise thresholds are expected to be exceeded across the width of Coos Bay at the Terminal, and (3) many harbor seals that haul out at Clam Island, and to a lesser extent, the other haulouts in Coos Bay, likely swim by the LNG Terminal work zone throughout the day. Because of these factors, individual animals are expected to move into the Level B ZOI throughout the day as active vibratory driving is occurring at the LNG Terminal, and harbor seal take would be underestimated without accounting for the movement of animals. Therefore, JCEP developed a calculation method whereby seals were allowed to move continuously past the LNG Terminal site. JCEP refers to this as the movement method.

JCEP's movement method uses the same base assumption as the typical static method described above—that harbor seals are distributed evenly across the estuary. However, this method then assumes that these evenly distributed harbor seals travel through the harassment zones and they use a current drift speed as a proxy for this drift but it could also be considered a slow swim speed (likely representative for animals milling around an estuary to which they are resident) as described below. The calculations used by JCEP to estimate harbor seal exposures (likely occurring to the same 300 to 400 individuals) is: (Seals/km^2 × (ZOI) km^2) + (Seals/km^2 × (Current) km/min × (Pile Driving) min/day × (Channel Width) km) = Seals/day. This calculation represents that take for each day is calculated by taking a snapshot of the seals that are in the Level B harassment zone when driving starts (*i.e.,* the conventional static method), and then adding to that the seals that ''flow'' into the leading edge of the ZOI for the duration of pile driving. After harbor seals flow across the leading edge of the Level B harassment zone, they are considered taken.

Although seals are active swimmers and do not drift with the current, the purpose of the method was not to characterize actual movement but to estimate how many seals may pass into a given Level B harassment zone throughout the day. The method proposed by JCEP is a method designed to model the possibility seals may come within the Level B harassment zone in greater probability than a single snapshot in time in a given day (the static calculation method described above). In their Acoustic Integration AIM model, the U.S. Navy estimates harbor seal swim speeds range from 1–4 kilometers per hour (0.27 m/sec–1.1 m/sec) (Table B–2 in Navy, 2017). The proposed method assumes a drift speed of 0.39 m/sec (1.4 km/hour), which is within this range. We note the data from which the Navy swim speeds are derived are primarily tagging data during dives and bouts of foraging where animals are likely lunging for prey and moving quickly. Therefore, because we are looking for representative swim speeds crossing zones and these animals are resident to Coos Bay, we believe the lower end of this range is representative of average swim speeds. Further, the proposed movement method assumes seals flow in one direction whereas it is more likely seals are moving in multiple directions, potentially not crossing or taking longer to cross a Level B harassment isopleth. When considering this straight-line movement assumption and that the speed proposed is within a reasonable swim speed, NMFS finds JCEP's method is acceptable to estimate the potential for exposure. More importantly, the resulting number of exposures from this method is an equally reasonable amount of take given the specified activity (Table 11). We do not anticipate the calculated exposures to represent the number of individuals taken but that these exposures likely will occur to the same individuals repeatedly as the population appears to be resident with some flux in abundance as evident by the lower sighting rates in winter months than near pupping season.

TABLE 11—ESTIMATED HARBOR SEAL EXPOSURES

Method	Pile type	Total piles	Location	Animal density [a]	Driving days	Mins driving per day	Level B zone area from GIS (sq. km) [b,c]	Level B takes per day [a]	Total Level B takes (Year 1) [b]	Calculation method
LNG Terminal Piles										
Vibratory	Sheet Pile	1,246	MOF (outside ODFW work window).	6.2	97	309	2.49	64.52	6,258.44	Movement.
Vibratory	Sheet Pile	623	MOF (inside ODFW work window).	3.0	48	309	2.49	31.66	1,519.68	Movement.
Vibratory	Sheet Pile	113	W. berth wall, 2.5% nearest berm (outside ODFW work window).	6.2	8.5	329	2.49	66.34	563.89	Movement.
Vibratory	Pipe Pile	6	TMBB mooring pile (inside ODFW window).	3.0	10	9	3.19	9.64	96.40	Static
Ancillary Activities Piles (all inside ODFW window)										
Impact	Timber	1,150	TPP/US–101 intersection.	3.0	60	50	NA	NA	NA	Static.
Vibratory	Timber	1,150	TPP/US–101 intersection.	3.0	60	100	1.18	3.58	214.80	Static.
Vibratory	Sheet Pile	311	TPP/US–101 intersection.	3.0	16	100	1.18	3.58	57.28	Static.
Impact	Pipe Pile	36	TPP/US–101 intersection.	3.0	9	20	NA[c]	NA	NA	Static.
Vibratory	Pipe Pile	36	TPP/US–101 intersection.	3.0	9	80	1.18	3.58	32.22	Static.
Vibratory	Pipe Pile	33	APCO sites	3.0	9	30	0.40	1.20	10.80	Static.
Grand Total									8,753.51	

[a] Animal density is calculated for both in-water and out-of-water impact pile driving work windows as animal density is not uniform throughout the year.
[b] NA Indicates that Level A threshold is not exceeded for that piling activity.
[c] The calculated area of the Level B zone is influenced by land.

A summary of the proposed amount of take, by species, with respect to stock size is provided in Table 12. For all marine mammal species, it is unlikely Level A harassment would occur due the nature of the work and movement of animals throughout the bay. Cetaceans especially would likely move quickly through the area and JCEP would implement shutdown zones equal to most conservative Level A harassment distance based on the User Spreadsheet (*i.e.,* the output that considers the maximum amount of piles driven in one day).

TABLE 12—TOTAL AMOUNT OF PROPOSED TAKE, PER SPECIES

Common name	Stock	Proposed take		Percent of stock (stock size)
		Level A	Level B	
gray whale	Eastern North Pacific	0	2	<1 (26,960)
killer whale	West Coast Transient	0	15	3 (521)
harbor porpoise	Northern CA/Southern OR	0	12	<1 (35,769)
Northern elephant sea	California breeding	0	33	<1 (179,000)
Steller sea lion	Eastern U.S.	0	230	<1 (41,638)
California sea lion	U.S.	0	230	<1 (257,606)
Pacific harbor seal	Oregon/Washington Coast	0	8,754	<*2 (24,732)

* The number of takes presented here (n = 8,750) represents potential exposures to 300–400 individual harbor seals, not the number of individuals taken.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse

impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

JCEP's project design greatly reduces marine mammal and fisheries impacts to in-water noise. JCEP is conducting the majority of pile driving (over 90 percent) at the LNG terminal site behind a berm or in-the-dry. Further, the bulk of the terminal slip would be excavated and dredged before being connected to the estuary. Excavated material would be used to restore the former Kentuck golf course to functional wetlands. JCEP will primarily use a vibratory hammer to reduce the potential for auditory injury; pre-drill the soil at the LNG terminal to loosen and facilitate a more efficient installation and optimize vibratory driving, implement NMFS' standard soft-start procedure for impact hammer pile-driving, avoid in-water impact pile driving from February 16 through September 30 which includes the harbor seal pupping season. When in-water impact driving is necessary, JCEP will use a bubble curtain that will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column, balance bubbles around the pile, and have the lowest bubble ring on the seabed floor.

JCEP would implement shutdown zones (Table 13) equal to the Level A harassment distances as calculated based on the maximum number of piles driven per day. These zones are all relatively small; therefore, there is little concern for unnecessary project delays. These shutdown zones will also minimize noise exposure such that the severity of any Level B harassment is minimized. If a species for which take is not authorized is observed within Coos Bay and could be exposed to pile driving noise, JCEP would implement a shutdown zone that equates to the Level B harassment zone for that activity.

TABLE 13—SHUTDOWN ZONES, BY PILE DRIVING ACTIVITY AND SPECIES

Species	Impact pile driving		Vibratory pile-driving	
	Timber piles at TPP/US–101	Pipe piles at TPP/US–101	Pipe piles, timber piles and sheet piles at TPP/US–101	Pipe Piles at APCO
Shutdown Zone				
Harbor Seal	30	70	10	10
Northern Elephant Seal	30	70	10	10
California Sea Lion	10	10	10	10
Stellar Sea Lion	10	10	10	10
Gray Whale	60	140	25	30
Killer Whale	10	10	10	10
Harbor Porpoise	60	140	25	30

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important

physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

JCEP will implement a marine mammal monitoring plan that will include shutdown zones and monitoring areas. JCEP's Marine Mammal Monitoring Plan includes five components: (1) Conduct a preconstruction survey; (2) monitor marine mammal occurrence near the project site during construction; (3) enforce shutdown zones (Table 12) for marine mammals; (4) record observations of marine mammals in the observable portions of the Level B harassment zones, including movement and behavior of animals; and (5) report the results of the preconstruction survey and the construction monitoring, including take numbers. Each of these components is discussed in detail in the associated Marine Mammal Monitoring Plan, provided in Appendix E of JCEP's application.

At least two protected species observers (PSOs) will be on-watch during all pile driving. Monitoring locations will be specific to each activity and may be subject to change depending on physical conditions at the site. PSOs will be positioned on either land-based structures, the shoreline, or boats, depending on activity, best vantage point, and field and safety conditions. The PSOs will be stationed to observe shut-down zone and maximum visual coverage of the Level B harassment zones.

A two-person PSO team will complete a one-time, boat-based, 2-day pre-construction survey of potential Level B harassment zones prior to pile driving activities at the LNG Terminal Marine Facilities (Table 2). A one-day survey would be conducted at the TPP/US–101 and APCO sites prior to pile driving work. The surveys will include on-water observations at each of the pile driving locations to observe species numbers and general behaviors of animals in the area. Surveys will occur no earlier than seven days before the first day of construction at each activity site.

Special attention will be given to the two closest harbor seal haul-out sites in proximity to the project area—Clam Island and Pigeon Point—as described in Section 4 of the IHA application. On each of the monitoring days, monitoring will occur for up to 12 hours (weather-dependent), to include one low-tide survey and one high-tide survey in daylight hours. A small boat will be used for the survey from various locations that provide the best vantage points. The information collected from monitoring will be used for comparison with results of marine mammal behaviors during pile-driving activities and will contribute to baseline monitoring data for the area.

Marine mammal observations will begin 30 minutes prior to the onset of pile driving. Monitoring the Level B harassment zone for a minimum of 30 minutes after pile-driving stops.

Recording marine mammal presence in the entirety of the vibratory driving Level B harassment zones is not practicable and is not planned The Level B harassment zone will be monitored out to visible distances and then using the daily density calculated for each species observed, the number of Level B harassment take will be extrapolated out to the full zone or if hydroacoustics data is available, the measured Level B harassment zone. PSOs will continue monitoring 30 minutes post pile driving each day.

A final marine mammal monitoring report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Marine Mammal Monitoring Plan, including, but not limited to: dates and times (begin and end) of all marine mammal monitoring, a description of construction activities occurring during each daily observation period, weather and sightability conditions, sighting data (*e.g.,* number of marine mammals observed, by species) PSO locations during marine mammal monitoring, any mitigation action, and other applicable parameters as listed in the Draft IHA available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* The report must also distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals, and the number of total takes estimated based on sighting capabilities.

In addition to marine mammal monitoring, JCEP, in coordination with NMFS, has developed a preliminary Hydroacoustic Monitoring Plan. This plan is designed to conduct sound source verification and verify that underwater noise thresholds are not exceeded over distances greater than predicted by the acoustic models used in JCEP's application and this analysis. For the 2020–2021 construction season, hydroacoustic monitoring will be conducted for a portion of all piles to be installed by impact or vibratory methods. In general, approximately 5 percent of each pile driving activity would be monitored, with a minimum of three and a maximum of 20 piles monitored.

Two hydrophones will be placed for each monitoring event, one placed close to the pile and one placed at a greater distance so that a transmission loss value can be measured. For in-water pile driving, the hydrophone nearest the pile will be placed at least 3H from the pile, where H is the water depth at the pile and 0.7 to 0.85H depth from the surface, or 10 meters, whichever is greater (NMFS 2012b). For all pile driving, including in-the-dry pile installation, hydrophones will be placed at least 1 meter below the surface and with a clear acoustic line-of-sight between the pile and the hydrophone. The other hydrophone will be placed at mid-column depth, at a distance at least 20 times the source depth from each pile being monitored, in waters at least 5 meters deep (NMFS 2012a). If the water velocity is 1.5 meters per second or greater, 1 to 3 meters off the bottom is recommended for near-field hydrophones and greater than 5 meters from the surface is recommended for any far-field hydrophones (FHWG 2013). A weighted tape measure will be used to determine the depth of the water. The hydrophones will be attached to a nylon cord, a steel chain, or other proven anti-strum features, if the current is swift enough to cause strumming of the line. The nylon cord or chain will be attached to an anchor that will keep the line the appropriate distance from each pile. The nylon cord or chain will be attached to a float or tied to a static line at the surface. The distances will be measured by a tape measure, where possible, or a laser range-finder. The acoustic path (line of sight) between the pile and the hydrophone(s) should be unobstructed in all cases.

The on-site inspector/contractor will inform the acoustics specialist when pile driving is about to begin, to ensure that the monitoring equipment is operational. Underwater sound levels will be monitored continuously during the entire duration of each pile being driven, with a minimum one-third octave band frequency resolution. The wideband instantaneous absolute peak pressure and sound exposure level (SEL) values of each strike, and daily cumulative SEL (cSEL) should be monitored in real time during construction, to ensure that the project does not exceed its authorized take level. Peak and RMS pressures will be reported in dB (1 μPa). SEL will be reported in dB (1 μPa^2 per second). Wideband time series recording is strongly recommended during all impact pile driving.

Underwater sound levels will be continuously monitored during the entire duration of each pile being driven. The peak, root-mean-square (RMS) (impulse level), and SEL of each strike will be monitored in real time. The cSEL also will be monitored, assuming no contamination from other noise sources. Underwater sound levels will be measured in dB re:1 μPa. JCEP will submit a draft report on all monitoring conducted under the IHA within ninety calendar days of the completion of marine mammal and/or acoustic monitoring or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. When applying for a subsequent IHA, JCEP will include a summary of the monitoring data collected to date with its application.

A final draft report, including data collected and summarized from all monitoring locations, will be submitted to NMFS within 90 days of completion of the hydroacoustic monitoring. The results will be summarized in graphical form and will include summary statistics and time histories of impact sound values for each pile. A final report will be prepared and submitted to NMFS within 30 days following receipt of comments on the draft report from NMFS. The report will include information of the circumstances surrounding the recordings (*e.g.,* pile size, type, hydrophone distance to pile, etc.) as presented in JCEP's Hydroacoustic Monitoring Plan.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as serious injury, or mortality, JCEP must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (301–427–8401) and the West Coast Region Stranding Coordinator (206–526–4747). The report must include the time and date of the incident; description of the incident; environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of all marine mammal observations and active sound source use in the 24 hours preceding the incident; species identification or description of the animal(s) involved; fate of the animal(s); and photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with JCEP to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. JCEP may not resume pile driving activities until notified by NMFS.

In the event JCEP discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), JCEP must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with JCEP to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that JCEP discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), JCEP must report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analyses applies to all species listed in Table 4 except for harbor seals, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. For harbor seals, there are meaningful differences in anticipated individual responses to activities, impact of expected take on the resident population in Coos Bay (all part of the Oregon/Washington stock), or impacts on habitat; therefore, we provide a supplemental analysis independent of the other species for which we propose to authorize take.

NMFS has identified key qualitative and quantitative factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock. When an evaluation of key factors shows that the anticipated impacts of the specified activity would clearly result in no greater than a negligible impact on all affected species or stocks, additional evaluation is not required. In this case, all the following factors are in place for all affected species or stocks except harbor seals:

- No takes by mortality, serious injury or Level A harassment are anticipated or authorized;
- Takes by Level B harassment is small in number (less than 3 percent of the best available abundance estimates for all stocks);
- Take would not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat, biologically important areas (BIA), or other habitats critical to recruitment or survival (*e.g.,* rookery);
- Take would occur over a short timeframe, being limited to the short duration a marine mammal would be present within Coos Bay during pile driving;
- Take would occur over an extremely small portion of species/stock range;

• The affected stocks are not known to be declining and/or are within OSP range; and

• Any impacts to marine mammal habitat from pile driving are temporary and minimal.

For all species and stocks, take, by Level B harassment only, would only occur within Coos Bay—a limited, confined area of any given stock's home range, including the Oregon/Washington stock of harbor seals. JCEP is not requesting, and NMFS is not proposing to issue Level A harassment of marine mammals incidental to the specified activities.

For harbor seals, we further discuss our negligible impact finding in the context of potential impacts to the resident population, a small subset of the Oregon/Washington coastal stock, within Coos Bay. Similar to other stocks, take by mortality, serious injury, or Level A harassment is not anticipated or proposed to be authorized; takes would occur over a very small portion of the stock's range; and the affected stocks are not known to be declining. OSP for harbor seals is currently unknown; however, the stock was previously reported to be within its OSP range (Jeffries et al. 2003, Brown et al. 2005).

As discussed in the *Description of Marine Mammals and Their Habitat* section, a resident population of approximately 300–400 harbor seals that belong to the Oregon/Washington Coastal stock likely reside year-round within Coos Bay. The exact home range of this sub-population is unknown but harbor seals, in general, tend to have limited home range sizes. Therefore, we can presume a limited number of harbor seals (approximately 300–400) will be repeatedly taken throughout the effective period of the IHA, though not necessarily on sequential days. It is possible a limited number of harbor seals may enter the bay occasionally (similar to occasional Steller sea lion and California sea lion presence) from nearby coastal haulouts (*e.g.,* Cape Arago); however, these seals would likely not be repeatedly exposed throughout the entire year. For those animals exposed repeatedly, these exposures would occur throughout the year but not every single day (230 days of pile driving work total). In addition, pile driving work is spread throughout the Bay thereby changing the areas where Level B harassment may occur. Regardless, in general, repeated exposure, especially over sequential days, of harbor seals to pile driving noise could result in impacts to reproduction or survival of individuals if that exposure results in adverse, long-term impacts. The following discussion analyzes the potential impacts from repeated pile driving exposure to Coos Bay harbor seals.

Harbor seals within Coos Bay are currently exposed to numerous anthropogenic noise sources. As described in the *Specified Geographic Area* section, Coos Bay is highly developed along its coastline. Typical noise sources within Coos Bay include U.S. Army Corps of Engineers maintenance dredging, commercial shipping and fishing vessel traffic, and recreational boating. Despite these existing anthropogenic stressors, unpublished ODFW aerial survey data indicates that harbor seals in Coos Bay have been stable and likely approach carrying capacity (Wright et al. 2019, pers. comm), similar to the status of the entire stock. In the absence of recent abundance estimates throughout its range, the current population trend of the Oregon/Washington Coastal stock is unknown; however, based on the analyses of Jeffries et al. (2003) and Brown et al. (2005), both the Washington and Oregon portions of this stock were reported as reaching carrying capacity. As described in Southall et al. (2007), except for naïve individuals, behavioral responses depend critically on the principles of habituation and sensitization meaning an animal's exposure history with a particular sound and other contextual factors play a role in anticipated behaviors and subsequently, consequences of those behaviors of survival and reproduction. Example contextual factors include nearness to a source, if the source is approaching and general novelty or familiarity with a source (Southall et al., 2007).

AECOM's acoustic surveys indicate median background noise levels in Coos Bay are at or higher than the harassment threshold used in our analysis to estimate Level B harassment (120 dB rms). The range of background noise levels in the presence of working commercial vessels have been measured up to 164 dB rms at close but unknown distance from the source; however, we can assume those measurements were taken several tens of meters away from the vessel for safety and port access reasons. Overall, harbor seals are familiar with several anthropogenic noise sources in Coos Bay, pile driving is stationary (not perceived as approaching), and the haulout sites within Coos Bay are no less than 500 m from any pile driving location.

There are no known concentrated foraging areas around the terminal site or location of the ancillary activities. Further, JCEP would not conduct any impact pile driving during the pupping season which would otherwise be introducing noise that has a greater potential for injury during critical life stages and when abundance and density of harbor seals are greatest.

In summary and as described above, although this small resident population is likely to be taken repeatedly throughout the year, the following factors primarily support our preliminary determination that the impacts resulting from JCEP's proposed activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival on harbor seals:

• No mortality, serious injury, or Level A harassment is anticipated or authorized.

• Exposure resulting in Level B harassment would occur in a very small part of the Oregon/Washington Coastal stock's range.

• Animals exposed would primarily be limited to the 300–400 resident harbor seals in Coos Bay, a small percentage of the overall stock (approximately 2 percent).

• No in-water impact pile driving would occur during the pupping season; therefore, no impacts to pups from this activity is likely to occur. Vibratory pile driving near the water's edge may result in noise propagation near the MOF and ancillary activities; however, pupping sites are located outside the Level B harassment ensonification areas for any pile driving activity.

• Harbor seals in Coos Bay are habituated to several sources of anthropogenic noise sources with no evidence exposure is impacting rates or recruitment and survival (as evident from steady population numbers as derived from several years of ODFW aerial survey data).

• The Oregon/Washington coastal stock is subject to very low anthropogenic sources of mortality and serious injury (*e.g.,* annual minimum level of human-caused mortality and serious injury is 10.6 harbor seals) and is likely reaching carrying capacity (Carretta, 2018).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For all stocks, the amount of authorized take is small (less than 3 percent; Table 12). Although the number of exposures of harbor seals is high, as described above, takes would likely occur to the small (approximately 300 to 400 animals), resident population of harbor seals within Coos Bay.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from JCEP's proposed activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed marine mammal species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to JCEP for constructing the proposed Jordan Cove LNG Terminal and associated ancillary activities in Coos Bay, Oregon from October 1, 2020 through September 30, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for construction of the proposed Jordan Cove LNG Terminal and ancillary activities. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: November 7, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–24857 Filed 11–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT020

Atlantic Highly Migratory Species; Atlantic Highly Migratory Species Southeast Data, Assessment, and Review Workshops Advisory Panel

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

ACTION: Notice; nominations for shark stock assessment Advisory Panel.

SUMMARY: NMFS solicits nominations for the ''SEDAR Pool,'' also known as the Atlantic Highly Migratory Species (HMS) Southeast Data, Assessment, and Review (SEDAR) Workshops Advisory Panel. The SEDAR Pool is comprised of a group of individuals who may be selected to consider data and advise NMFS regarding the scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Nominations are being sought for a 5-year appointment (2020–

2025). Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership on the SEDAR Pool.

DATES: Nominations must be received on or before December 18, 2019.

ADDRESSES: You may submit nominations and request the SEDAR Pool Statement of Organization, Practices, and Procedures by any of the following methods:

- *Email: SEDAR.pool@noaa.gov.*
- *Mail:* Karyl Brewster-Geisz, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Include on the envelope the following identifier: ''SEDAR Pool Nomination.''
- *Fax:* 301–713–1917.

Additional information on SEDAR and the SEDAR guidelines can be found at *http://sedarweb.org/.* The terms of reference for the SEDAR Pool, along with a list of current members, can be found at *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/southeast-data-assessment-and-review-and-atlantic-highly.*

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, (301) 425–8503.

SUPPLEMENTARY INFORMATION:

Background

Section 302(g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* states that each Council shall establish such advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. For the purposes of this section, NMFS applies the above Council provision to Atlantic HMS management (See section 304(g)(1) of the Magnuson-Stevens Act, which provides that the Secretary will prepare fishery management plans for HMS and consult with Advisory Panels under section 302(g) for such FMPs). As such, NMFS has established the SEDAR Pool under this section. The SEDAR Pool currently consists of 30 individuals, each of whom may be selected to review data and advise NMFS regarding the scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. While the SEDAR Pool was created specifically for Atlantic oceanic sharks, it may be expanded to include other HMS, as needed.

The primary purpose of the individuals in the SEDAR Pool is to review, at SEDAR workshops, the scientific information (including but not limited to data and models) used in stock assessments that are used to advise NMFS, as a delegate to the Secretary of Commerce (Secretary), about the conservation and management of Atlantic HMS, specifically but not limited to, Atlantic sharks. Individuals in the SEDAR Pool, if selected, may participate in the various data, assessment, and review workshops during the SEDAR process of any HMS stock assessment. In order to ensure that the peer review is unbiased, individuals who participated in a data and/or assessment workshop for a particular stock assessment will not be allowed to serve as reviewers for the same stock assessment. However, these individuals may be asked to attend the review workshop to answer specific questions from the reviewers concerning the data and/or assessment workshops. Members of the SEDAR Pool may serve as members of other Advisory Panels concurrent with, or following, their service on the SEDAR Pool.

Procedures and Guidelines

A. Participants

The SEDAR Pool is comprised of individuals representing the commercial and recreational fishing communities for Atlantic sharks, the environmental community active in the conservation and management of Atlantic sharks, and the academic community that have relevant expertise either with sharks and/or stock assessment methodologies for marine fish species. In addition, individuals who may not necessarily work directly with sharks, but who are involved in fisheries with similar life history, biology, and fishery issues may be part of the SEDAR Pool. Members of the SEDAR Pool must have demonstrated experience in the fisheries, related industries, research, teaching, writing, conservation, or management of marine organisms. The distribution of representation among the interested parties is not defined or limited.

Additional members of the SEDAR Pool may also include representatives from each of the five Atlantic Regional Fishery Management Councils, each of the 18 Atlantic states, both the U.S. Virgin Islands and Puerto Rico, and each of the interstate commissions: The Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

If NMFS requires additional members to ensure a diverse pool of individuals for data or assessment workshops, NMFS may request individuals to become members of the SEDAR Pool outside of the annual nomination period.

SEDAR Pool members serve at the discretion of the Secretary. Not all members will attend each SEDAR workshop. Rather, NMFS will invite certain members to participate at specific stock assessment workshops dependent on their ability to participate, discuss, and recommend scientific decisions regarding the species being assessed.

NMFS is not obligated to fulfill any requests (*e.g.,* requests for an assessment of a certain species) that may be made by the SEDAR Pool or its individual members. Members of the SEDAR Pool who are invited to attend stock assessment workshops will not be compensated for their services but may be reimbursed for their travel-related expenses to attend such workshops.

B. Nomination Procedures for Appointments to the SEDAR Pool

Member tenure will be for 5 years. Nominations are sought for terms beginning early in 2020 and expiring in 2025. Nomination packages should include:

1. The name, address, phone number, and email of the applicant or nominee;

2. A description of the applicant's or nominee's interest in Atlantic shark stock assessments or the Atlantic shark fishery;

3. A statement of the applicant's or nominee's background and/or qualifications; and

4. A written commitment that the applicant or nominee shall participate actively and in good faith in the tasks of the SEDAR Pool, as requested.

C. Meeting Schedule

Individual members of the SEDAR Pool meet to participate in stock assessments at the discretion of the Office of Sustainable Fisheries, NMFS. Stock assessment timing, frequency, and relevant species will vary depending on the needs determined by NMFS and SEDAR staff. In 2020, NMFS intends to finish the currently ongoing Atlantic blacktip shark assessment. Once that assessment is complete, NMFS intends to begin a research track assessment for the hammerhead shark species in the hammerhead shark management group. During an assessment year, meetings and meeting logistics will be determined according to the SEDAR Guidelines. All meetings are open for observation by the public.

Dated: November 12, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–24878 Filed 11–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Policy, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Policy Board (DPB) will take place.

DATES: Closed to the public Tuesday, November 19, 2019 from 8:00 a.m. to 5:00 p.m.

ADDRESSES: The closed meeting will be held at The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Bacheler, (703) 571–9234 (Voice), 703–697–8606 (Facsimile), *monica.t.bacheler.civ@mail.mil* (Email). Mailing address is 2000 Defense Pentagon, Washington, DC 20301–2000.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Policy Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on November 19, 2019 of the Defense Policy Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App.), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: To obtain, review, and evaluate classified information related to the DPB's mission to advise on (a) issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Policy.

Agenda: On November 19, 2019, the DPB will have classified discussions on national security issues regarding National Defense Strategy alignment and priorities for the United States Africa Command (USAFRICOM) Area of Responsibility (AOR). Topics and speakers include (1) an intel community baseline from the DIA and CIA of actions in this space; (2) policy perspectives from Dr. James Anderson, Ms. Amanda Dory, Ms. Simone Ledeen, Ms. Michelle Lenihan, and Mr. Chad Sbragia of the Office of the Secretary of Defense for Policy; (3) perspectives from leadership at USAFRICOM; (4) perspectives from the Defense Security Cooperation Agency and the Joint Staff on security cooperation and exercise activities happening on the continent; and (5) State Department and USAID presentations on their operations and presence in Africa.

Meeting Accessibility: In accordance with section 10(d) of the FACA, and 41 CFR 102–3.155, the DoD has determined that this meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the DoD FACA Attorney, has determined, in writing, that this meeting be closed to the public because the discussions fall under the purview of Section 552b(c)(1) of the Government in the Sunshine Act, and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing classified material.

Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140(c), the public or interested organizations may submit written statements to the membership of the DPB at any time regarding its mission or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's Designated Federal Officer (DFO), which is listed in this notice or can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than two business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all members.

Dated: November 13, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–24884 Filed 11–15–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Crystal Springs Hatchery Program Termination Environmental Impact Statement (EIS)

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to terminate preparation of an Environmental Impact Statement (EIS).

SUMMARY: This notice advises the public that BPA is terminating the preparation of the Crystal Springs Hatchery Program EIS (DOE/EIS–0500) that was announced in the Notice of Intent in the **Federal Register** on May 27, 2014. This EIS was considering BPA's decision whether to fund the Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho's (Shoshone-Bannock Tribes) proposal to construct and operate a hatchery for spring/summer Chinook salmon for release in the Salmon River subbasin and for Yellowstone cutthroat trout for release in the Upper Snake River subbasin on the Fort Hall Reservation. The Shoshone-Bannock Tribes are developing an alternate implementation strategy to address site conditions and BPA would consider these proposals in the future.

FOR FURTHER INFORMATION CONTACT: Ted Gresh, Environmental Protection Specialist, Bonneville Power Administration—ECF–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–5756; or email *esgresh@bpa.gov* or Jonathan McCloud, Project Manager, Bonneville Power Administration—EWM–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–622–4519; email *jmmccloud@bpa.gov.* Additional information can be found at the project website: *www.bpa.gov/goto/CrystalSprings.*

SUPPLEMENTARY INFORMATION: A Notice of Intent was published in the **Federal Register** on May 27, 2014, (79 FR 30165) to begin preparing an EIS for the Crystal Springs Hatchery Program. BPA solicited public comments pursuant to Section 102 of the National Environmental Policy Act (NEPA) of 1969. A draft EIS was issued May 3,

2017, and BPA initiated a 45-day public comment period. Because of project feasibility issues, the EIS is being terminated in accordance with 40 CFR 1506.6 and 40 CFR 1506.10.

Signed in Portland, Oregon, on November 5, 2019.

Elliot E. Mainzer,

Administrator and Chief Executive Officer.

[FR Doc. 2019–24904 Filed 11–15–19; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10001–69]

Pesticide Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and/or ecological risk assessments for the registration review of acequinocyl, boscalid, DBNPA, etridiazole, ethoxyquin, fenpyroximate, flonicamid, inorganic halides, mandipropamid, metolachlor/s-metolachlor, myclobutanil, phostebupirim (also known as tebupirimphos), propanil, terbacil, terbuthylazine, triclopyr, ortho-phenylphenol and salts, and phenol and salt.

DATES: Comments must be received on or before January 17, 2020.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, are available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and/or ecological risk assessments for the pesticides shown in the following table, and opens a 60-day public comment period on the risk assessments. This notice also announces the availability of EPA's preliminary work plan (PWP) for mandipropamid and opens a 60-day public comment period on the work plan.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Acequinocyl, Case 7621	EPA–HQ–OPP–2015–0203	Sergio Santiago, *santiago.sergio@epa.gov,* (703) 347–8606.
Boscalid, Case 7039	EPA–HQ–OPP–2014–0199	Lauren Weissenborn, *weissenborn.lauren@epa.gov,* (703) 347–0467.
DBNPA, Case 3056	EPA–HQ–OPP–2009–0724	Jessie Bailey, *bailey.jessica@epa.gov,* (703) 347–0148.
Ethoxyquin, Case 0003	EPA–HQ–OPP–2014–0780	Matthew Khan, *khan.matthew@epa.gov,* (703) 347–8613.
Etridiazole, Case 0009	EPA–HQ–OPP–2014–0414	Jonathan Williams, *williams.jonathanr@epa.gov,* (703) 347–0670.
Fenpyroximate, Case 7432	EPA–HQ–OPP–2014–0572	Carolyn Smith, *smith.carolyn@epa.gov,* (703) 347–8325.
Flonicamid, Case 7436	EPA–HQ–OPP–2014–0777	Eric Fox, *fox.ericm@epa.gov,* (703) 347–0104.
Inorganic Halides, Case 4051	EPA–HQ–OPP–2009–0168	Erin Dandridge, *dandridge.erin@epa.gov,* (703) 347–0185.
Mandipropamid, Case 7058	EPA–HQ–OPP–2019–0536	Michelle Nolan, *nolan.michelle@epa.gov,* (703) 347–0258.
Metolachlor/S-Metolachlor, Case 0001.	EPA–HQ–OPP–2014–0772	Ana Pinto, *pinto.ana@epa.gov,* (703) 347–8421.
Myclobutanil, Case 7006	EPA–HQ–OPP–2015–0053	Kent Fothergill, *fothergill.kent@epa.gov,* (703) 347–8299.
Ortho-phenylphenol and Salts, Case 2575.	EPA–HQ–OPP–2013–0524	Kimberly Wilson, *wilson.kimberly@epa.gov,* (703) 347–0495.
Phenol and Salt, Case 4074	EPA–HQ–OPP–2012–0810	Kimberly Wilson, *wilson.kimberly@epa.gov,* (703) 347–0495.
Phostebupirim (also known as tebupirimphos), Case 7606.	EPA–HQ–OPP–2008–0940	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov,* (703) 308–8025.
Propanil, Case 0226	EPA–HQ–OPP–2015–0052	Tiffany Green, *green.tiffany@epa.gov,* (703) 347–0341.
Terbacil, Case 0039	EPA–HQ–OPP–2011–0054	Steven R. Peterson, *peterson.stevenr@epa.gov,* (703) 347–0755.
Terbuthylazine, Case 2645	EPA–HQ–OPP–2010–0453	Megan Snyderman, *snyderman.megan@epa.gov,* (703) 347–0671.
Triclopyr, Case 2710	EPA–HQ–OPP–2014–0576	Andy Muench, *muench.andrew@epa.gov,* (703) 347–8263.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

Information submission requirements. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 29, 2019.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019–24912 Filed 11–15–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–10001–70]

Pesticide Registration Review; Proposed Interim Decisions for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for the following pesticides: 2-phenethyl propionate, ammonium bromide, azadirachtin, *Bacillus sphaericus,* chloropicrin, *Colletotrichum gloeosprioides,* Cuelure, cyazofamid, dazomet, Extract of Reynoutria sachalinensis, fluroxypyr, glycolic acid and salts, gonadotropin releasing hormone (GnRH), Harpin Proteins, iodine and iodophors, metam sodium and metam potassium, methyl isothiocyanate (MITC), pelargonic acid salts and esters, phenmedipham, *Pythium oligandrum* DV 74, sethoxydim, tetraacetylethylenediamine (TAED), thymol, tralopyril, and triclosan.

DATES: Comments must be received on or before January 17, 2020.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in Table 1, and opens a 60-day public comment period on the proposed interim registration review decisions.

This notice also announces the availability of EPA's human health and/or ecological risk assessments for the pesticides cyazofamid, ammonium bromide, glycolic acid and salts, pelargonic acid salts and esters, sethoxydim, TAED, and thymol and opens a 60-day public comment period on the risk assessments. Additionally, this notice announces the availability of EPA's preliminary workplan and human health and/or ecological risk assessments for GnRH.

TABLE 1—PROPOSED INTERIM DECISIONS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
2-Phenethyl Propionate, Case 3110	EPA–HQ–OPP–2010–0714	Cody Kendrick, *kendrick.cody@epa.gov*, (703) 347–0468.
Ammonium bromide, Case 5002	EPA–HQ–OPP–2012–0683	Stephen Savage, *savage.stephen@epa.gov*, (703) 347–0345.
Azadirachtin, Case 6021	EPA–HQ–OPP–2008–0632	Joseph Mabon, *mabon.joseph@epa.gov*, (703) 347–0177.
Bacillus sphaericus, Case 6052	EPA–HQ–OPP–2013–0116	Alexandra Boukedes, *boukedes.alexandra@epa.gov*, (703) 347–0305.
Chloropicrin, Case 0040	EPA–HQ–OPP–2013–0153	Samantha Thomas, *thomas.samantha@epa.gov*, (703) 347–0514.
Colletotrichum gloeosprioides, Case 4103.	EPA–HQ–OPP–2016–0685	Joseph Mabon, *mabon.joseph@epa.gov*, (703) 347–0177.
Cuelure [2-butanone, 4-(4-(acetyloxy)phenyl)-, acetate], Case 6201.	EPA–HQ–OPP–2017–0221	Bibiana Oe, *oe.bibiana@epa.gov*, (703) 347–8162.

TABLE 1—PROPOSED INTERIM DECISIONS—Continued

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Cyazofamid, Case 7056	EPA–HQ–OPP–2015–0128	Tiffany Green, *green.tiffany@epa.gov*, (703) 347–0341.
Dazomet, Case 2135	EPA–HQ–OPP–2013–0080	Katherine St. Clair, *stclair.katherine@epa.gov*, (703) 347–8778.
Extract of Reynoutria sachalinensis, Case 6030.	EPA–HQ–OPP–2016–0232	Alexandra Boukedes, *boukedes.alexandra@epa.gov*, (703) 347–0305.
Fluroxypyr, Case 7248	EPA–HQ–OPP–2014–0570	Eric Fox, *fox.ericm@epa.gov*, (703) 347–0104.
Glycolic Acid and Salts, Case 4045	EPA–HQ–OPP–2011–0422	Michael McCarroll, *mccarroll.michael@epa.gov*, (703) 347–0147.
Gonadotropin Releasing Hormone (GnRH), Case 7800.	EPA–HQ–OPP–2018–0798	Jaclyn Pyne, *pyne.jaclyn@epa.gov*, (703) 347–0445.
Harpin Protein and Harpinαβ Protein, (Harpin Proteins), Case 6010.	EPA–HQ–OPP–2012–0641	Michael Glikes, *glikes.michael@epa.gov*, (703) 231–6499.
Iodine and Iodophors, Case 3080	EPA–HQ–OPP–2013–0767	Michael McCarroll, *mccarroll.michael@epa.gov*, (703) 347–0147.
Metam Sodium and Metam Potassium, Case 2390.	EPA–HQ–OPP–2013–0140	Tiffany Green, *green.tiffany@epa.gov*, (703) 347–0314.
Methyl isothiocyanate (MITC), Case 2405.	EPA–HQ–OPP–2013–0242	Megan Snyderman, *snyderman.megan@epa.gov*, (703) 347–0671.
Pelargonic Acid, Salts and Esters, Case 6077.	EPA–HQ–OPP–2010–0424	Michael McCarroll, *mccarroll.michael@epa.gov*, (703) 347–0147.
Phenmedipham, Case 0277	EPA–HQ–OPP–2014–0546	Lauren Bailey, *bailey.lauren@epa.gov*, (703) 347–0374.
Pythium oligandrum DV 74, Case 6511.	EPA–HQ–OPP–2017–0393	Cody Kendrick, *kendrick.cody@epa.gov*, (703) 347–0468.
Sethoxydim, Case 2600	EPA–HQ–OPP–2015–0088	Steven R. Peterson, *peterson.stevenr@epa.gov*, (703) 347–0755.
Tetraacetylethylenediamine (TAED), Case 5105.	EPA–HQ–OPP–2013–0608	Kimberly Wilson, *wilson.kimberly@epa.gov*, (703) 347–0495.
Thymol, Case 3143	EPA–HQ–OPP–2010–0002	Kimberly Wilson, *wilson.kimberly@epa.gov*, (703) 347–0495.
Tralopyril (Econea), Case 5114	EPA–HQ–OPP–2013–0217	Erin Dandridge, *dandridge.erin@epa.gov*, (703) 347–0185.
Triclosan, Case 2340	EPA–HQ–OPP–2012–0811	Megan Snyderman, *snyderman.megan@epa.gov*, (703) 347–0671.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the tables in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in Table 1 in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Tables in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: October 30, 2019.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019–24919 Filed 11–15–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10002–14–Region 3]

Administrative Settlement Agreement for Recovery of Past Response Costs Pursuant to Section 122(H) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed administrative settlement agreement for recovery of past response costs (''Proposed Agreement'') associated with the Fleetwood Residential Lead Superfund Site and the Hamburg Residential Lead Superfund Site, both located in Berks County, Pennsylvania (collectively the ''Sites'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement

would resolve potential EPA claims under Sections 107(a) and 113 of CERCLA, against Exide Technologies, Inc. (''Settling Party''). The Proposed Agreement would require Settling Party to reimburse EPA $112,500.00 for past response costs incurred by EPA for the Sites.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before December 18, 2019.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Thomas A. Cinti (3RC20), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Fleetwood Residential Lead Superfund Site and the Hamburg Residential Lead Superfund Site, Proposed Administrative Settlement Agreement for Recovery of Past Response Costs'' and ''EPA Docket No. CERCLA–03–2019–0117CR,'' and should be forwarded to Thomas A. Cinti at the address below.

FOR FURTHER INFORMATION CONTACT: Thomas A. Cinti (3RC20), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2634; *cinti.thomas@epa.gov.*

Dated: October 21, 2019.

Paul Leonard,

Acting Director, Superfund & Emergency Management Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2019–24926 Filed 11–15–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0094; FRL–10002–19–OAR]

Proposed Collection; Comment Request; Information Collection for Importation of On-Highway Vehicles and Motorcycles and Nonroad Engines, Vehicles, and Equipment; EPA ICR Number 2583.02, OMB Control Number 2060–0717

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an Information Collection Request (ICR) ''Importation of On-highway Vehicles and Motorcycles and Nonroad Engines, Vehicles, and Equipment'' to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the current ICR, which is approved through July 31, 2020. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 17, 2020.

ADDRESSES: Submit your comments referencing Docket ID No. EPA–HQ–OAR–2016–0094 online using *www.regulations.gov* (our preferred method), by email to *pugliese.holly@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode 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: Holly Pugliese, Compliance Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan, 48105; telephone number: 734–214–4288; fax number: 734–214–4869; email address: *pugliese.holly@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 Clean Air Act requires that on-highway vehicles and motorcycles, and nonroad vehicles, engines and equipment imported into the U.S. either comply with applicable emission requirements or qualify for an applicable exemption or exclusion. The Compliance Division (CD) in the EPA's Office of Air and Radiation maintains and makes available instruments to importers to help facilitate importation of products at U.S. Borders. EPA Form 3520–1 is used by importers of on-highway vehicles and motorcycles, and EPA Form 3520–21 is used by importers of nonroad vehicles, engines and equipment.

For most imports, U.S. Customs and Border Protection (CBP) regulations require that EPA Declaration Forms 3520–1 and 3520–21 be filed with CBP at the time of entry. EPA makes both forms available on our website in fillable PDF format (*http://www.epa.gov/importing-vehicles-and-engines/publications-and-forms-*

importing-vehicles-and-engines). While EPA does not require that the forms be submitted directly to EPA, the forms are primarily used by CBP to facilitate the importation process at U.S. borders. EPA does require that the forms be kept by importers for a period of five years after importation to assist EPA's Office of Enforcement and Compliance Assurance (OECA) and CBP should any issues arise with any given importation.

In addition, this ICR covers the burden of EPA Form 3520–8 which is used to request final importation clearance for Independent Commercial Importers (ICIs) of on-highway vehicles who are required to bring the on-highway vehicles into compliance and provide emissions test results.

In 2016, CBP deployed the Automated Commercial Environment (ACE). ACE has become the primary system through which the trade community and other importers report imports and exports. Through ACE as the single point of submission, manual processes have been streamlined and automated, and paper submissions (*e.g.,* fillable PDFs) have been significantly reduced. During the development of ACE, EPA worked with CBP to incorporate the information detailed on both EPA Declaration Forms 3520–1 and 3520–21 into ACE which effectively eliminates the forms as unique individual documents that are to be filled in and filed with CPB. Rather, importers will log into ACE and check boxes that correspond to information elements currently found on the forms. Filers using the ACE interface will also receive transaction information that will be kept by the filer. However, EPA will continue to maintain the forms on our website in fillable PDF format. Although importers are expected to use the ACE interface to submit information, the PDF versions of the form can also be submitted directly into ACE by importers.

EPA also makes available upon request EPA Form 3520–8 for on-highway vehicles. This form is used by independent commercial importers (ICIs) to request final admission of nonconforming vehicles.

Form numbers: 3520–1, 3520–21, 3520–8.

Frequency of response: Once per entry (one form per shipment may be used).

Respondents/affected entities: Information collected is from individual importers, or companies who import and/or manufacture on-highway vehicles and motorcycles and nonroad engines, vehicles, and equipment.

Respondent's obligation to respond: Required for any importer to legally import on-highway vehicles and motorcycles and nonroad engines, vehicles, and equipment vehicles or engines into the U.S.

Estimated number of respondents: 14,810.

Total estimated burden: 81,985 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,244,699 (per year).

Changes in estimates: With the deployment of the ACE system, we are now able to have a much more accurate count of the number of forms that are being filed. As a result, we now know that number of entries being filed is around 160,000 per year vs. the 12,000 we had been estimating in previous ICRs. As a result, the burden estimates have increased significantly due to having a more accurate account of how many forms are being filed.

Dated: November 7, 2019.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality.

[FR Doc. 2019–24987 Filed 11–15–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 18, 2019.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Cendera Bancorp, Inc., Bells, Texas;* to become a bank holding company by acquiring Cendera Financial holdings, Inc., and thereby indirectly acquire Cendera Bank, N.A., both of Bells, Texas.

Board of Governors of the Federal Reserve System, November 14, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–25024 Filed 11–15–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Federal Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 2, 2019.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Kathryn J. Kelly Special Trust, Ken K. Kelly, trustee, both of Severy, Kansas;* to retain voting shares of Elk County Bancshares, Inc., and thereby indirectly retain voting shares of Howard State Bank, both of Howard, Kansas.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Dawn M. Skeie Crane GST Trust, Dawn M. Skeie as trustee, both of Fosston, Minnesota; and the Lorri J. Skeie-Campbell GST Trust, Lorri J.*

Skeie-Campbell as trustee, both of Corrales, New Mexico; to be approved as members acting in concert with the Skeie Family Control Group to retain voting shares of Financial Services of Winger, Inc., and thereby indirectly retain voting shares of Ultima Bank Minnesota, both of Winger, Minnesota.

Board of Governors of the Federal Reserve System, November 13, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–24969 Filed 11–14–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10260, CMS–R–297/CMS–L564, CMS–4040, CMS–10718 and CMS–10146]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid 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 January 17, 2020.

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 ___, 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 following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

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–10260 Medicare Advantage and Prescription Drug Program: Final Marketing Provisions in 42 CFR 422.111(a)(3) and 423.128(a)(3)

CMS–R–297/CMS–L564 Request for Employment Information

CMS–4040 Request for Enrollment in Supplementary Medical Insurance (SMI) and Supporting Regulations in 42 CFR 407.10, 407.11 and 408.40(a)(2)

CMS–10718 Model Medicare Advantage and Medicare Prescription Drug Plan Individual Enrollment Request Form

CMS–10146 Notice of Denial of Medicare Prescription Drug Coverage

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:* Revision with change of a currently approved collection; *Title of Information Collection:* Medicare Advantage and Prescription Drug Program: Final Marketing Provisions in 42 CFR 422.111(a)(3) and 423.128(a)(3); *Use:* Pursuant to disclosure requirements set out in sections 1851(d)(2)(A) and 1860D–1(c) of the Social Security Act (the Act), and cited in §§ 422.111(a)(3) and 423.128(a)(3), Medicare Advantage (MA) organizations and Part D sponsors must provide notice to plan members of impending changes to plan benefits, premiums and cost sharing in the coming year. To this effect, members will be in the best position to make an informed choice on continued enrollment or disenrollment from that plan at least 15 days before the Annual Election Period (AEP) using the Annual Notice of Change (ANOC) and before the first day of the AEP for the Evidence of Coverage (EOC). MA organizations and Part D sponsors must notify plan members of the coming year changes using the standardized ANOC. Plans must disseminate the EOC at the time of enrollment and at least annually thereafter.

CMS requires MA organizations and Part D sponsors to use the standardized documents being submitted for OMB approval to satisfy disclosure requirements mandated by section 1851(d)(3)(A) of the Act and § 422.111 for MA organizations and section 1860D–1(c) of the Act and § 423.128(a)(3) for Part D sponsors.

Sections 1851(h)(1) and (2) of the Act require MA organizations and Part D sponsors to obtain CMS approval of marketing materials to ensure that MA organizations and Part D sponsors disclose correct information to current and potential enrollees. CMS collects and retains the MA organization and Part D plan marketing materials via the Health Plan Management System

(HPMS). MA organizations and Part D plans submit marketing materials to the CMS marketing material review process using HPMS. Both current and potential enrollees can review other marketing materials to find plan benefits, premiums, and cost sharing for the coming year (after October 1) and the current year to be in a better position to make.

MA organizations and Part D sponsors use the information discussed in the Medicare Communication and Marketing Guidelines (MCMG) to comply with the requirements to seek CMS approval on marketing materials under MA and Part D law and regulations, as described above. CMS requires MA organizations and Part D sponsors to obtain CMS approval of marketing materials to ensure that MA organizations and Part D sponsors disclose correct information to current and potential enrollees. Both current and potential enrollees can review other marketing materials to find plan benefits, premiums, and cost sharing for the coming year (after October 1) and the current year to be in a better position to make informed and educated plan selections. *Form Number:* CMS–10260 (OMB control number: 0938–1051); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 795; *Total Annual Responses:* 47,962; *Total Annual Hours:* 33,124. (For policy questions regarding this collection contact Timothy Roe at (410) 786–2006.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Request for Employment Information; *Use:* The form CMS–L564, also referred to as CMS–R–297, is used, in conjunction with form CMS–40–B, Application for Supplementary Medical Insurance, during an individual's special enrollment period (SEP). Completed by an employer, the CMS–L564 provides proof of an applicant's employer group health coverage. The Social Security Administration (SSA) uses it to obtain information from employers regarding whether a Medicare beneficiary's coverage under a group health plan is based on current employment status. This form is available in both English and Spanish.

Section 1837(i) of the Social Security Act (the Act) provides a SEP for individuals who delay enrolling in Medicare Part B because they are covered by a group health plan based on their own or a spouse's current employment status. Disabled individuals with Medicare may also delay enrollment because they have large group health plan coverage based on their own or a family member's current employment status. When these individuals apply for Medicare Part B, they must provide proof that the group health plan coverage is (or was) based on current employment status. Form CMS L564 provides this proof so that SSA can determine eligibility for the SEP. Individuals eligible for the SEP can enroll in Part B without incurring a late enrollment penalty. Individuals may also use this form to prove that their group health plan coverage is based on current employment status and to have the assessed Medicare late enrollment penalty reduced.

The form is available online via *Medicare.gov* and *CMS.gov* for individuals who are requesting the SEP to obtain and submit to their employer for completion. The employer must complete and sign the form, and submit it to the individual to accompany their enrollment or late enrollment penalty reduction request. The information on the completed form is reviewed manually by SSA. Thus, the collection of this information does not involve the use of information technology. *Form Number:* CMS–R–297/CMS–L564 (OMB control number: 0938–0787); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 15,000; *Total Annual Responses:* 15,000; *Total Annual Hours:* 1,250. (For policy questions regarding this collection contact Carla D. Patterson, at (410) 786–1000.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Request for Enrollment in Supplementary Medical Insurance (SMI) and Supporting Regulations in 42 CFR 407.10, 407.11 and 408.40(a)(2); *Use:* Section 1836 of the Social Security Act, and CMS regulations at 42 CFR 407.10, provide the eligibility requirements for enrollment in Part B for individuals age 65 and older who are not entitled to premium-free Part A. The individual must be a resident of the United States, and either a U.S. Citizen or an alien lawfully admitted for permanent residence that has lived in the US continually for 5 years.

CMS regulations 42 CFR 407.11 lists the CMS–4040 as the application to be used by individuals who are not eligible for monthly Social Security/Railroad Retirement Board benefits or free Part A.

The CMS–4040 solicits the information that is used to determine entitlement for individuals who meet the requirements in section 1836 as well as the entitlement of the applicant or their spouses to an annuity paid by OPM for premium deduction purposes. The application follows the application questions and requirements used by SSA. This is done not only for consistency purposes but to comply with other Title II and Title XVIII requirements because eligibility to Title II benefits and free Part A under Title XVIII must be ruled out in order to qualify for enrollment in Part B only. *Form Number:* CMS–4040 (OMB control number: 0938–0245); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 29,663; *Total Annual Responses:* 29,663; *Total Annual Hours:* 7,416 hours. (For policy questions regarding this collection contact Carla D. Patterson, at (410) 786–1000.)

4. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Model Medicare Advantage and Medicare Prescription Drug Plan Individual Enrollment Request Form; *Use:* This information collection is necessary for the Medicare beneficiary (or their legal representative), to enroll in an MA or PDP plan, even if switching plans within the same MA or PDP organization. To consider an election complete, the individual must:

- Complete an enrollment request;
- Provide required information to the MA or PDP organization within the required time frames;
- Submit the completed request to the MA or PDP organization during a valid enrollment period.

MA and PDP organizations, applicants to MA and PDP organizations, and the CMS will use the information collected to comply with the eligibility and enrollment requirements for Medicare Part C and Part D plans.

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) enacted August 5, 1997, established Part C of the Medicare program, known as the Medicare + Choice program, (now referred to as Medicare Advantage (MA)). As required by 42 CFR 422.50(a)(5), an MA-eligible individual who meets the eligibility requirements for enrollment into an MA or MAPD plan may enroll during the enrollment periods specified in § 422.62, by completing an enrollment form with the MA organization or enrolling through other mechanisms that the Centers for Medicare & Medicaid Services (CMS) determines are appropriate.

Section 101 of Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) enacted December 8, 2003, established Part D of the Medicare

program, known as the Voluntary Prescription Drug Benefit Program. As required by 42 CFR 423.32(a) and (b), a Part D-eligible individual who wishes to enroll in a Medicare prescription drug plan (PDP) may enroll during the enrollment periods specified in § 423.38, by completing an enrollment form with the PDP, or enrolling through other mechanisms CMS determines are appropriate. *Form Number:* CMS–10718 (OMB control number: 0938–New); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 14,749,256; *Total Annual Responses:* 14,749,256; *Total Annual Hours:* 10,324,481. (For policy questions regarding this collection contact Deme Umo at (410) 786–8854.)

5. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Use:* The purpose of this notice is to provide information to enrollees when prescription drug coverage has been denied, in whole or in part, by their Part D plans. The notice must be readable, understandable, and state the specific reasons for the denial. The notice must also remind enrollees about their rights and protections related to requests for prescription drug coverage and include an explanation of both the standard and expedited redetermination processes and the rest of the appeal process.

CMS requests approval of changes to a currently approved collection under section 1860D–4(g)(1) of the Social Security Act which requires Part D plan sponsors that deny prescription drug coverage to provide a written notice of the denial to the enrollee. The written notice must include a statement, in understandable language, of the reasons for the denial and a description of the appeals process.

Medicare beneficiaries who are enrolled in a Part D plan will be informed of adverse decisions related to their prescription drug coverage and their right to appeal these decisions. The notice provides all ways that the beneficiary can file an appeal under one section. The Part D instructions have also been revised to include a paragraph informing providers that in the case that a request for a coverage determination is denied under Part B due to step therapy requirements, a different notice should be given.

This denial notice is primarily issued to Part D plan enrollees (Medicare beneficiaries) and is most commonly sent to enrollees by mail. Relying on electronic transmission of this notice to beneficiaries is impractical. Plans are required by regulation to maintain a website by which beneficiaries can request an appeal. In this version of the notice, website information is more prominently displayed. *Form Number:* CMS–10146 (OMB control number: 0938–0976); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 525; *Total Annual Responses:* 2,887,866; *Total Annual Hours:* 721,967. (For policy questions regarding this collection contact Sara Klotz at (410) 786–1984.)

Dated: November 13, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–24930 Filed 11–15–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3392–CN]

Medicare Program; Request for Nominations for Members for the Medicare Evidence Development & Coverage Advisory Committee; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects a typographical error that appeared in the notice published in the **Federal Register** on October 21, 2019 entitled ''Request for Nominations for Members for the Medicare Evidence Development & Coverage Advisory Committee.''

DATES: This correcting document is effective on November 15, 2019.

FOR FURTHER INFORMATION CONTACT: Leah Cromwell, (410) 786–2243.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Errors

In FR Doc. 2019–22947 of October 21, 2019 (84 FR 56193), there was a typographical error that is identified in the **FOR FURTHER INFORMATION CONTACT** section.

On page 56193, we inadvertently made a typographical error in the email address of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) coordinator.

II. Correction of Errors

In FR Doc. 2019–22947 of October 21, 2019 (84 FR 56193), make the following corrections:

1. On page 56193, second column, third full paragraph, last line, the email address ''*Leah.Cromwell@cms.hhs.gov*'' is corrected to read ''*Leah.Cromwell1@cms.hhs.gov*''.

Dated: November 4, 2019.

Kate Goodrich.

Director, Center for Clinical Standards and Quality, Chief Medical Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–24934 Filed 11–15–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10611, CMS–R–282 and CMS–R–235]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid 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 (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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by December 18, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the

following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

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 following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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 (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Outpatient Observation Notice (MOON); *Use:* On August 6, 2015, Congress enacted the Notice of Observation Treatment and Implication for Care Eligibility Act (NOTICE Act) Public Law 114–42, amending Section 1866(a)(1) of the Social Security Act (the Act) (42 U.S.C. 1395cc(a)(1)), by adding a new subparagraph (Y). The NOTICE Act requires hospitals and CAHs to provide written notification and oral explanation to individuals who receive observation services as outpatients for more than 24 hours.

The MOON is a standardized notice delivered to persons entitled to Medicare benefits under Title XVIII of the Act who receive more than 24 hours of observation services, informing them that their hospital stay is outpatient and not inpatient, and the implications of being an outpatient. This information collection applies to beneficiaries in Original Medicare and enrollees in Medicare health plans.

The Medicare Outpatient Observation Notice (MOON) serves as the written notice component of this mandatory notification process. The standardized content of the MOON includes all informational elements required by statute, in language understandable to beneficiaries, and fulfils the regulatory requirements at 42 CFR part 489.20(y).

The MOON is not given every time items and services are furnished in a hospital or CAH. Rather, hospitals are only required to deliver the MOON to individuals receiving observation services as outpatients for more than 24 hours. *Form Number:* CMS–10611 (OMB control number: 0938–1308); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 4,373; *Total Annual Responses:* 946,209; *Total Annual Hours:* 236,552. (For policy questions regarding this collection contact Janet Miller at *Janet.Miller@cms.hhs.gov.*)

2. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Health Plan Appeals and Grievance Data Collection and Reporting Requirements, Data Disclosure Requirements under section 422.111; *Use:* Part 422 of Title 42 of the Code of Federal Regulations (CFR) distinguishes between certain information a Medicare Advantage (MA) organization must provide to each enrollee (on an annual basis) and information that the MA organization must disclose to any MA eligible individual (upon request). This requirement can be found in § 1852(c)(2)(C) of the Social Security Act and in 42 CFR 422.111(c)(3) which states that MA organizations must disclose information pertaining to the number of disputes, and their disposition in the aggregate, with the categories of grievances and appeals, to any individual eligible to elect an MA organization who requests this information.

The appeals and grievance data form is an OMB approved form for use by Medicare Advantage organizations to disclose grievance and appeal data, upon request, to individuals eligible to elect an MA organization. By utilizing the form, MA organizations will meet the disclosure requirements set forth in regulations at 42 CFR 422.111(c)(3).

In an effort to identify opportunities to reduce burden for this collection, we compared data provided by plans to CMS in Part C reporting requirements (OMB 0938–1054) with the requirements to provide aggregate grievance and appeals data to MA eligible beneficiaries. We found that data reported to CMS in the Part C reporting requirements was data that would meet the disclosure requirements at § 1852(c)(2)(C) of the Social Security Act and 42 CFR 422.111(c).

We are proposing to revise this form by allowing plans to use data collected for Part C reporting requirements (OMB 0938–1054) that also meet requirements for this collection. This change merges and aligns the collection and reporting periods, so MA plans do not need to keep two separate sets of data and reports each year.

For CMS Part C reporting requirements, data is collected quarterly, but only reported annually. To match this and reduce plan burden, CMS is revising this form to use the data reported annually to CMS, and that data be valid for one year versus creating a new report every six months. Further, data provided to enrollees would be consistent with data provided to CMS. *Form Number:* CMS–R–282 (OMB control number: 0938–0778); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 733; *Total Annual Responses:* 59,133; *Total Annual Hours:* 5,405. (For policy questions regarding this collection contact Staci Paige at 410–786–2045.)

3. *Type of Information Collection Request:* Reinstatement with change of a currently approved collection; *Title of Information Collection:* Data Use Agreement (DUA) Form; *Use:* The Privacy Act of 1974 allows for discretionary releases of data maintained in Privacy Act protected systems of records under § 552a(b) (Conditions of Disclosure). The mandate to account for disclosures of data under the Privacy Act is found at § 552a(c)(Accounting of Certain Disclosures). This section states that certain information must be maintained regarding disclosures made by each agency. This information is: Date, Nature, Purpose, and Name/Address of Recipient. Section 552a(e) sets the overall Agency Requirements that each agency must meet in order to maintain records under the Privacy Act.

The Data Use Agreement (DUA) form is needed as part of the review of each CMS data request to ensure compliance with the requirements of the Privacy Act

for disclosures that contain PII. The DUA form also provides data requestors and custodians with a formal means to agree to the data protection and destruction statutory and regulatory requirements of CMS' PII data.

When entities, such as academic, federal or state agency researchers or CMS contractors request CMS PII/PHI data, they enter into a Data Use Agreement (DUA) with CMS. The DUA stipulates that the recipient of CMS data must properly protect the data according to all applicable data security standards and also provide for its appropriate destruction at the completion of the project/study or the expiration date of the DUA. The DUA form enables the data recipient and CMS to document the request and approval for release of CMS data. *Form Number:* CMS–R–235 (OMB control number: 0938–0734); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 9,200; *Total Annual Responses:* 9,200; *Total Annual Hours:* 2,900. (For policy questions regarding this collection contact Kari A Gaare at 410–786–8612.)

Dated: November 13, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–24929 Filed 11–15–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1835]

Smallpox (Variola Virus) Infection: Developing Drugs for Treatment or Prevention; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Smallpox (Variola Virus) Infection: Developing Drugs for Treatment or Prevention.'' The purpose of this guidance is to assist sponsors in the clinical development of drugs for treating or preventing smallpox (variola virus) infection. This guidance finalizes the draft guidance of the same name issued on July 11, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on November 18, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1835 for ''Smallpox (Variola Virus) Infection: Developing Drugs for Treatment or Prevention.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jeffrey Murray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6360, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled

''Smallpox (Variola Virus) Infection: Developing Drugs for Treatment or Prevention.'' This final guidance addresses nonclinical development, key study design considerations for animal efficacy studies to support potential new drug application (NDA) submissions under the Animal Rule, and considerations for obtaining a human safety database. This guidance finalizes the draft guidance of the same name issued on July 11, 2018 (83 FR 32136). Changes in this final guidance compared with the previous draft version are:

- Clarification of the assessment of immunologically naïve status in animals used in the animal studies
- Minor editorial changes

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Smallpox (Variola Virus) Infection: Developing Drugs for Treatment or Prevention.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collection of information in 21 CFR part 312 (investigational new drug applications) has been approved under OMB control number 0910–0014. The collection of information in 21 CFR part 314 (NDAs) has been approved under OMB control number 0910–0001. The collection of information resulting from special protocol assessments has been approved under OMB control number 0910–0470. The collection of information resulting from emergency use authorization of medical products has been approved under OMB control number 0910–0595. The collection of information resulting from individual patient expanded access applications has been approved under OMB control number 0910–0814. The collection of information resulting from good laboratory practices has been approved under OMB control number 0910–0119.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: November 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24916 Filed 11–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4693]

Mayne Pharma Group Limited and Actavis Laboratories UT, Inc.; Withdrawal of Approval of Abbreviated New Drug Applications for Fentanyl Transdermal Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing the approval of abbreviated new drug application (ANDA) 077062 for the fentanyl transdermal system held by Mayne Pharma Group Ltd. (Mayne) and ANDA 076709 for the fentanyl transdermal system held by Actavis Laboratories UT, Inc. (Actavis), an indirect wholly owned subsidiary of Teva Pharmaceuticals USA, Inc. (Teva). These drug products are both transdermal systems designed with a liquid reservoir. Mayne and Actavis have both requested withdrawal of their respective applications and have waived their opportunity for a hearing.

DATES: Approval is withdrawn as of November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Bronwen Blass, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION: On August 20, 2007, FDA approved Actavis South Atlantic LLC Inc.'s (Actavis South) ANDA 077062, and Watson Pharmaceuticals' (Watson) ANDA 076709 for fentanyl transdermal systems with liquid reservoirs. Both ANDAs 077062 and 076709 are indicated for use in the management of pain in opioid-tolerant patients, severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate. Both ANDAs 077062 and 076709 fentanyl transdermal systems were approved for the following strengths: 25 micrograms (mcg)/hour (hr), 50 mcg/hr, 75 mcg/hr, and 100 mcg/hr.

ANDA 077062, previously held by Actavis South, is now held by Mayne [1] and ANDA 076709 is now held by Actavis as an indirect wholly owned subsidiary of Teva.[2] However, after ANDAs 077062 and 076709 were approved, FDA became aware of new information related to problems with the manufacturing, design, and quality control of fentanyl transdermal systems with a liquid reservoir design, leading to potential leakage, unintended opioid exposure, and potentially life-threatening adverse events.

In June 2019, Mayne requested withdrawal of ANDA 077062 under § 314.150(d) (21 CFR 314.150(d)) and waived its opportunity for a hearing, and in July 2019, Actavis requested withdrawal of ANDA 076709 under § 314.150(d) and waived its opportunity for a hearing. In its letter requesting withdrawal of approval, Actavis stated that it voluntarily discontinued manufacture and sale of products under ANDA 076709 in 2018 for commercial reasons and has agreed to withdrawal of the application for those reasons only.

For the reasons discussed above, and pursuant to Mayne's and Actavis' requests, approval of ANDAs 077062 and 076709, and all amendments and supplements thereto, is withdrawn under § 314.150(d).

Distribution of Mayne's fentanyl transdermal system (25 mcg/hr, 50 mcg/hr, 75 mcg/hr, and 100 mcg/hr) or Actavis's fentanyl transdermal system (25 mcg/hr, 50 mcg/hr, 75 mcg/hr, and 100 mcg/hr) into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)).

Dated: November 12, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24922 Filed 11–15–19; 8:45 am]

BILLING CODE 4164–01–P

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[1] At the time of original approval, ANDA 077062 was held by Actavis South. In 2012, Actavis South divested ANDA 077062 to Par Pharmaceutical, Inc. In 2017, Par Pharmaceutical, Inc., divested ANDA 077062 to Mayne.

[2] At the time of original approval, ANDA 076709 was held by Watson. In 2015, Watson became a wholly owned subsidiary of Actavis, and thus, the application transferred to Actavis. In 2017, Actavis became an indirect wholly owned subsidiary of Teva. Thus, ANDA 076709 is currently held by Actavis as a subsidiary of Teva.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4992]

Pan American Laboratories, LLC, et al.; Proposal To Withdraw Approval of Four New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is proposing to withdraw approval of four new drug applications (NDAs) from multiple NDA holders and is announcing an opportunity for the NDA holders to request a hearing on this proposal. The basis for the proposal is that the NDA holders have repeatedly failed to file required annual reports for these NDAs.

DATES: The NDA holders may submit a request for a hearing by December 18, 2019. Submit all data, information, and analyses upon which the request for a hearing relies January 17, 2020. Submit electronic or written comments by January 17, 2020.

ADDRESSES: The request for a hearing may be submitted by the NDA holders by either of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments to submit your request for a hearing. Comments submitted electronically to *https://www.regulations.gov,* including any attachments to the request for a hearing, will be posted to the docket unchanged.

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- Because your request for a hearing will be made public, you are solely responsible for ensuring that your request does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. The request for a hearing must include the Docket No. FDA–2019–N–4992 for ''Pan American Laboratories, LLC, et al.; Proposal To Withdraw Approval of Four New Drug Applications; Opportunity for a Hearing.'' The request for a hearing will be placed in the docket and publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

The NDA holders may submit all data and analyses upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

- Confidential Submissions—To submit any data analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analyses. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of any decisions on this matter. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov* or available at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. Submit both copies to the Dockets Management Staff. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law.

Comments Submitted by Other Interested Parties: For all comments submitted by other interested parties, submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand Delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–4992 for ''Pan American Laboratories, LLC, et al.; Proposal To Withdraw Approval of Four New Drug Applications; Opportunity for a Hearing.'' Received comments, those filed in a timely manner (see **DATE**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked

as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kimberly S. Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81). The NDA holders listed in table 1 have failed to submit the required annual reports and have not responded to the Agency's request for submission of the reports.

TABLE 1—APPROVED NDAS FOR WHICH REQUIRED REPORTS HAVE NOT BEEN SUBMITTED

Application No.	Drug	NDA holder
NDA 014217	MAOLATE (chlorphenesin carbamate) Tablet, 400 milligrams (mg).	Pan American Laboratories, LLC, 4099 Highway 190, Covington, LA 70433.
NDA 018663	CHYMODIACTIN (chymopapain) for Injection, 4,000 Units/vial and 10,000 Units/vial.	Chart Medical, Inc., c/o Renascent Medical, Inc., 9600 Great Hills Trail, Suite 150 West, Austin, TX 78759.
NDA 020530	IONTOCAINE (epinephrine and lidocaine hydrochloride (HCl)) Topical Solution, 0.01 mg/milliliter; 2%.	Iomed, Inc., 2441 South 3850 West, Suite A, Salt Lake City, UT 84120–9941.
NDA 021504	LIDOSITE TOPICAL SYSTEM: LidoSite Patch (lidocaine HCl and epinephrine topical iontophoretic patch) 10%/0.1% and LidoSite Controller.	Vyteris, Inc., 13–01 Pollitt Dr., Fair Lawn, NJ 07410.

Therefore, notice is given to the NDA holders listed in table 1 and to all other interested persons that the Director of CDER proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(e)), withdrawing approval of the applications and all amendments and supplements thereto on the grounds that the NDA holders have failed to submit reports required under § 314.81.

In accordance with section 505 of the FD&C Act and 21 CFR part 314, the NDA holders are hereby provided an opportunity for a hearing to show why the approval of the applications listed previously should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products covered by these applications.

An NDA holder who decides to seek a hearing must file the following: (1) A written notice of participation and request for a hearing (see **DATES** and **ADDRESSES**) and (2) the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing (see **DATES** and **ADDRESSES**). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 (21 CFR 314.200) and in 21 CFR part 12.

The failure of an NDA holder to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that NDA holder not to avail itself of the opportunity for a hearing concerning CDER's proposal to withdraw approval of the applications and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the applications, and the drug products may not thereafter be lawfully introduced or delivered for introduction into interstate commerce. Any new drug product introduced or delivered for introduction into interstate commerce without an approved application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If a request for a hearing is not complete or is not supported, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.*

This notice is issued under section 505(e) of the FD&C Act and under authority delegated to the Director of CDER by the Commissioner of Food and Drugs.

Dated: November 12, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24921 Filed 11–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2649]

Advisory Committee; Nonprescription Drugs Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Nonprescription Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Nonprescription Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until August 27, 2021.

DATES: Authority for the Nonprescription Drugs Advisory Committee will expire on August 27, 2021, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *NDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3, FDA is announcing the renewal of the Nonprescription Drugs Advisory Committee (the Committee). The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases and advises the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee serves as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of agency sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

Pursuant to its charter, the Committee consists of a core of 10 voting members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties. Members are invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/nonprescription-drugs-advisory-committee/nonprescription-drugs-advisory-committee-charter* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: November 12, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24917 Filed 11–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Ryan White HIV/AIDS Program Parts A and B Unobligated Balances and Rebate Addendum Tables, OMB No. 0906–xxxx—NEW

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than December 18, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *paperwork@hrsa.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Ryan White HIV/AIDS Program Parts A and B Unobligated Balances and Rebate Addendum Tables, OMB No. 0906–xxxx—NEW.

Abstract: HRSA's Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states, territories, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support to low-income people diagnosed with HIV. Nearly two-thirds of RWHAP clients (patients) live at or below 100 percent of the federal poverty level and approximately three-quarters of RWHAP clients are racial and ethnic minorities. Since 1990, the RWHAP has developed a comprehensive system of HIV service providers who deliver high quality direct health care and support services to over half a million people diagnosed with HIV—more than 50 percent of all people diagnosed with HIV in the United States.

Grant recipients funded under Parts A, B, C, and D of the RWHAP (codified under Title XXVI of the Public Health Service Act) are required to report financial data to HRSA at the beginning (Allocations Report) and at the end of each grant budget period (Expenditures Report) using the HRSA Electronic Handbooks (EHBs).[i] HRSA RWHAP Parts A and B collect unobligated balances (UOB) of federal funds and rebate addendum information by subprogram from their grant recipients. Parts A and B use the UOB and rebate addendum financial information to determine formula funding as directed by the RWHAP statute. These data were collected when grant recipients submitted their annual Federal Financial Report (FFR SF–425) in hard copy only, and were submitted to the individual HHS Operating Divisions. HRSA added UOB and rebate addendum tables after the FFR SF–425, using a suggested format through the HRSA EHBs. This financial information is collected in the same location to

[i] The Allocations Report and the Expenditures Report were approved by OMB under the 0915–0318 control number.

streamline the process for the grant recipients. The UOB and rebate addendum data tables will be collected in the HRSA EHBs below the FFR SF–425 control number and the Paperwork Burden Statement.

A 60-day notice was published in the **Federal Register** on July 19, 2019, vol. 84, No. 139; pp. 34903–04. There were no public comments.

Need and Proposed Use of the Information: RWHAP Part A and Part B recipients currently complete the UOB and rebate addendum tables in a non-electronic form and upload them as attachments as a part of their FFR SF–425 submission. This new process will decrease administrative burden, increase transparency, and improve the quality of data submitted to HRSA. These UOB and rebate addendum tables are essential for allowing HRSA to ensure that RWHAP recipients are meeting the goal of accountability to Congress, clients, advocacy groups, and the general public. Information provided in the UOB and rebate addendum tables is critical for HRSA, states and territories, local clinics, and individual providers to evaluate the effectiveness of these programs.

Likely Respondents: HRSA RWHAP Parts A and B Recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Part A UOB Table	52	1	52	0.5	26.0
Part B UOB Table	59	1	59	0.5	29.5
	111		111		55.5

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–24911 Filed 11–15–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Chart Abstraction of Ryan White HIV/AIDS Program Recipient Data, OMB No. 0906–xxxx—New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than December 18, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Chart Abstraction of Ryan White HIV/AIDS Program Recipient Data, OMB No. 0906–xxxx—New.

Abstract: HRSA's Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support to low-income people with HIV. Nearly two-thirds of clients (patients) live at or below 100 percent of the Federal poverty level and approximately three-quarters of RWHAP clients are racial and ethnic minorities. Since 1990, the RWHAP has developed a comprehensive system of HIV service providers who deliver high quality direct health care and support services to over half a million people with HIV—more than 50 percent of all people with diagnosed HIV in the United States.

HRSA is required to assess the quality of care provided by RWHAP grant recipients. HHS guidelines (*e.g.,* Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents Living with HIV; Guidelines for the Prevention and Treatment of Opportunistic Infections in HIV-Infected Adults and Adolescents; and Sexually Transmitted Diseases Treatment Guidelines, 2015) and U.S. Preventative Services Task Force (USPSTF) guidelines serve as the basis for assessing the quality of care within the RWHAP. The purpose of the *Chart Abstraction of RWHAP Data* study is to assess the extent to which the care provided with funding from the RWHAP is meeting the HHS and USPSTF guidelines. The study will collect data from RWHAP service providers via a provider screening phone interview, a provider pre-site visit interview, and medical records data abstraction. The data will reflect the full range of HIV outpatient ambulatory health services, primary care, and screening and treatment for hepatitis, sexually transmitted infections (STIs), and opioid use disorder provided by service providers and allow HRSA to assess the extent to which care provided by RWHAP service providers meets the HHS and USPSTF guidelines.

A 60-day notice was published in the **Federal Register** on May 10, 2019, vol. 84, No. 91; pp. 20638–20639. There were no public comments.

Need and Proposed Use of the Information: National RWHAP client-level data is collected through the RWHAP Client Level Data Reporting System. The RWHAP Client Level Data Reporting System dataset (OMB control number 0915–0323) is HRSA's primary source of annual, client-level data collected from its nearly 2,000 funded grant recipients/service providers and the data have been used to assess the numbers and types of clients receiving services and limited HIV outcomes. However, the RWHAP Client Level Data Reporting System dataset does not include relevant data in order to fully assess the extent to which the care provided by RWHAP service providers is meeting the HHS and USPSTF guidelines. This proposed new information collection request will provide the full range of HIV outpatient ambulatory health services, primary care, and screening and treatment for hepatitis, STIs, and opioid use disorder data and allow HRSA to assess the extent to which care provided by RWHAP service providers meets the HHS and USPSTF guidelines.

Likely Respondents: HRSA RWHAP Part A, Part B, Part C, and Part D service providers funded to deliver outpatient ambulatory health services to eligible clients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The burden estimate increased by 25 hours (0.5 hour increase for each medical record data abstraction) to a total of 225 hours (previous estimate was 200 hours as published in the 60-day notice on May 10, 2019 in Vol. 84, No. 91, pages 20638–20639). The burden estimate increased as the result of a pilot of the data collection forms.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Provider Site screening interview	100	1	100	0.5	50
Provider Pre-Site Visit Interview	50	1	50	1.0	50
Medical Record Data Abstraction	50	1	50	2.5	125
Total	200		200		225

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–24910 Filed 11–15–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

SUPPLEMENTARY INFORMATION: Section 100.2 of VICP's implementing regulation (42 CFR part 100) states that the revised amount of an average cost of a health insurance policy, as determined by the Secretary of HHS (the Secretary), is effective upon its delivery by the Secretary to the United States Court of Federal Claims (the Court), and will be published periodically in a notice in the **Federal Register**. The Secretary delegated this responsibility to the HRSA Administrator. This figure is calculated using the most recent Medical Expenditure Panel Survey-Insurance Component (MEPS–IC) data available as the baseline for the average monthly cost of a health insurance policy. This baseline is adjusted by the annual percentage increase/decrease obtained from the most recent annual Kaiser Family Foundation (KFF) Employer Health Benefits Survey or other authoritative source that may be more accurate or appropriate.

In 2019, MEPS–IC, available at *www.meps.ahrq.gov,* published the annual 2018 average total single premium per enrolled employee at private-sector establishments that provide health insurance. The figure published was $6,715. This figure is divided by 12 months to determine the cost per month of $559.58. The $559.58 figure is increased or decreased by the percentage change reported by the most recent KFF Employer Health Benefits Survey, available at *www.kff.org.* The percentage increase from 2018 to 2019 was 4.0 percent. By adding this percentage increase, the calculated average monthly cost of a health insurance policy for a 12-month period is $581.96.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $581.96 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the Court. Such notice was delivered to the Court on November 7, 2019.

Dated: November 7, 2019.

Thomas J. Engels,

Acting Administrator.

[FR Doc. 2019–24886 Filed 11–15–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Amended Notice of Meeting

Notice is hereby given of a change in the Interagency Pain Research Coordinating Committee meeting on November 18, 2019, 08:30 a.m. to 05:00 p.m., Building 35A, Porter Neuroscience Center, Room 610, 35 Convent Drive, Bethesda, MD 20892, which was published in the **Federal Register** on October 18, 2019, 84 FR 55974.

The meeting notice is amended to change the meeting agenda from the meeting will include discussions of committee business items including information about the NIH HEAL Initiative and an update on the Pain Management Best Practices Interagency Task Force to The meeting will include discussions of committee business items including the SUPPORT act, an update on the NIH HEAL Initiative and pain initiatives outside of the NIH.

The meeting is open to the public.

Dated: November 12, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–24849 Filed 11–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) I Review.

Date: January 23–24, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W116, National Cancer Institute, Rockville, MD 20892–9750, 240–276–5413, *klaus.piontek@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) II Review.

Date: January 28–29, 2020.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Majed M. Hamawy, Ph.D., MBA, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Dr. Rm 7W120, Bethesda, MD 20892, 240–276–6457, *mh101v@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE IV (P50) Review.

Date: February 4–5, 2020.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W244, National Cancer Institute, NIH, Bethesda, MD 20892, 240–276–5415 *paul.cairns@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Feasibility and Planning Studies for SPOREs to Investigate Cancer Health Disparities (P20).

Date: February 7, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rm 2W910/912, Rockville, MD 20850.

Contact Person: Caron A. Lyman, Ph.D., Chief, Scientific Review Officer, National Cancer Institute, NIH, Division of Extramural Activities, Research Programs Review Branch, 9609 Medical Center Dr., Rm 7W126, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–7A: SBIR Contract Review.

Date: February 11, 2020.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, 6W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Ivan Ding, M.D. Health Scientist Administrator, National Cancer Institute, NIH, Division of Extramural Activities, Program & Review Extramural Staff Training Office, 9609 Medical Center Dr., Room 7W534, Bethesda, MD 20892–9750, 240–276–6444, *dingi@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–7B: SBIR Contract Review.

Date: February 12, 2020.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W034, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, National Cancer Institute, NIH, Division of Extramural Activities, Program & Review Extramural Staff Training Office, 9609 Medical Center Dr., Room 7W534, Bethesda, MD 20892–9750, 240–276–6444 *dingi@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review II.

Date: February 13–14, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W618, National Cancer Institute, NIH Rockville, MD 20850, 240–276–6611 *mukesh.kumar3@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–7C: SBIR Contract Review.

Date: February 13, 2020.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, National Cancer Institute, NIH, Division of Extramural Activities, Program & Review Extramural Staff Training Office, 9609 Medical Center Dr., Room 7W534, Bethesda, MD 20892–9750, 240–276–6444, *dingi@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Career Development.

Date: March 5–6, 2020.

Time: 4:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources & Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850, 240–276–6132, *tushar.deb@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 12, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–24850 Filed 11–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of April 3, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
New London County, Connecticut (All Jurisdictions) Docket No.: FEMA–B–1771	
Town of North Stonington	Old Town Hall, 40 Main Street, North Stonington, CT 06359.
Town of Stonington	Town Hall, 152 Elm Street, Stonington, CT 06378.
Town of Voluntown	Town Hall, 115 Main Street, Voluntown, CT 06384.
Allegany County, Maryland and Incorporated Areas Docket No.: FEMA–B–1601 and FEMA–B–1905	
City of Cumberland	City Hall, 57 North Liberty Street, Cumberland, MD 21502.
City of Frostburg	City Hall, 59 East Main Street, Frostburg, MD 21532.
Town of Barton	Town Hall, 19018 Legislative Road SW, Barton, MD 21521.
Town of Lonaconing	Town Hall, 35 East Main Street, Lonaconing, MD 21539.
Town of Luke	City Building, 510 Grant Street, Luke, MD 21540.
Town of Midland	Town Hall, 19823 Big Lane SW, Midland, MD 21532.
Town of Westernport	City Building, 107 Washington Street, Westernport, MD 21562.
Unincorporated Areas of Allegany County	Allegany County Office Building, 701 Kelly Road, Cumberland, MD 21502.
Essex County, New Jersey (All Jurisdictions) Docket Nos.: FEMA–B–1471 and B–1800	
Borough of North Caldwell	Borough Hall, 141 Gould Avenue, North Caldwell, NJ 07006.
Borough of Roseland	Public Works Department, 300 Eagle Rock Avenue, Roseland, NJ 07068.
Township of Belleville	Engineering Office, 152 Washington Avenue, Belleville, NJ 07109.
Township of Bloomfield	Municipal Building, 1 Municipal Plaza, Bloomfield, NJ 07003.

Community	Community map repository address
Township of Fairfield	Municipal Building, Engineering Department, 230 Fairfield Road, Fairfield, NJ 07004.
Township of Livingston	Township Hall, Engineering Department, 357 South Livingston Avenue, Livingston, NJ 07039.
Township of Montclair	Planning Department, 205 Claremont Avenue, Montclair, NJ 07042.
Township of Nutley	Township Hall, 1 Kennedy Drive, Nutley, NJ 07110.
Township of West Caldwell	Municipal Building, 30 Clinton Road, West Caldwell, NJ 07006.
Kent County, Rhode Island (All Jurisdictions) Docket No.: FEMA–B–1771	
Town of Coventry	Planning Department, 1675 Flat River Road, Coventry, RI 02816.
Town of West Greenwich	Town Hall Annex South, Building Official's Office, 302 Victory Highway, West Greenwich, RI 02817.
Washington County, Rhode Island (All Jurisdictions) Docket No.: FEMA–B–1771	
Narragansett Indian Tribe	Administration Building, 4533 South County Trail, Charlestown, RI 02813.
Town of Charlestown	Town Hall, Building Department, 4540 South County Trail, Charlestown, RI 02813.
Town of Exeter	Town Hall, Town Clerk's Office, 675 Ten Rod Road, Exeter, RI 02822.
Town of Hopkinton	Town Hall, 1 Town House Road, Hopkinton, RI 02833.
Town of North Kingstown	Department of Public Works, Engineering Department, 2050 Davisville Road, North Kingstown, RI 02852.
Town of Richmond	Richmond Town Hall, 5 Richmond Townhouse Road, Wyoming, RI 02898.
Town of South Kingstown	South Kingstown Town Hall, 180 High Street, Wakefield, RI 02879.
Town of Westerly	Town Hall, 45 Broad Street, Westerly, RI 02891.
Grand County, Utah and Incorporated Areas Docket No.: FEMA–B–1860	
Unincorporated Areas of Grand County	Grand County Courthouse, 125 East Center Street, Moab, UT 84532.

[FR Doc. 2019–24885 Filed 11–15–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their

floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Chaffee (FEMA Docket No.: B–1943).	Unincorporated areas of Chaffee County (19–08–0038P).	The Honorable Greg Felt, Chairman, Chaffee County Board of Commissioners, P.O. Box 699, Salida, CO 81201.	Chaffee County Planning and Zoning Department, 104 Crestone Avenue, Room 125, Salida, CO 81201.	Oct. 10, 2019	080269
Denver (FEMA Docket No.: B–1948).	City and County of Denver (19–08–0316P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	Oct. 18, 2019	080046
El Paso (FEMA Docket No.: B–1952).	City of Colorado Springs (19–08–0188P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903.	Pikes Peak Regional Building Department, 2880 International Circle, Colorado Springs, CO 80910.	Oct. 15, 2019	080060
Weld (FEMA Docket No.: B–1948).	Unincorporated areas of Weld County (19–08–0635P).	The Honorable Barbara Kirkmeyer, Chair, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	Department of Planning Services, 1555 North 17th Avenue, Greeley, CO 80631.	Oct. 15, 2019	080266
Florida:					
Charlotte (FEMA Docket No.: B–1952).	Unincorporated areas of Charlotte County (19–04–0669P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	Oct. 17, 2019	120061
Lee (FEMA Docket No.: B–1943).	Town of Fort Myers Beach (19–04–3002P).	The Honorable Anita Cereceda, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Oct. 11, 2019	120673
Monroe (FEMA Docket No.: B–1948).	Unincorporated areas of Monroe County (19–04–2934P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Oct. 10, 2019	125129
Palm Beach (FEMA Docket No.: B–1948).	Unincorporated areas of Palm Beach County (18–04–6177P).	The Honorable Mack Bernard, Mayor, Palm Beach County Board of Commissioners, 301 North Olive Avenue, West Palm Beach, FL, 33401.	Palm Beach County Building Division, 2300 North Jog Road, West Palm Beach, FL 33411.	Oct. 11, 2019	120192
Sarasota (FEMA Docket No.: B–1943).	Town of Longboat Key (19–04–2109P).	Mr. Thomas A. Harmer, Manager, Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228.	Planning, Zoning and Building Department, 501 Bay Isles Road, Longboat Key, FL 34228.	Oct. 15, 2019	125126
Massachusetts: Worcester (FEMA Docket No.: B–1948).	Town of Charlton (19–01–0726P).	The Honorable David Singer, Chairman, Town of Charlton Board of Selectmen, 37 Main Street, Charlton, MA 01507.	Town Hall, 37 Main Street, Charlton, MA 01507.	Oct. 2, 2019	250299
New Mexico: Santa Fe (FEMA Docket No.: B–1943).	City of Santa Fe (18–06–3876P).	The Honorable Alan M. Webber, Mayor, City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504.	Building and Development Services Department, 102 Grant Avenue, Santa Fe, NM 87501.	Oct. 7, 2019	350070
North Carolina: Onslow (FEMA Docket No.: B–1948).	Unincorporated areas of Onslow County (18–04–3141P).	The Honorable Jack Bright, Chairman, Onslow County Board of Commissioners, 234 Northwest Corridor Boulevard, Jacksonville, NC 28540.	Onslow County Planning and Development Department, 234 Northwest Corridor Boulevard, Jacksonville, NC 28540.	Oct. 15, 2019	370340
Oklahoma:					
Kingfisher (FEMA Docket No.: B–1943).	Unincorporated areas of Kingfisher County (19–06–0141P).	The Honorable Jeff Moss, Chairman, Kingfisher County Board of Commissioners, 101 South Main Street, Kingfisher, OK 73750.	Kingfisher County Courthouse, 101 South Main Street, Kingfisher, OK 73750.	Oct. 3, 2019	400471
Pottawatomie (FEMA Docket No.: B–1952).	City of Shawnee (19–06–2167P).	The Honorable Richard Finley, Mayor, City of Shawnee, 16 West 9th Street, Shawnee, OK 74801.	City Hall, 16 West 9th Street, Shawnee, OK 74801.	Oct. 3, 2019	400178
Pennsylvania:					
Montgomery (FEMA Docket No.: B–1939).	Township of Lower Merion (18–03–2077P).	The Honorable Daniel S. Bernheim, President, Township of Lower Merion Board of Commissioners, 75 East Lancaster Avenue, Ardmore, PA 19003.	Township Hall, 75 East Lancaster Avenue, Ardmore, PA 19003.	Sep. 23, 2019	420757
Northumberland (FEMA Docket No.: B–1943).	Borough of Mount Carmel (18–03–1827P).	The Honorable Robert Shirmer, President, Borough of Mount Carmel Council, 137 West 4th Street, Mount Carmel, PA 17851.	Borough Hall, 137 West 4th Street, Mount Carmel, PA 17851.	Oct. 7, 2019	420738

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Northumberland (FEMA Docket No.: B–1943).	Township of Mount Carmel (18–03–1827P).	The Honorable Aaron Domanski, Chairman, Township of Mount Carmel Board of Supervisors, 300 Laurel Street, Mount Carmel, PA 17851.	Township Hall, 300 Laurel Street, Mount Carmel, PA 17851.	Oct. 7, 2019	421942
Philadelphia (FEMA Docket No.: B–1939).	City of Philadelphia (18–03–2077P).	The Honorable James Keeney, Mayor, City of Philadelphia, 400 John F. Kennedy Boulevard, Philadelphia, PA 19107.	Department of Licenses and Inspections, 1401 John F. Kennedy Boulevard, Room 1130, Philadelphia, PA 19102.	Sep. 23, 2019	420757
Somerset (FEMA Docket No.: B–1931).	Township of Elk Lick (19–03–0464P).	The Honorable Allen Green, Chairman, Township of Elk Lick, 1507 St. Paul Road, Salisbury, PA 15558.	Township Hall, 1507 St. Paul Road, Salisbury, PA 15558.	Oct. 7, 2019	422048
South Dakota: Lawrence (FEMA Docket No.: B–1948).	City of Spearfish (19–08–0612P).	The Honorable Dana Boke, Mayor, City of Spearfish, 625 North 5th Street, Spearfish, SD 57783.	City Hall, 625 North 5th Street, Spearfish, SD 57783.	Oct. 21, 2019	460046
Texas:					
Bexar (FEMA Docket No.: B–1948).	Unincorporated areas of Bexar County (19–06–0167P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	Sep. 23, 2019	480035
Collin and Denton (FEMA Docket No.: B–1952).	City of Celina (19–06–0008P).	The Honorable Sean Terry, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	City Hall, 142 North Ohio Street, Celina, TX 75009.	Oct. 7, 2019	480133
Collin (FEMA Docket No.: B–1948).	City of McKinney (18–06–1366P).	The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	Oct. 21, 2019	480135
Collin (FEMA Docket No.: B–1952).	Unincorporated areas of Collin County (19–06–0008P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Emergency Management Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	Oct. 7, 2019	480130
Denton (FEMA Docket No.: B–1952).	Unincorporated areas of Denton County (19–06–0008P).	The Honorable Andy Eads, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Public Works, Engineering Department, 1505 East McKinney Street, Suite 175, Denton, TX 76201.	Oct. 7, 2019	480774
El Paso (FEMA Docket No.: B–1943).	City of El Paso (19–06–0075P).	The Honorable Dee Margo, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	City Development Department, 811 Texas Avenue, El Paso, TX 79901.	Oct. 7, 2019	480214
Harris (FEMA Docket No.: B–1948).	City of Houston (19–06–2522P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, Houston, TX 77002.	Oct. 21, 2019	480296
Montgomery (FEMA Docket No.: B–1943).	City of Conroe (19–06–0333P).	The Honorable Toby Powell, Mayor, City of Conroe, P.O Box 3066, Conroe, TX 77305.	Engineering Department, 300 West Davis Street, Conroe, TX 77301.	Oct. 7, 2019	480484
Montgomery (FEMA Docket No.: B–1943).	Unincorporated areas of Montgomery County (19–06–0333P).	The Honorable Mark J. Keough, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Commissioners Court Building, 501 North Thompson Street, Suite 103, Conroe, TX 77301.	Oct. 7, 2019	480483
Tarrant (FEMA Docket No.: B–1943).	City of Crowley (18–06–3679P).	The Honorable Billy P. Davis, Mayor, City of Crowley, 201 East Main Street, Crowley, TX 76036.	City Hall, 201 East Main Street, Crowley, TX 76036.	Oct. 7, 2019	480591
Tarrant (FEMA Docket No.: B–1943).	Unincorporated areas of Tarrant County (18–06–3679P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196.	Tarrant County Plaza Building, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196.	Oct. 7, 2019	480582
Virginia: Independent City (FEMA Docket No.: B–1943).	City of Fairfax (19–03–0492P).	Mr. Robert A. Stalzer, Manager, City of Fairfax, 10455 Armstrong Street, Room 316, Fairfax, VA 22030.	Public Works Department, 10455 Armstrong Street, Room 200, Fairfax, VA 22030.	Oct. 11, 2019	515524
Washington:					
Spokane (FEMA Docket No.: B–1952).	City of Spokane Valley (18–10–1005P).	Mr. Mark Calhoun, Manager, City of Spokane Valley, 10210 East Sprague Avenue, Spokane Valley, WA 99206.	Building and Planning Division, 10210 East Sprague Avenue, Spokane Valley, WA 99206.	Oct. 15, 2019	530342
Spokane (FEMA Docket No.: B–1952).	Unincorporated areas of Spokane County (18–10–1005P).	Mr. Gerry Gemmill, Chief Executive Officer, Spokane County, 1116 West Broadway Avenue, Spokane, WA 99260.	Spokane County Public Works Department, 1026 West Broadway Avenue, Spokane, WA 99260.	Oct. 15, 2019	530174

[FR Doc. 2019–24883 Filed 11–15–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet in person on Wednesday, December 11, 2019, and Thursday, December 12, 2019, in Arlington, VA. The meeting will be open to the public.

DATES: The TMAC will meet on Wednesday, December 11, 2019, from 8 a.m.–5:30 p.m. Eastern Daylight Time (EDT), and Thursday, December 12, 2019, from 8 a.m.–5:30 p.m. EDT. Please note that the meeting may close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held at AECOM at 3101 Wilson Blvd., Ste 900, Arlington, VA 22201. Members of the public who wish to attend the meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attention: Michael Nakagaki) by 5 p.m. EDT on Tuesday, December 10, 2019. Members of the public must check in at the front desk of 3101 Wilson Boulevard, Arlington, Virginia 22201 and will be provided with an escort to the meeting room; photo identification is required.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the person listed below by Tuesday, December 10, 2019.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated meeting materials will be available at *www.fema.gov/TMAC* for review by Friday, December 6, 2019. Written comments to be considered by the committee at the time of the meeting must be submitted and received by Tuesday, December 10, 2019, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW, Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Wednesday, December 11, 2019, from 11:30 a.m. to 12 p.m. EDT and again on Thursday, December 12, 2019, from 11:30 a.m. to 12 p.m. EDT. Speakers are requested to limit their comments to no more than 3 minutes. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Tuesday, December 10, 2019.

FOR FURTHER INFORMATION CONTACT: Michael Nakagaki, Designated Federal Officer for the TMAC, FEMA, 400 C Street SW, Washington, DC 20024, telephone (202) 212–2148, and email *FEMA-TMAC@fema.dhs.gov.* The TMAC website is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

In accordance with the Biggert-Waters Flood Insurance Reform Act of 2012, the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: During the first day, TMAC members will review the recommendations developed by each subcommittee. During the second day, the discussion will focus on the memorandum format being used to submit information to FEMA and a vote on the final selection of recommendations. TMAC members will then vote on recommendations for FEMA's consideration in 2020. The TMAC will receive public input on the recommendations. Any related materials will be posted to the FEMA TMAC site prior to the meeting to provide the public an opportunity to review the materials. The full agenda and related meeting materials will be posted for review by Friday, December 6, 2019, at *http://www.fema.gov/TMAC.*

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency.

[FR Doc. 2019–24882 Filed 11–15–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20EE000101100]

Public Meeting of the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place.

DATES: The meeting will be held on Wednesday, December 4, 2019 from 8:30 a.m. to 5:00 p.m., and on Thursday,

December 5, 2019 from 8:30 a.m. to 4:00 p.m. (Eastern Standard Time).

ADDRESSES: The meeting will be held at the Bureau of Land Management Office, 20 M Street SE, Washington, DC 20003, in Room 4107. Send your comments to Group Federal Officer by email to *gs-faca-mail@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Mahoney, Federal Geographic Data Committee, U.S. Geological Survey, 909 First Avenue, Suite 800, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 220–4621.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The NGAC provides advice and recommendations related to management of Federal and national geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of the Geospatial Data Act of 2018 and Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-Federal stakeholders in the geospatial community. The NGAC meeting is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC meeting is available at: *www.fgdc.gov/ngac.*

Agenda Topics:

—FGDC Update
—Geospatial Data Act Implementation
—National Spatial Data Infrastructure Strategic Plan
—Landsat Advisory Group
—NGAC Operations
—Public-Private Partnerships
—Public Comments

Meeting Accessibility/Special Accommodations: The meeting is open to the public from 8:30 a.m. to 5:00 p.m. on December 4 and from 8:30 a.m. to 4:00 p.m. on December 5. Members of the public wishing to attend the meeting should contact Mr. John Mahoney by email at *jmahoney@usgs.gov* to register no later than five (5) business days prior to the meeting. Registration is required for entrance into the building. Seating may be limited due to room capacity. Individuals requiring special accommodations to access the public meeting should contact Mr. John Mahoney at the email stated above or by telephone at (206) 220–4621 at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the committee members, written notice must be provided to John Mahoney, Federal Geographic Data Committee, U.S. Geological Survey, 909 First Avenue, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 220–4621, at least three (3) business days prior to the meeting. Any written comments received will be provided to the committee members.

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 may 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.

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2019–24887 Filed 11–15–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES962000 L14400000 BJ0000 18X]

Notice of Filing of Plat of Survey; Eastern States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Massachusetts, Stayed.

SUMMARY: On Monday, August 26, 2019, there was published in the **Federal Register**, Volume 84, Number 165, on page 44632 a notice entitled ''Eastern States: Filing of Plats of Survey''. In said notice was a plat depicting the dependent resurvey and corrective dependent resurvey of portions of the boundaries of the ''Public Settlement Lands'' recited in the Act of August 18, 1987, (Pub. L. 100–95) held in trust for the Mashpee Wampanoag Tribe, in the Town of Aquinnah, Dukes County, in the State of Massachusetts. This plat was accepted April 26, 2019.

The official filing of the plat is hereby stayed, pending consideration of all protests.

Kenneth D. Roy,

Acting Chief Cadastral Surveyor.

[FR Doc. 2019–24861 Filed 11–15–19; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO3200000 L19900000.PO0000; OMB Control Number 1004–0114]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Recordation of Location Notices and Mining Claims; Payment of Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 18, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman, or by email to *jesonneman@blm.gov.* Please reference OMB Control Number 1004–0114 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elaine Guenaga by email at *eguenaga@blm.gov,* or by telephone at 775–861–6539. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.* Persons who use a telecommunication device for the deaf may call the Federal Relay Service at 1–800–877–8339, to leave a message for Ms. Guenaga.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to

comment on new, proposed, revised and continuing collections of information. This helps to assess the impact of the BLM's information collection requirements and minimize the public's reporting burden. It also helps the public understand the BLM's information collection requirements and provides the requested data in the desired format. A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 16, 2019 (84 FR15636). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. The BLM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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. The BLM 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 in your comment to the BLM to withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

The following information pertains to this request:

Abstract: This control number applies to the location, recording and maintenance of mining claims and sites, in accordance with the Mining Law (30 U.S.C. 22–54), Section 314 of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1744), certain other statutes pertaining to specific Federal lands, and the Stock Raising Homestead Act (43 U.S.C. 299 and 301).

Title of Collection: Recordation of Location Notices and Mining Claims (43 CFR parts 3832, 3833, 3834, 3835, 3836, 3837, and 3838).

OMB Control Number: 1004–0114.

Forms:

- *3830–2, Maintenance Fee Waiver Certification;*
- *3830–3, Notice of Intent to Locate a Lode or Placer Mining Claim(s) and/or a Tunnel Site(s) on Lands Patented under the Stock Raising Homestead Act of 1916, As Amended by the Act of April 16, 1993; and*
- *3830–4, Affidavit of Annual Assessment Work.*

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Mining claimants.

Total Estimated Number of Annual Respondents: 191,492.

Total Estimated Number of Annual Responses: 191,492.

Estimated Completion Time per Response: Varies from 30 to 60 minutes per response.

Total Estimated Number of Annual Burden Hours: 91,680.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion, except Form 3830–2 (which may be filed annually) and annual FLPMA documents (are to be filed annually when required).

Total Estimated Annual Nonhour Burden Cost: $3,078,360.

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.*).

Chandra Little,

Regulatory Analyst, Bureau of Land Management.

[FR Doc. 2019–24909 Filed 11–15–19; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO310/L13400000/LXSIGEOT0000/20X/; OMB Control Number 1004–0132]

Agency Information Collection Activities; Geothermal Resource Leasing and Permitting, and Geothermal Resources Unit Agreements; Control Number 1004–0132

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before January 17, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Jean Sonneman, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240; or by email to *jsonneman@blm.gov.* Please reference OMB Control Number 1004–0132 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Rebecca Good by email at *rgood@blm.gov,* or by telephone at 307–251–3487.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps to assess the impact of the BLM's information collection requirements and minimize the public's reporting burden. It also helps the public understand the BLM's information collection requirements and provides the requested data in the desired format.

The BLM is soliciting comments on the ICR that is described below. The BLM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology. This ICR seeks authorization for the use of Form 3200–9 (Notice of Intent to Conduct Geothermal Resource Exploration Operations) by both the BLM and the U.S. Department of Agriculture, Forest Service (USFS).

Comments that you submit in response to this notice are a matter of public record. The BLM 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 in your comment to the BLM to withhold your personal

identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Abstract: The BLM uses the required information to collect information from those who wish to participate in the exploration, development, production, and utilization of geothermal resources. The BLM has authority to issue geothermal leases in BLM-managed lands, and in national forests and other lands administered by the USFS. In this ICR, the BLM is proposing to revise Form 3200–9, Notice of Intent to Conduct Geothermal Resource Exploration Operations. A respondent submits this form either to the BLM or to the USFS, depending upon which agency has surface-management jurisdiction. Upon receiving such a form, the relevant agency determines whether to grant a permit to conduct geophysical exploration activities for geothermal resources. Approval by the authorizing agency is required before any ground-disturbing activities beyond casual use may commence. At present, Form 3200–9 refers directly only to the BLM. The proposed revisions of the form would simplify its use by both agencies. The BLM is proposing that the remaining forms in this ICR be renewed without revision.

Title of Collection: Geothermal Resource Leasing and Permitting, and Geothermal Resources Unit Agreements.

OMB Control Number: 1004–0132.

Forms: 3200–9, 3203–1, 3260–2, 3260–3, 3260–4, and 3260–5.

Type of Review: Revision of a currently approved collection.

Description of Respondents: Businesses that wish to participate in the exploration, development, production, and utilization of geothermal resources on BLM-managed public lands, and lands managed by other Federal surface-management agencies.

Total Estimated Number of Annual Responses: 914.

Estimated Completion Time per Response: Varies from 1 to 40 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 5,417.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion, except for Form 3260–5, Monthly Report of Geothermal Operations, which is filed once a month.

Total Estimated Annual Nonhour Burden Cost: $83,260.

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.*)

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management,

[FR Doc. 2019–24907 Filed 11–15–19; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS00000–L12200000.DF0000–19X]

Notice of Public Meetings, Southwest Resource Advisory Council, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southwest RAC has scheduled its meetings for December 12, 2019, and March 25, 2020. Each meeting will begin at 8 a.m. and adjourn at approximately 3 p.m.

ADDRESSES: The December 12, 2019, meeting will be held in Montrose, CO, at the Public Lands Center, 2465 South Townsend Ave.; and the March 25, 2020, meeting will be held in Grand Junction, CO, at the BLM Grand Junction Field Office, 2815 H Road.

FOR FURTHER INFORMATION CONTACT: Eric Coulter, Public Affairs Specialist, Southwest District, 2815 H Road, Grand Junction, CO 81506; phone: (970) 244–3061; email: *ecoulter@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Coulter during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Southwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public-land issues in the Southwest District, including the Grand Junction, Uncompahgre, and Tres Rios field offices. Topics of discussion for these meetings include recreation, recreation fee proposals, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land management proposals, cultural resource management, and other issues as appropriate. The December 12 agenda includes reviewing a fee proposal for the Canyons of the Ancients Visitor Center and Museum, a discussion about illegal dumping on public lands, and an update on the Uncompahgre Resource Management Plan.

The meetings are open to the public, and a public comment period will be held at 2:30 p.m. at each meeting. Depending on the number of persons wishing to comment and the time available, time allotted for individual oral comments may be limited. The public may also present written comments to the SW RAC. 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.

Detailed minutes for the RAC meetings will be maintained in the Southwest District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Previous minutes, membership information, and upcoming agendas are available at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/southwest-rac.*

(Authority: 43 CFR 1784.4–2)

Gregory P. Shoop,

Colorado Associate State Director.

[FR Doc. 2019–24908 Filed 11–15–19; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–29244; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before November 2, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by December 3, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 2, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State Historic Preservation Officers:

IDAHO

Twin Falls County

Rogerson School, (Public School Buildings in Idaho MPS), 2291 East 1510 North, Rogerson, MP100004759

LOUISIANA

Calcasieu Parish

Lake Charles Historic District (Boundary Increase), 517 Broad St. and 517 Broad St. Rear, Lake Charles, BC100004768

Orleans Parish

U.S. Quarantine Station, W. bank of the Mississippi R., in the New Orleans neighborhood of Algiers approx. 4 mi. downriver from the Port of New Orleans, New Orleans, SG100004767

MINNESOTA

Brown County

Way of the Cross, The, 1500 Fifth Street North, New Ulm, SG100004756

Hennepin County

Minnetonka Beach Water Tower, 2510 Woodbridge Rd., Minnetonka Beach, SG100004758

Ramsey County

Watson, Dwight H. and Clara M. House, 402 Hall St., St. Paul, SG100004757

MISSISSIPPI

DeSoto County

Circle G Ranch, 5921 Goodman Rd. W (MS 302 at intersection with MS 301), Horn Lake, SG100004749

NEW JERSEY

Atlantic County

Northside Institutional Historic District, 117, 138 North Indiana Ave.; 1707, 1711, 1713, 1714 Arctic Ave.; 61A, 61B Martin Luther King Jr. Blvd., Atlantic City, SG100004764

PENNSYLVANIA

Allegheny County

Clairton Inn, 601 Miller Ave., Clairton, SG100004763

Bucks County

Stover, Jacob, Farmstead, 921 River Rd., Upper Black Eddy, SG100004762

TEXAS

Comal County

Central Fire Station, 169 Hill Ave., New Braunfels, SG100004753

Dallas County

Forest Theatre, 1904 Martin Luther King Jr. Blvd., Dallas, SG100004752

Presidio County

Blackwell School, 501 South Abbot St., Marfa, SG100004751

Travis County

West Fifth Street Bridge at Shoal Creek, West Fifth St. at Shoal Creek, Austin, SG100004750

VERMONT

Windsor County

White River Junction Historic District (Boundary Increase II), North Main St., South Main St., Bridge St., Gates St., Currier St. & Maple St., Hartford, BC100004755

WASHINGTON

Island County

Deception Pass State Park-Cornet Bay Fire Circle (Historic Park Landscapes in National and State Parks MPS), 41020 WA 20, Oak Harbor vicinity, MP100004769

Deception Pass State Park-Cranberry Lake Bathing and Picnic Area Historic District (Historic Park Landscapes in National and State Parks MPS), 41020 WA 20, Oak Harbor vicinity, MP100004770

Deception Pass State Park-Cornet Bay Incinerator (Historic Park Landscapes in National and State Parks MPS), 41020 WA 20, Oak Harbor vicinity, MP100004771

Deception Pass State Park-Rosario and Bowman Bathing, Picnic, and Caretaker's Areas, Historic District (Historic Park Landscapes in National and State Parks MPS), 41020 WA 20, Oak Harbor vicinity, MP100004772

Deception Pass State Park-Cornet Bay Campstove Shelter (Historic Park Landscapes in National and State Parks MPS), 41020 WA 20, Oak Harbor vicinity, MP100004773

Additional documentation has been received for the following resource:

VERMONT

Windsor County

White River Junction Historic District, Railroad Row, Main St., Currier St., Bridge St. & Gates St., Hartford, AD80000390

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

ALASKA

Denali Borough

Quigley, Fannie, House (Kantishna Historic Mining Resources of Denali National Park and Preserve, MPS), Mile 92 of Denali Park Rd., approx. 270 ft. NE of terminus at the Kantishna Airstrip, Denali Park, MP100004765

Busia Cabin (Kantishna Historic Mining Resources of Denali National Park and Preserve, MPS), Approx. 900 ft. SW of Denali Park Rd. on west side of Moose Creek, Denali Park, MP100004766

Authority: Section 60.13 of 36 CFR part 60.

Dated: November 4, 2019.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–24913 Filed 11–15–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKRO–ANIA–29144; PPAKAKROR4; PPMPRLE1Y.LS0000]

Notice of an Open Public Meeting for the Aniakchak National Monument Subsistence Resource Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service (NPS) is hereby giving notice that the Aniakchak National Monument Subsistence Resource Commission (SRC), will hold a public meeting to develop and continue work on NPS subsistence program recommendations, and other related regulatory proposals.

DATES: The SRC will meet from 1:30 p.m. to 4:30 p.m. or until business is completed on Wednesday, December 4, 2019.

ADDRESSES: NPS Alaska Region Office, 240 W 5th Avenue, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Teleconference participants must call the NPS office in King Salmon, AK at (907) 246–2154 or (907) 246–3305, by Monday, December 2, 2019, prior to the meeting to received teleconference passcode information. For more detailed information regarding this meeting, or if you are interested in applying for SRC membership, contact Mark Sturm, Designated Federal Officer and Superintendent, at (907) 246–2154, or email at *mark_sturm@nps.gov* or Linda Chisholm, Subsistence Coordinator, at (907) 246–2154 or via email *linda_chisholm@nps.gov* or Joshua T. Ream, Regional Subsistence Manager, at (907) 644–3596 or via email *joshua_ream@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS is holding the meeting pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix 2). The NPS SRC program is authorized under section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118), title VIII.

SRC meetings are open to the public and will have time allocated for public comment. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting.

Purpose of the Meeting: The agenda may change to accommodate SRC business. The proposed meeting agenda includes the following:

1. Call to Order—Confirm Quorum
2. Introductions
3. Superintendent's Welcome
4. Additions, Corrections, and Approval of Agenda
5. Approval of SRC Minutes
6. SRC Purpose and Role
7. Status of Membership
8. Election of Officers for Chair and Vice Chair
9. Public and Agency Comments
10. Subsistence Coordinator's Report
11. Agency Reports
12. Public and Agency Comments
13. Set Date and Location for Next SRC Meeting
14. Adjourn Meeting

SRC meeting location and date may change based on inclement weather or exceptional circumstances. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the rescheduled meeting. Should inclement weather prevent travel throughout the week, the meeting will be held by teleconference on Thursday, December 5, 2019.

Public Disclosure of Information: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Shirley Sears,

Acting Chief, Office of Policy.

[FR Doc. 2019–24881 Filed 11–15–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1126]

Certain Water Filters and Components Thereof; Issuance of a General Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order (''GEO'') denying entry of certain water filters and components thereof as well as two cease and desist orders (''CDOs''). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 1, 2018, based on a complaint, as amended, filed on behalf of Electrolux Home Products, Inc. of Charlotte, North Carolina, and KX Technologies, LLC of West Haven, Connecticut (collectively, ''Complainants''). 83 FR 37514 (Aug. 1, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain water filters and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,673,146 (''the '146 patent''), 8,137,551 (''the '551 patent''), 9,233,322 (''the '322 patent''), and 9,901,852 (''the '852 patent''). *Id.* The Commission's notice of investigation names eight respondents. *Id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation.

On October 3, 2018, the ALJ issued an initial determination finding certain respondents in default, specifically, Shenzen Calux Purification Technology Co., Limited (''Calux''); JiangSu Angkua Environmental Technical Co., Ltd. (''Angkua Environmental''); and Shenzhen Dakon Purification Tech Co., Ltd. (collectively, ''the Defaulting Respondents''). *See* Order No. 9 (Oct. 3, 2018), *not reviewed,* Notice (Oct. 25, 2018). The remaining respondents, specifically, Ningbo Pureza Limited; HongKong Ecoaqua Co., Limited; Ecolife Technologies, Inc.; Ecopure Filter Co., Ltd.; and Crystala Filters LLC, were terminated from the investigation due to settlement. *See* Order Nos. 14, 15, 16, *not reviewed,* Notice (April 1, 2019).

On February 12, 2019, Complainants filed a motion for summary determination of violation of section 337 by the Defaulting Respondents. Complainants requested a general exclusion order (''GEO'') and cease and desist orders (''CDOs'') against all three Defaulting Respondents. On March 8, 2019, OUII filed a response supporting a finding of a violation as well as the requested remedies of a GEO and CDOs for two of the Defaulting Respondents (Calux and Angkua Environmental).

The ALJ issued the subject ID on July 11, 2019, granting the motion for summary determination and finding a violation of section 337 by the Defaulting Respondents. Specifically, the ID found that Complainants established infringement of claims 1–3, 6, 7, and 15 of the '146 patent, claim 49 of the '551 patent, claims 1–3, 7–9, and 12–15 of the '322 patent, and claims 1, 4–6, 9–11, 14–18, and 21–31 of the '852

patent with respect to each Defaulting Respondents' accused product(s) by substantial, reliable, and probative evidence. The ALJ recommended that the Commission issue a GEO and CDOs against Calux and Angkua Environmental. The ALJ also recommended setting a bond during Presidential review in the amount of 100 percent. *Id.* No party petitioned for review of the subject ID.

On August 28, 2019, the Commission issued a Notice stating that the Commission determined to review the ID in part and, on review, to correct an error in a citation and a typo. 84 FR 45170 (Aug. 28, 2019). The Commission's determination resulted in finding a violation of section 337. *Id.* The Notice also requested written submissions on remedy, the public interest, and bonding. *See id.*

On September 6, 2019, Complainants submitted a brief on remedy, the public interest, and bonding, requesting that the Commission issue a GEO, issue CDOs against two of the three Defaulting Respondents, and set a bond of 100 percent during the Presidential review period. On the same day, OUII also submitted a brief on remedy, the public interest, and bonding, supporting the ALJ's recommended GEO, CDOs against two of the Defaulting Respondents, and bond in the amount of 100 percent. On September 13, 2019, OUII submitted a reply to Complainants' opening brief. No other submissions were filed in response to the Notice.

The Commission finds that the statutory requirements for relief under section 337(d)(2) are met with respect to the Defaulting Respondents. *See* 19 U.S.C. 1337(d)(2). In addition, the Commission finds that the public interest factors enumerated in section 337(d)(1) do not preclude issuance of statutory relief. *See id.* at 1337(d)(1).

The Commission has determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed entry of certain water filters and components thereof that infringe one or more of claims 1–3, 6, and 7 of the '146 patent; claim 49 of the '551 patent; claims 1–3, 7–9, and 12–15 of the '322 patent; and claims 14–18 and 21–31 of the '852 patent; and (2) CDOs against Angkua Environmental and Calux. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO and CDOs. The Commission's orders were delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: November 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–24860 Filed 11–15–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–630 and 731–TA–1462 (Preliminary)]

Glass Containers From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of glass containers from China, provided for in subheading 7010.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 25, 2019, the American Glass Packaging Coalition, Tampa, Florida, and Chicago, Illinois, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of glass containers from China and LTFV imports of glass containers from China. Accordingly, effective September 25, 2019, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–630 and antidumping duty investigation No. 731–TA–1462 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 2, 2019 (84 FR 52536). The conference was held in Washington, DC, on October 16, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 12, 2019. The views of the Commission are contained in USITC Publication 4996 (November 2019), entitled *Glass Containers from China: Investigation Nos.* 701–TA–630 and 731–TA–1462.

By order of the Commission.

Issued: November 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–24858 Filed 11–15–19; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 84 FR 56168 and 84 FR 56174 (October 21, 2019).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on November 5, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cambridge Assessment, Cambridge, UNITED KINGDOM; Strategic Education, Minneapolis, MN; Hudson School District, Hudson, WI; RANDA Solutions, Franklin, TN; Unox Portal (Pragnya Technologies Pty Ltd), Sydney, AUSTRALIA; U.S. Chamber of Commerce Foundation, Washington, DC; VidGrid, St. Paul, MN; and Wharton School, University of Pennsylvania, Philadelphia, PA, have been added as parties to this venture.

Also, Capella University, Minneapolis, MN; Nelson Education, Toronto, CANADA; and Zia Learning, Willowbrook, IL, have withdrawn as parties to this venture.

In addition, eSyncTraining has changed its name to CoSo Cloud, Irvine, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on August 22, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2019 (84 FR 48379).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–24895 Filed 11–15–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that on September 17, 2019 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between May 9, 2019 and September 11, 2019 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification with the Department was filed on May 16, 2019. A notice was filed in the **Federal Register** on June 27, 2019 (84 FR 30772).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–24896 Filed 11–15–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Countering Weapons of Mass Destruction

Notice is hereby given that, on October 23, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Countering Weapons of Mass Destruction (''CWMD'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Air Shelters USA, LLC, Pompano Beach, FL; Block MEMS, LLC, Southborough, MA; CapeSym, Inc., Natick, MA; Chemelectronics, LLC, Los Angeles, CA; CORTEK, Inc., Fredericksburg, VA; Custom Gas Solutions, LLC, Durham, NC; DeepSig Inc., Arlington, VA; Gamma Reality Inc., Richmond, CA; Government Acquisitions, Inc., Cincinnati, OH; IAS Machine, LLC, Seattle, WA; KEF Robotics, Inc., Pittsburgh, PA; Logistics Management Institute (LMI), Tysons, VA; Military Battery Systems, Inc., Denver, CO; Robotic Research, LLC, Gaithersburg, MD; SitScape, Inc., Vienna, VA; SkySafe, Inc., San Diego, CA; SRI International, St. Petersburg, FL; The University of Texas at Dallas, Richardson, TX; and Vanderbilt University Medical Center, Nashville, TN, have been added as parties to this venture.

Also, The Tauri Group, Alexandria, VA, has changed its name to Logistics Management Institute (LMI), Tysons, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on July 24, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on September 4, 2019 (84 FR 46565).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–24897 Filed 11–15–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0102]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Prison Population Reports: Summary of Sentenced Population Movement—National Prisoner Statistics

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 18, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact E. Ann Carson, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *elizabeth.carson@usdoj.gov;* telephone: 202–616–3496).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Summary of Sentenced Population Movement—National Prisoner Statistics.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers for the questionnaire are NPS–1b (Summary of Sentenced Population Movement) and NPS–1B(T) Prisoner Population Report—U.S. Territories. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* For the NPS–1B form, 51 central reporters (one from each state and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in privately operated facilities, county or other local authority correctional facilities, or in other state or Federal facilities on December 31;

(c) Prison admission information in the calendar year for the following categories: New court commitments, parole violators, other conditional release violators returned, transfers from other jurisdictions, AWOLs and escapees returned, and returns from appeal and bond;

(d) Prison release information in the calendar year for the following categories: Expirations of sentence, commutations, other conditional releases, probations, supervised mandatory releases, paroles, other conditional releases, deaths by cause, AWOLs, escapes, transfers to other jurisdictions, and releases to appeal or bond;

(e) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(f) Number of inmates under physical custody on December 31 classified as non-citizens of the U.S. with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(g) Number of inmates under physical custody on December 31 who are citizens of the U.S. with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(h) The source of U.S. citizenship data;

(i) Testing of incoming inmates for HIV; and HIV infection and AIDS cases on December 31; and

(j) The aggregated rated, operational, and/or design capacities, by sex, of the state/BOP's correctional facilities at year-end.

For the NPS–1B(T) form, five central reporters from the U.S. Territories and Commonwealths of Guam, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, and American Samoa will be asked to provide information for the following categories for the calendar year just ended, and, if available, for the previous calendar year:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates; and an assessment of the completeness of these counts (complete, partial, or estimated)

(b) The number of inmates under jurisdiction on December 31 but in the custody of facilities operated by other jurisdictions' authorities solely to reduce prison overcrowding;

(c) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(d) The aggregated rated, operational, and/or design capacities, by sex, of the territory's/Commonwealth's correctional facilities at year-end.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* During data collection in 2020, 51 respondents will each take an average of 7 hours to complete the NPS–1B and 5 respondents will each taking an average of 2 hours to respond to the NPS–1B(T) form. Data collection conducted in 2021 and 2022 will require each respondent to spend an

average of 6.5 total hours to respond to the NPS–1B form. 5 respondents, each taking an average of 2 hours to respond to the NPS–1B(T) form. The burden estimates are based on feedback from respondents, and the burden for data collected in 2021 and 2022 remains the same as the previous clearance. The burden for data collected in 2020 increased due to the addition of questions disaggregating the number of U.S. citizens in custody by sentence length.

6. *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 1,050 total burden hours associated with this collection for the three years of data collection, or approximately 350 hours for each year.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 13, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–24918 Filed 11–15–19; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, November 21, 2019.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Share Insurance Fund Quarterly Report.
2. Guidance Regarding Prohibitions Imposed by Statute.
3. NCUA Rules and Regulations, Part 722, Real Estate Appraisals.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, November 21, 2019.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel Action. Closed pursuant to Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2019–25039 Filed 11–14–19; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board (NSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of meetings for the transaction of NSB business as follows:

TIME AND DATE: Tuesday, November 19, 2019 from 9 a.m. to 4:45 p.m., and Wednesday, November 20, 2019 from 9 a.m. to 1:30 p.m. EST.

PLACE: These meetings will be held at the NSF headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314. Meetings are held in the boardroom on the 2nd floor. The public may observe public meetings held in the boardroom. All visitors must contact the Board Office (call 703–292–7000 or send an email to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide your name and organizational affiliation. Visitors must report to the NSF visitor's desk in the building lobby to receive a visitor's badge.

STATUS: Some of these meetings will be open to the public. Others will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Wednesday, July 17, 2019

Plenary Board meeting

Open session: 9–11:30 a.m.

- NSB Chair's Welcome
- Update on the National Science and Technology Council (NSTC) Joint Committee on Research Environments (JCORE)
- NSF Director's Remarks
- Chile Site Visit Report
- NSB Chair's and Summary of Activities
- Directorate for Education and Human Resources Portfolio Overview
- Research Collaboration in an Era of Strategic Competition

Committee on Awards and Facilities (A&F)

Closed session: 1–2:15 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Closed Minutes
- Context Item: High Luminosity Upgrades to the ATLAS and CMS Detectors
- Information Item: Large Synoptic Survey Telescope (LSST) Construction and Operations
- Written Item: Chief Officer for Research Facilities Report

Committee on Awards and Facilities (A&F)

Open session: 2:30–3:30 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Calendar Year (CY) 2019–20 Schedule of Planned Action and Context Items
- Information Item: NSF Award Instruments for Major Facilities
- Information Item: Mid-scale Research Infrastructure I and II Update
- Information Item: Regional-Class Research Vessel Construction Update

Committee on Oversight (CO)

Open session: 3:30–4:45 p.m.

- Committee Chair's Opening Remarks
- Approval of Committee Meeting Minutes
- Merit Review Digest and Update on Modernization
- OIG Semiannual Report and Management Response
- Inspector General's Update
- Chief Financial Officer's Update

Wednesday, November 20, 2019

Task Force on Vision 2030 (Vision TF)

Open session: 9–9:30 a.m.

- Task Force Chair's Opening Remarks
- Approval of Prior Minutes
- Update on Vision Project

Committee on External Engagement

Open session: 9:30–10 a.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- Report on ASU Member of Congress Event
- Skilled Technical Workforce Report Rollout
- Senate Hearing on Research and Innovation

Committee on Strategy (CS)

Open session: 10–10:15 a.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Update on Budgets

Committee on Strategy (CS)

Closed Session: 10:15–10:30 a.m.

- Committee Chair's Remarks
- Approval of Prior Closed Minutes
- Update on Budgets

Plenary Board

Closed session: 10:30–10:45 a.m.
- NSB Chair's Opening Remarks
- Approval of Prior Minutes
- Closed Committee Reports

Plenary Board (Executive)

Closed session: 10:45–11:15 a.m.
- NSB Chair's Opening Remarks
- Approval of Prior Executive Closed Minutes
- Report by Subcommittee on Honorary Awards

Committee on National Science and Engineering Policy (SEP)

Open session: 12:15–1 p.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Update on *Indicators 2020* Thematic Reports and ''The State of Science & Engineering in the U.S.'' (summary)
- *Indicators 2020* Rollout Plan
- Discussion of Possible Board Policy Messages from *Indicators 2020*

Plenary Board

Open Session: 1–1:30 p.m.
- NSB Chair's Opening Remarks
- Approval of Prior Minutes
- Open Committee Reports
- Vote on Merit Review Digest
- Votes on OIG Semiannual Report and NSF Management Response
- NSB Chair's Closing Remarks

Meeting Adjourns: 1:30 p.m.

MEETINGS THAT ARE OPEN TO THE PUBLIC:

Tuesday, November 19, 2019

9–11:30 a.m. Plenary NSB
2:30–3:30 p.m. A&F
3:30–4:45 p.m. CO

Wednesday, November 20, 2019

9–9:30 a.m. Vision TF
9:30–10 a.m. EE
10–10:15 a.m. CS
12:15–1 p.m. SEP
1–1:30 p.m. Plenary

MEETINGS THAT ARE CLOSED TO THE PUBLIC:

Tuesday, November 19, 2019

1–2:15 p.m. A&F

Wednesday, November 20, 2019

10:15–10:30 a.m. CS
10:30–10:45 a.m. Plenary
10:45–11:15 a.m. Plenary Executive

CONTACT PERSONS FOR MORE INFORMATION: The NSB Office contact is Brad Gutierrez, *bgutierr@nsf.gov,* 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490.

SUPPLEMENTARY INFORMATION: Public meetings and public portions of meetings held in the 2nd floor boardroom will be webcast. To view these meetings, go to: *http://www.tvworldwide.com/events/nsf/191119/* and follow the instructions. The public may observe public meetings held in the boardroom. The address is 2415 Eisenhower Avenue, Alexandria, VA 22314.

Please refer to the NSB website for additional information. You will find any updated meeting information and schedule updates (time, place, subject matter, or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

The NSB provides some flexibility around meeting times. After the first meeting of each day, actual meeting start and end times will be allowed to vary by no more than 15 minutes in either direction. As an example, if a 10 meeting finishes at 10:45, the meeting scheduled to begin at 11 may begin at 10:45 instead. Similarly, the 10 meeting may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next meeting would start no later than 11:15. Arrive at the NSB boardroom or check the webcast 15 minutes before the scheduled start time of the meeting you wish to observe.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2019–25012 Filed 11–14–19; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. The primary purpose of this revision is to implement changes described in the **SUPPLEMENTARY INFORMATION** section of this notice. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

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

Summary of Comments on the National Science Foundation Proposal and Award Policies and Procedures Guide and NSF's Responses

The draft NSF PAPPG was made available for review by the public on the NSF website at *http://www.nsf.gov/bfa/dias/policy/.* NSF received 105 responses from 25 commenters in response to the First **Federal Register**

notice published on May 29, 2019, at 84 FR 24827. All comments have been considered in the development of the proposed version. Please see *http://www.nsf.gov/bfa/dias/policy/*. A summary of the significant changes and clarifications to the PAPPG has been incorporated into the document.

Title of Collection: ''National Science Foundation Proposal & Award Policies & Procedures Guide.''

OMB Approval Number: 3145–0058.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) sets forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . .''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 50,000 proposals annually for new projects and makes approximately 11,000 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on merit evaluations of proposals submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public

It has been estimated that the public expends an average of approximately 120 burden hours for each proposal submitted. Since the Foundation expects to receive approximately 50,600 proposals in FY 2019, an estimated 6,072,000 burden hours will be placed on the public.

The Foundation has based its reporting burden on the review of approximately 50,600 new proposals expected during FY 2019. It has been estimated that anywhere from one hour to 20 hours may be required to review a proposal. We have estimated that approximately 5 hours are required to review an average proposal. Each proposal receives an average of 3 reviews, resulting in approximately 759,000 hours per year.

The information collected on the reviewer background questionnaire (NSF 428A) is used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, and ethnicity is used in meeting NSF needs for data to permit response to Congressional and other queries into equity issues. These data also are used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education. The estimated burden for the Reviewer Background Information (NSF 428A) is estimated at 5 minutes per respondent with up to 10,000 potential new reviewers for a total of 833 hours.

The aggregate number of burden hours is estimated to be 6,831,000. The actual burden on respondents has not changed.

Dated: November 13, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–24906 Filed 11–15–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2019–0194]

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a February 28, 2019, request from NextEra Energy Duane Arnold, LLC. The exemption allows a certified fuel handler, in addition to a licensed senior operator, to suspend security measures in an emergency or during severe weather at the Duane Arnold Energy Center (DAEC) after both the ''Certification of Permanent Cessation of Operations'' and the ''Certification of Permanent Fuel Removal'' have been docketed for the facility.

DATES: The exemption was issued on November 7, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0194 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0194. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, 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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mahesh Chawla, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8371; email: *Mahesh.Chawla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

Document	ADAMS accession No.
NextEra Energy Duane Arnold, LLC; ''Certification of Permanent Cessation of Power Operations''; Dated January 18, 2019	ML19023A196
NextEra Energy Duane Arnold, LLC; ''Request for Approval of Certified Fuel Handler Training Program''; Dated January 29, 2019.	ML19037A016
U.S. Nuclear Regulatory Commission; ''Duane Arnold Energy Center—Approval of a Certified Fuel Handler Training and Continuing Training Program''; Dated August 28, 2019.	ML19204A287
NextEra Energy Duane Arnold, LLC; ''Request for Exemption from 10 CFR 73.55(p)(1)(i) and (ii) Related to the Suspension of Security Measures in an Emergency or During Severe Weather''; Dated February 28, 2019.	ML19059A099

The text of the exemption is attached.

Dated at Rockville, Maryland, this 12th day of November, 2019.

For the Nuclear Regulatory Commission.

Mahesh L. Chawla,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment: Exemption Related to the Approval Authority for Suspension of Security Measures in an Emergency or During Severe Weather

Nuclear Regulatory Commission

Docket No. 50–331

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center

Exemption Related to the Approval Authority for Suspension of Security Measures in an Emergency or During Severe Weather

I. Background

NextEra Energy Duane Arnold, LLC (NEDA) is the holder of Renewed Facility Operating License No. DPR–49 for the Duane Arnold Energy Center (DAEC). The license provides, among other things, that the facility is subject to all applicable rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission), now or hereafter in effect. The DAEC facility consists of a boiling-water reactor located in Linn County, Iowa.

By letter dated January 18, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19023A196), NEDA provided formal notification to the NRC pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.82(a)(1)(i) and 50.4(b)(8) of the intention to permanently cease power operations at the DAEC in the fourth quarter of 2020.

In accordance with 10 CFR 50.82(a)(1)(i)–(ii) and 50.82(a)(2), the 10 CFR part 50 license for the facility no longer authorizes reactor operation or emplacement or retention of fuel in the reactor vessel, after certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel are docketed for the DAEC. As a result, licensed senior operators (*i.e.,* individuals licensed under 10 CFR part 55 to manipulate the controls of a facility and to direct the licensed activities of licensed operators) will no longer be required to support plant operating activities. Instead, certified fuel handlers (CFHs) (*i.e.,* non-licensed operators who have qualified in accordance with a fuel handler training program approved by the Commission) will perform activities associated with decommissioning, irradiated fuel handling, and management. Commission approval of a fuel handler training program is needed to facilitate these activities.

By letter dated January 29, 2019 (ADAMS Accession No. ML19037A016), NEDA submitted a request for Commission approval of the CFH Training and Retraining Program for the DAEC. By letter dated August 28, 2019 (ADAMS Accession No. ML19204A287), the Commission approved the CFH Training and Retraining Program for the DAEC. The CFH Training and Retraining Program is to be used to satisfy training requirements for the plant personnel responsible for supervising and directing the monitoring, storage, handling, and cooling of irradiated fuel in a manner consistent with ensuring the health and safety of the public. As stated in 10 CFR 50.2, ''Definitions,'' CFHs are qualified in accordance with a Commission-approved training program.

II. Request/Action

The Commission's regulation at 10 CFR 73.55(p)(1) addresses the suspension of security measures in an emergency (10 CFR 73.55(p)(1)(i)) or during severe weather (10 CFR 73.55(p)(1)(ii)) by stating:

The licensee may suspend implementation of affected requirements of this section under the following conditions:

(i) In accordance with §§ 50.54(x) and 50.54(y) of this chapter, the licensee may suspend any security measures under this section in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This suspension of security measures must be approved as a minimum by a licensed senior operator before taking this action.

(ii) During severe weather when the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection. This suspension of security measures must be approved, as a minimum, by a licensed senior operator, with input from the security supervisor or manager, before taking this action.

By letter dated February 28, 2019 (ADAMS Accession No. ML19059A099), NEDA requested an exemption from 10 CFR 73.55(p)(1)(i) and (ii), pursuant to 10 CFR 73.5, ''Specific exemptions.'' Consistent with 10 CFR 50.54(y), the proposed exemption would authorize a CFH, in addition to a licensed senior operator, to approve the suspension of security measures in an emergency or during severe weather at the DAEC.

III. Discussion

The NRC's security rules have long recognized the potential need to suspend security or safeguards measures under certain conditions. Accordingly, 10 CFR 50.54(x) and (y), first published in 1983, allow a licensee to take reasonable actions in an emergency that depart from license conditions or technical specifications when those actions are immediately ''needed to protect the public health and safety'' and no actions consistent with license conditions and technical specifications

that can provide adequate or equivalent protection are immediately apparent (48 FR 13970; April 1, 1983). This departure from license conditions or technical specifications must be approved, as a minimum, by a licensed senior operator. In 1986, in its final rule, ''Miscellaneous Amendments Concerning the Physical Protection of Nuclear Power Plants'' (51 FR 27817; August 4, 1986), the Commission issued 10 CFR 73.55(a), stating, in part:

> In accordance with § 50.54(x) and (y) of Part 50, the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specification that can provide adequate or equivalent protection is immediately apparent. This suspension must be approved as a minimum by a licensed senior operator prior to taking the action.

In 1996, the NRC made a number of regulatory changes to address decommissioning. One of the changes was to amend 10 CFR 50.54(x) and (y) to authorize a non-licensed operator called a ''certified fuel handler,'' in addition to a licensed senior operator, to approve such protective actions in an emergency situation at a permanently shutdown facility. Specifically, in addressing the role of the CFH during emergencies, the Commission stated in the proposed rule, ''Decommissioning of Nuclear Power Reactors'' (60 FR 37379; July 20, 1995):

> The Commission is proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of ''Certified Fuel Handler'' specified in § 50.2, to make these evaluations and judgments. A nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the final rule (61 FR 39298; July 29, 1996), the NRC added the following definition to 10 CFR 50.2, ''[c]ertified fuel handler means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.'' However, the decommissioning rule did not propose or make parallel changes to 10 CFR 73.55(a) regarding the role of a non-licensed CFH at a permanently shutdown facility.

In the final rule, ''Power Reactor Security Requirements'' (74 FR 13926; March 27, 2009), the NRC relocated the security suspension requirements from 10 CFR 73.55(a) to 10 CFR 73.55(p)(1)(i) and (ii). The role of a CFH was not discussed in the rulemaking; therefore, the suspension of security measures in accordance with 10 CFR 73.55(p) continues to require approval, as a minimum, by a licensed senior operator, even for a permanently shutdown facility.

Under 10 CFR 73.5, the Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73, as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. As explained below, the proposed exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

A. The Exemption Is Authorized by Law

The proposed exemption from 10 CFR 73.55(p)(1)(i) and (ii) would permit, as a minimum, a CFH, in addition to a licensed senior operator, to approve the suspension of security measures in an emergency or during severe weather at the DAEC when it is permanently shutdown. Although the exemption is effective upon receipt, the actions permitted by the exemption may not be implemented at the DAEC until the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel in accordance with 10 CFR 50.82(a)(2). The intent of the proposed exemption is to align these regulations with 10 CFR 50.54(y).

Per 10 CFR 73.5, the NRC may grant specific exemptions from the requirements of 10 CFR part 73, as are authorized by law. Granting the proposed exemption is consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with NRC regulations or other applicable laws. Therefore, the exemption is authorized by law.

B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security

Permitting, as a minimum, a CFH, in addition to a licensed senior operator, to approve the suspension of security measures in an emergency or during severe weather at the DAEC when it is permanently shutdown will not endanger life or property or the common defense and security for the reasons discussed below.

First, 10 CFR 73.55(p)(2) will continue to require that ''[s]uspended security measures must be reinstated as soon as conditions permit.''

Second, the suspension of security measures for emergencies under 10 CFR 73.55(p)(1)(i) will continue to be invoked only ''when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.'' Thus, the exemption would not prevent the licensee from meeting the underlying purpose of 10 CFR 73.55(p)(1)(i) to protect the public health and safety.

Third, the suspension of security measures for severe weather under 10 CFR 73.55(p)(1)(ii) will continue to be used only when ''the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection.'' The requirement in 10 CFR 73.55(p)(1)(ii) to receive input from the security supervisor or manager will remain. Therefore, the exemption would not prevent the licensee from meeting the underlying purpose of 10 CFR 73.55(p)(1)(ii) to protect the health and safety of the security force.

Additionally, by letter dated August 28, 2019, the NRC approved the DAEC CFH Training and Retraining Program. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, the safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because a CFH at the DAEC will be sufficiently trained and qualified under an NRC-approved program, the NRC staff considers the CFH to have sufficient knowledge of operational and safety concerns, such that allowing the CFH to suspend security measures in emergencies or during severe weather will not result in undue risk to the public health and safety.

In addition, since the exemption allows a CFH the same authority currently given to the licensed senior operator under 10 CFR 73.55(p)(1)(i) and (ii), no change is required to physical security. Since no change is required to physical security, the exemption would not reduce the overall effectiveness of the DAEC physical security plan and would not adversely

impact the licensee's ability to physically secure the site or protect special nuclear material at the DAEC, and thus, would not have an effect on the common defense and security. The NRC staff has determined that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Instead, the exemption would align the requirements of 10 CFR 73.55(p)(1)(i) and (ii) with the existing requirements of 10 CFR 50.54(y).

For these reasons, permitting, as a minimum, a CFH, in addition to a licensed senior operator, to approve the suspension of security measures in an emergency or during severe weather at the DAEC when it is permanently shutdown will not endanger life or property or the common defense and security.

C. The Exemption Is Otherwise in the Public Interest

The proposed exemption would allow a CFH, in addition to a licensed senior operator, to approve the suspension of security measures in an emergency when ''immediately needed to protect the public health and safety'' or during severe weather when ''immediately needed to protect the personal health and safety of security force personnel'' at the DAEC when it is permanently shutdown. If the exemption is not granted, the DAEC will be required to have a licensed senior operator available to approve the suspension of security measures in an emergency or during severe weather for a permanently shutdown plant, even though there would no longer be a requirement for a licensed senior operator after the certifications required by 10 CFR 50.82(a)(1)(i) and (ii) are submitted.

This exemption is in the public interest for the following reasons. Without the exemption, there would be uncertainty regarding how the licensee will invoke the temporary suspension of security measures that may be needed for protecting the public health and safety or the personal health and safety of the security force personnel in emergencies or during severe weather given the differences between the requirements in 10 CFR 73.55(p)(1)(i) and (ii) and 10 CFR 50.54(y). The exemption would allow the licensee to make decisions pursuant to 10 CFR 73.55(p)(1)(i) and (ii) without having to maintain a staff of licensed senior operators at a nuclear power reactor that has permanently ceased operations and permanently removed fuel from the reactor vessel. The exemption would also allow the licensee to have an established procedure in place to allow a CFH to suspend security measures in an emergency or during severe weather after the certifications required by 10 CFR 50.82(a)(1)(i) and (ii) have been submitted. Finally, the consistent and efficient regulation of nuclear power plants serves the public interest and this exemption would assure consistency between the regulations in 10 CFR part 73 and 10 CFR 50.54(y) and the requirements concerning licensed operators in 10 CFR part 55.

The NRC staff has determined that granting the proposed exemption would allow the licensee to designate a CFH with qualifications appropriate for a permanently shutdown and defueled reactor to approve the suspension of security measures in an emergency to protect the public health and safety and during severe weather to protect the personal health and safety of the security force personnel at the DAEC when it is permanently shutdown, which is consistent with the similar authority provided by 10 CFR 50.54(y). Therefore, the exemption is in the public interest.

D. Environmental Consideration

The NRC's approval of the proposed exemption belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the NRC's approval of the exemption is categorically excluded from further environmental analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that: (i) There is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: Recordkeeping requirements; reporting requirements; inspection or surveillance requirements; equipment servicing or maintenance scheduling requirements; education, training, experience, qualification, requalification or other employment suitability requirements; safeguard plans, and materials control and accounting inventory scheduling requirements; scheduling requirements; surety, insurance or indemnity requirements; or other requirements of an administrative, managerial, or organizational nature.

The NRC staff has determined that granting the proposed exemption involves no significant hazards consideration because allowing a CFH, in addition to a licensed senior operator, to approve the security suspension at a permanently shutdown and defueled power plant does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed exemption is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and no significant increase in individual or cumulative public or occupational radiation exposure. The proposed exemption is not associated with construction, so there is no significant construction impact. The proposed exemption does not concern the source term (*i.e.,* potential amount of radiation in an accident) or mitigation. Thus, there is no significant increase in the potential for or consequences from radiological accidents. Finally, the requirement regarding suspensions of security measures involves either safeguards, materials control, or managerial/organizational matters.

Therefore, pursuant to 10 CFR 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the proposed exemption.

IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, the proposed exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee's request for an exemption from the requirements of 10 CFR 73.55(p)(1)(i) and (ii) to permit, as a minimum, a CFH, in addition to a licensed senior operator, to approve the suspension of security measures in an emergency or during severe weather at the DAEC once the certifications required under 10 CFR 50.82(a)(1) have been submitted.

The exemption is effective upon receipt.

Dated at Rockville, Maryland, this 7th, day of November 2019.

For the Nuclear Regulatory Commission.

/RA/

Craig G. Erlanger, Director,

Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–24855 Filed 11–15–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0073]

Stakeholder Input on Best Practices for Establishment and Operation of Local Community Advisory Boards in Response to a Portion of the Nuclear Energy Innovation and Modernization Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meetings and webinar; reopening of comment period.

SUMMARY: On September 27, 2019, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on best practices for establishment and operation of local community advisory boards (CABs) associated with decommissioning activities, including lessons learned from existing boards, as required by the Nuclear Energy Innovation and Modernization Act (NEIMA). The public comment period was originally scheduled to close on November 15, 2019. The NRC has elected to reopen the public comment period to allow more time for members of the public to develop and submit their comments. Consistent with the consultation requirements in NEIMA Section 108, the NRC has hosted 11 public meetings and a public webinar to consult with host States, communities within the emergency planning zone of an applicable nuclear power reactor, and existing local CABs. The NRC is planning to host a second public webinar on November 19, 2019. In addition to these public meetings and public webinars, the NRC has developed a questionnaire to collect information regarding the areas identified in NEIMA with respect to the creation and operation of CABs from CABs in the vicinity of power reactors undergoing decommissioning, similar established stakeholder groups, or local government organizations. The results of the meetings, along with any other data received as a result of the NRC's information collection activities associated with the NEIMA Section 108, will be captured in a best practices report that will be submitted to Congress.

DATES: The due date of comments requested in the notice published on September 27, 2019 (84 FR 51189) is reopened. Comments should be filed no later than December 6, 2019. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date. The NRC hosted 11 Category 3 public meetings and a public webinar from August through October of 2019. A second public webinar will take place on November 19, 2019. Specific details regarding the webinar can be found on the NRC's public website at *https://www.nrc.gov/waste/decommissioning/neima-section-108.html.*

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0073. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing 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: Kim Conway, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1335; email: *NEIMA108.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0073 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0073.
- *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.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0073 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

On September 27, 2019 (84 FR 51189), as part of the ongoing efforts to obtain feedback from members of the public and other stakeholders, the NRC solicited comments on best practices for establishment and operation of local CABs associated with decommissioning activities, including lessons learned from existing boards, as required by Section 108 of NEIMA. The NRC is coordinating activities in accordance with Section 108 of NEIMA to develop a report identifying best practices for establishment and operation of CABs.

The contents of this report, scheduled to be issued to Congress no later than July 14, 2020, will include (1) a description of the type of topics that might be brought before a CAB; (2) how the board's input could inform the decision-making process of stakeholders for various decommissioning activities; how the board could interact with the NRC and other Federal regulatory bodies to promote dialogue between the licensee and affected stakeholders; and (3) how the board could offer opportunities for public engagement throughout all phases of the decommissioning process. The report will also include a discussion of the composition of existing CABs and best practices identified during the establishment and operation of such boards, including logistical considerations, frequency of meetings, the selection of board members, etc.

In developing a best practices report, and as required by NEIMA, the NRC is consulting with host States, communities within the emergency planning zone of an applicable nuclear power reactor, and existing CABs. This consultation included hosting 11 Category 3 public meetings and 1 nationwide webinar, with another nationwide webinar scheduled for November 19, 2019. The public meetings were held in locations that ensure geographic diversity across the United States, with priority given to States that (1) have a nuclear power reactor currently undergoing the decommissioning process; and (2) requested a public meeting under the provisions of NEIMA in accordance with the **Federal Register** (FR) notice published on March 18, 2019 (84 FR 9841).

In addition to these public meetings, the NRC has developed a questionnaire to collect information regarding the areas identified in NEIMA with respect to the creation and operation of CABs. The NRC is requesting responses from existing CABs in the vicinity of power reactors undergoing decommissioning, similar established stakeholder groups, or local government organizations. The questionnaire is available at *https://www.nrc.gov/waste/decommissioning/neima-local-comm-advisory-board-questionnaire.html.*

III. Category 3 Public Meeting Dates and Locations

Consistent with the consultation requirements in NEIMA Section 108, the NRC received requests for and identified the areas surrounding the following nuclear power reactors as locations to host public meetings to discuss best practices and lessons learned for establishment and operation of local community advisory boards: (1) Crystal River 3 Nuclear Power Plant in Crystal River, Florida; (2) Diablo Canyon Power Plant in San Luis Obispo, California; (3) Humboldt Bay Nuclear Power Plant in Eureka, California; (4) Indian Point Energy Center in Buchanan, New York; (5) Kewaunee Power Station in Kewaunee, Wisconsin; (6) Oyster Creek Nuclear Generating Station in Forked River, New Jersey; (7) Palisades Nuclear Generating Station in Covert, Michigan; (8) Pilgrim Nuclear Power Station in Plymouth, Massachusetts; (9) San Onofre Nuclear Generating Station in San Clemente, California; (10) Vermont Yankee Nuclear Power Plant in Vernon, Vermont; and (11) Zion Nuclear Power Station in Zion, Illinois.

Additionally, the NRC hosted a public webinar held on August 8, 2019, to obtain comments from individuals in other areas of the country. The NRC is planning to host a second nationwide webinar on November 19, 2019, to discuss best practices and lessons learned for establishment and operation of local community advisory boards. For information about attending the webinar, please see the public NEIMA Section 108 website or contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

IV. Local Community Advisory Board Questionnaire

The NRC is seeking input from existing CABs in the vicinity of power reactors undergoing decommissioning, similar established stakeholder groups, or local government organizations regarding best practices and lessons learned associated with CABs at decommissioning nuclear power reactors. The public comment period was originally scheduled to close on November 15, 2019. The NRC has decided to reopen the public comment period on this document until December 6, 2019, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland this 13th day of November, 2019.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium, Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–24923 Filed 11–15–19; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Performance Review Board Members

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) announces the appointment of members of PBGC's Performance Review Board.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), made applicable by PBGC's Senior Level Performance Management System, PBGC announces the appointment of those individuals who have been selected to serve as members of PBGC's Performance Review Board. The Performance Review Board is responsible for making recommendations on each senior level (SL) professional's annual summary rating, performance-based adjustment, and performance award to the appointing authority.

The following individuals have been designated as members of PBGC's FY 2019 Performance Review Board:

1. Gordon Hartogensis, Director
2. Kristin Chapman, Chief of Staff
3. Judith Starr, General Counsel
4. Patricia Kelly, Chief Financial Officer
5. Alice Maroni, Chief Management Officer

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–24879 Filed 11–15–19; 8:45 am]

BILLING CODE 7709–02–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 58182

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, November 13, 2019, at 10:30 a.m.; and Thursday, November 14, 2019, at 9 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, in the Benjamin Franklin Room.

STATUS: Wednesday, November 13, 2019, at 10:30 a.m.—Closed. Thursday, November 14, 2019, at 9 a.m.—Open.

CHANGES IN THE MEETING: Open session agenda items were revised.

REVISED MATTERS TO BE CONSIDERED:

Thursday, November 14, 2019, at 9 a.m. (Open)

1. Remarks of the Chairman of the Board of Governors.

2. Remarks of the Postmaster General and CEO.

3. Approval of Minutes of Previous Meetings.

4. Committee Reports.

5. Financial Matters, including FY2019 10K and Financial Statements, Annual Reports to Congress and Comprehensive Statement, and Five-Year Strategic Plan.

6. FY2020 Integrated Financial Plan.

7. FY2021 Congressional Reimbursement Request.

8. Quarterly Service Performance Request.

9. Approval of Tentative Agenda for February Meetings.

10. Board Leadership.

A public comment period will begin immediately following the adjournment of the open session on November 14, 2019. During the public comment period, which shall not exceed 30 minutes, members of the public may comment on any item or subject listed on the agenda for the open session above. Registration of speakers at the public comment period is required. Speakers may register online at *https://www.surveymonkey.com/r/BOG-11-14-19.* Onsite registration will be available until thirty minutes before the meeting starts. No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Acting Secretary.

[FR Doc. 2019–25000 Filed 11–14–19; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87498; File No. SR–CboeEDGX–2019–029]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

November 12, 2019.

On April 29, 2019, Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the EDGX fee schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on May 16, 2019.[4] On June 28, 2019, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] In response to the OIP, the Commission received three comment letters, including a response letter from the Exchange.[6]

Section 19(b)(2) of the Act[7] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on May 16, 2019.[8] November 12, 2019 is 180 days from that date, and January 11, 2020 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's response to comments.[9] Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates January 11, 2020 as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CboeEDGX–2019–029).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24865 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 85838 (May 10, 2019), 84 FR 22174 (''Notice'').

[5] *See* Securities Exchange Act Release No. 86231, 84 FR 32233 (July 05, 2019) (''OIP'').

[6] *See* Letters from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated July 26, 2019 (''SIFMA Letter''); Tyler Gellasch, Executive Director, Healthy Markets, dated July 26, 2019 (''Healthy Markets Letter''); and Rebecca Tenuta, Counsel, Cboe Global Markets, dated August 9, 2019 (''Exchange Response'').

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Notice, *supra* note 4.

[9] The Commission notes that the Exchange subsequently filed a proposed rule change to institute an identical trading rights fee which contained additional information and analysis with regard to the proposed fee. *See* Securities Exchange Act Release No. 86683 (August 14, 2019), 84 FR 43222 (August 20, 2019) (SR–CboeEDGX–2019–050). The Commission suspended and instituted proceedings for that filing to allow for additional analysis of the proposed rule change. *See* Securities Exchange Act Release No. 87144 (September 27, 2019), 84 FR 52925 (October 03, 2019) (SR–CboeEDGX–2019–050).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87497; File No. SR–CboeEDGA–2019–011]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

November 12, 2019.

On May 2, 2019, Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the EDGA fee schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on May 16, 2019.[4] On June 28, 2019, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] In response to the OIP, the Commission received three comment letters, including a response letter from the Exchange.[6]

Section 19(b)(2) of the Act[7] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on May 16, 2019.[8] November 12, 2019 is 180 days from that date, and January 11, 2020 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's response to comments.[9] Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates January 11, 2020 as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CboeEDGA–2019–011).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24864 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 85842 (May 10, 2019), 84 FR 22212 (''Notice'').

[5] *See* Securities Exchange Act Release No. 86236, 84 FR 32235 (July 05, 2019) (''OIP'').

[6] *See* Letters from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated July 26, 2019 (''SIFMA Letter''); Tyler Gellasch, Executive Director, Healthy Markets, dated July 26, 2019 (''Healthy Markets Letter''); and Rebecca Tenuta, Counsel, Cboe Global Markets, dated August 9, 2019 (''Exchange Response'').

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Notice, *supra* note 4.

[9] The Commission notes that the Exchange subsequently filed a proposed rule change to institute an identical trading rights fee which contained additional information and analysis with regard to the proposed fee. *See* Securities Exchange Act Release No. 86684 (August 14, 2019), 84 FR 43242 (August 20, 2019) (SR–CboeEDGA–2019–014). The Commission suspended and instituted proceedings for that filing to allow for additional analysis of the proposed rule change. *See* Securities Exchange Act Release No. 87143 (September 27, 2019), 84 FR 52922 (October 03, 2019) (SR–CboeEDGA–2019–014).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87506; File No. SR–C2–2019–018]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend the Cboe C2 Exchange, Inc. Fee Schedule To Modify the Options Regulatory Fee

November 12, 2019.

On August 1, 2019, Cboe C2 Exchange, Inc. (''C2'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–C2–2019–018) to modify the amount of its Options Regulatory Fee (''ORF'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on August 14, 2019.[5] The Commission received one comment letter on the proposal.[6] On September 30, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission temporarily suspended the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[7]

On November 7, 2019, the Exchange withdrew the proposed rule change (SR–C2–2019–018).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24869 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86605 (August 8, 2019), 84 FR 40452 (August 14, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Notice, *supra* note 3.

[6] *See* Letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), dated August 27, 2019 (''SIFMA Letter'').

[7] *See* Securities Exchange Act Release No. 87171, 84 FR 53200 (October 4, 2019).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87511; File No. SR–NYSE–2019–60]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Content of the NYSE Best Quote & Trades Data Feed To Include Data Feeds From NYSE Chicago BBO and Trades

November 12, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 4, 2019, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the content of the NYSE Best Quote & Trades (''NYSE BQT'') data feed. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the content of NYSE BQT to include data feeds from the Exchange's affiliate, NYSE Chicago, Inc. (''NYSE Chicago''). NYSE Chicago recently filed a proposed rule change to establish NYSE Chicago market data feeds, including NYSE Chicago BBO (''NYSE Chicago BBO'') and NYSE Chicago Trades (''NYSE Chicago Trades'').[4] The Exchange now proposes to amend the content of the NYSE BQT market data feed to include NYSE Chicago BBO and NYSE Chicago Trades.

The NYSE BQT[5] data feed currently provides a unified view of best bid and offer (''BBO'') and last sale information for the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca''), NYSE American LLC (''NYSE American'') and NYSE National, Inc. (''NYSE National'') and consists of data elements from eight existing market data feeds: NYSE Trades,[6] NYSE BBO,[7] NYSE Arca Trades,[8] NYSE Arca BBO,[9] NYSE American Trades,[10] NYSE American BBO,[11] NYSE National Trades and NYSE National BBO.[12]

NYSE BBO, NYSE Arca BBO, NYSE American BBO and NYSE National BBO are existing data feeds that distribute on a realtime basis the same BBO information that NYSE, NYSE Arca, NYSE American and NYSE National, respectively, report under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream. NYSE Trades, NYSE Arca Trades, NYSE American Trades and NYSE National Trades are existing data feeds that distribute on a real-time basis the same last sale information that NYSE, NYSE Arca, NYSE American and NYSE National, respectively, report under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams.

The NYSE BQT data feed has three channels: One channel for the last sale data (the ''last sale channel''); another channel for the BBO data (the ''best quotes channel''); and a third channel for consolidated volume data (the ''consolidated volume channel'').

The last sale channel provides an aggregation of the same data that is currently available through NYSE Trades, NYSE Arca Trades, NYSE American Trades and NYSE National Trades. With this proposed rule change, the last sale channel would also include data available through NYSE Chicago Trades.

The best quotes channel provides the NYSE BQT BBO, which is the best quote from among the NYSE BBO, NYSE Arca BBO, NYSE American BBO and NYSE National BBO based on the following criteria, in order:

- *Price:* The exchange with the highest bid or the lowest offer has overall priority;
- *Size:* The largest size takes precedence when multiple exchanges submit the same bid and/or offer price; and
- *Time:* The earliest time takes precedence when multiple exchanges submit the same bid and/or offer price with the same sizes.

With this proposed rule change, the best quotes channel would also include data available through NYSE Chicago BBO.

For each security, the best quotes channel would only include one best bid and one best offer from among the five exchanges. The NYSE BQT BBO would be marked with a market center ID identifying the exchange from which the BBO originated.

The consolidated volume channel carries consolidated volume for all listed equities in a manner consistent with the requirements for redistributing such data as set forth in the securities information processor plans.

As it does today, NYSE BQT would also provide related data elements for NYSE Chicago, such as trade and security status updates (*e.g.,* trade corrections and trading halts).

The Exchange believes that NYSE BQT would continue to provide high-quality, comprehensive last sale and BBO data for the Exchange, NYSE Arca, NYSE American, NYSE National and now, NYSE Chicago, in a unified view and would respond to subscriber demand for such a product.

The NYSE BQT data feed is offered in a capacity similar to that of a vendor. The Exchange, NYSE Arca, NYSE American, NYSE National and NYSE Chicago are the exclusive distributors of the 10 BBO and Trades feeds[13] from which certain data elements is taken to create the NYSE BQT. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that composes the NYSE BQT data feed. Other vendors would be able, if they chose, to create a data feed with the same information included in NYSE BQT, and to distribute it to clients with no greater latency than the Exchange would be able to distribute NYSE BQT.

With respect to latency, the Exchange, NYSE American, NYSE Arca, NYSE National and NYSE Chicago are located in the same data center in Mahwah, New Jersey. The system creating and supporting the NYSE BQT data feed would need to obtain the 10 underlying data feeds from these five exchanges before it could aggregate and consolidate information to create NYSE BQT and then distribute it to end users. NYSE BQT distributes this data feed through SFTI and market data vendors. The Exchange also offers third parties access to its data center through co-location. Accordingly, a competing market data vendor co-located in the Exchange's Mahwah, New Jersey facility offering a similar competing product would similarly need to obtain the 10 underlying data feeds.

[4] *See* Securities Exchange Act Release No. 87389 (October 23, 2019), 84 FR 57904 (October 29, 2019) (SR–NYSEChicago–2019–15).

[5] *See* Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Establish the NYSE Best Quote and Trades Data Feed).

[6] *See* Securities Exchange Act Release Nos. 59290 (January 23, 2009), 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05); and 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (SR–NYSE–2009–04).

[7] *See* Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30).

[8] *See* Securities Exchange Act Release Nos. 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR–NYSEArca–2009–06); and 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR–NYSEArca–2009–05).

[9] *See* Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23).

[10] *See* Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[11] *See* Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[12] *See* Securities Exchange Act Release No. 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09).

[13] These other data feeds are offered pursuant to pre-existing and already effective rules filed with the Commission; those rules will not be altered by this filing.

The path for distribution by the Exchange of this data is not faster than a vendor that independently creates an NYSE BQT-like product could distribute its own product. As such, the NYSE BQT data feed is a data product that a competing vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with NYSE Arca, NYSE American, NYSE National and NYSE Chicago, the Exchange represents that the source of the market data it uses to create NYSE BQT is the same as the source available to other vendors.

The NYSE BQT data feed is designed so that the Exchange would not have a competitive advantage over a competing vendor with respect to the speed of access to the 10 underlying data feeds. Likewise, the NYSE BQT data feed would not have a speed advantage vis-à-vis competing vendors co-located in the data center with respect to access to end user customers, whether those end users are also co-located or not. As such, a market data vendor could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level playing field with respect to the speed that the Exchange could create and redistribute the NYSE BQT data feed.

With respect to cost, the Exchange will file a separate rule filing to amend the fees for NYSE BQT. To ensure that vendors could continue to compete with the Exchange by creating the same product as NYSE BQT and selling it to their clients, the Exchange would continue to charge its clients for the NYSE BQT feed an amount that represents the cost to a market data vendor to obtain the underlying data feeds, plus an access fee to perform an aggregation and consolidation function that the Exchange performs in creating NYSE BQT. The Exchange believes that a competing vendor could create and offer a product similar to the proposed NYSE BQT data feed at a similar cost. For these reasons, the Exchange continues to believe that vendors could readily offer a product similar to NYSE BQT on a competitive basis.

This proposed change to NYSE BQT will not be operative until NYSE Chicago has established the NYSE Chicago BBO and NYSE Chicago Trades and any related fees via a proposed rule change and NYSE Chicago has transitioned trading to the Pillar trading platform.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[15] of the Act (''Act''), in general, and furthers the objectives of Section 6(b)(5)[16] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the NYSE BQT market data feed to those interested in receiving it.

The NYSE BQT data feed is a product that relies on the Exchange's receipt of underlying data, which is available to all market participants, before it can aggregate and consolidate information to create the NYSE BQT; this is a process that a vendor could also perform. Accordingly, the Exchange is not the only distributor of the NYSE BQT data feed.

The Exchange believes that the proposed rule change is consistent with Rule 603 of Regulation NMS,[17] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data.

The Exchange further notes that the existence of alternatives to the Exchange's product, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as well as the continued availability of the Exchange's separate data feeds, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives as their individual business cases warrant. Additionally, the Exchange has taken into consideration its affiliated relationship with NYSE Arca, NYSE American, NYSE National and NYSE Chicago in its design of the NYSE BQT data feed to assure that similarly situated competing vendors would be able to offer a similar product on the same terms as the Exchange, both from the perspective of latency and cost.

The Exchange believes that NYSE BQT offers an alternative to the use of consolidated data products and proprietary data products such as NASDAQ Basic and NLS Plus. NASDAQ Basic, which is offered by The NASDAQ Stock Market, Inc. (''NASDAQ'') provides best bid and offer and last sale information for all U.S. exchange-listed securities (including NYSE and its affiliates) based on liquidity within NASDAQ, as well as trades reported to the FINRA/NASDAQ Trade Reporting Facility (''TRF''), including NASDAQ last sale, NASDAQ BBO, NASDAQ opening and closing prices, and other market status information.[18] Further, NLS Plus provides all trade data from NASDAQ, the FINRA/NASDAQ TRF, NASDAQ BX, and NASDAQ PSX, as well as consolidated volume information as part of each trade message.[19]

Cboe Global Markets, Inc. (''Cboe'') also offers a market data product that provides a unified view of the aggregated quote and trade updates for all the Cboe equity exchanges.[20] The Exchange believes that NYSE BQT offers a competitive alternative to the two existing NASDAQ products and the Cboe product.

In addition, this proposal would not permit unfair discrimination because NYSE BQT will continue to be available to all of the Exchange's customers through SFTI and market data vendors on an equivalent basis. In addition, any customer that wished to continue to be able to purchase one or more of the

[14] NYSE Chicago has announced that, subject to rule approvals, it will transition to trading on Pillar on November 4, 2019. *See* Trader Update, *available here: https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSEChicago_Migration_update_9.4.pdf.*

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 17 CFR 242.603.

[18] *See* NASDAQ Basic, available at *http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQBasic.*

[19] *See* NLS Plus, available at *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus.*

[20] *See https://markets.cboe.com/us/equities/market_data_products/bats_one/.* The Cboe One Premium Feed also includes five levels of aggregate depth information for all four Cboe equity exchanges.

individual underlying data feeds would be able to do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will enhance competition because it would enable the Exchange to include NYSE Chicago BBO and NYSE Chicago Trades as part of NYSE BQT, thereby enabling it to better compete with market data products offered by NASDAQ and Cboe.[22] As noted above, the Exchange already offers NYSE BQT and this proposed rule change simply amends the content of the current market data product to include data elements from two additional data feeds from the Exchange's affiliate, NYSE Chicago. Although the Exchange, NYSE Arca, NYSE American, NYSE National and NYSE Chicago are the exclusive distributors of the ten BBO and Trades feeds from which certain data elements are taken to create NYSE BQT, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the amended NYSE BQT data feed. Vendors would be able, if they chose, to create a data feed with the same information as NYSE BQT and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's product.

With respect to latency, the Exchange, NYSE Arca, NYSE American, NYSE National and NYSE Chicago are located in the same data center in Mahwah, New Jersey. The system creating and supporting the NYSE BQT data feed would need to obtain the ten underlying data feeds from the five exchanges before it could aggregate and consolidate information to create NYSE BQT and then distribute it to end users. Likewise, a competing market data vendor co-located at the Exchange's Mahwah, New Jersey facility could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level-playing field with respect to the speed that the Exchange could create and redistribute the NYSE BQT data feed.

The Exchange believes that NYSE BQT will continue to promote competition among exchanges by offering an alternative to NASDAQ Basic, NLS Plus and Cboe One Feed.[23] For these reasons, the Exchange believes that NYSE BQT will continue to promote, rather than unnecessarily or inappropriately burden, competition for market data products that are offered in the capacity as a vendor and are not core exchange market data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[26]

A proposed rule change filed under Rule 19b–4(f)(6)[27] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[28] 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 proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow the Exchange to provide an amended NYSE BQT market data feed that will include NYSE Chicago data feeds immediately upon the launch of NYSE Chicago, and will further allow the Exchange to compete with similar Nasdaq and Cboe market data products on a timely basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change as operative upon filing.[29]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[30] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–60 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2019–60. 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

[21] 15 U.S.C. 78f(b)(8).

[22] *See supra* notes 18–20.

[23] *See supra* notes 18–20.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive this requirement.

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(2)(B).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–60 and should be submitted on or before December 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24872 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87502; File No. SR–ICC–2019–011]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Default Auction Procedures—Initial Default Auctions and the ICC Secondary Auction Procedures

November 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to revise ICC's Default Auction Procedures—Initial Default Auctions (''Initial Default Auction Procedures'') and Secondary Auction Procedures (collectively, ''the Auction Procedures''). These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC 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, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes to revise its Initial Default Auction Procedures and to make analogous changes to its Secondary Auction Procedures. The Initial Default Auction Procedures are designed to facilitate liquidation of the defaulter's portfolio through a multi-lot modified Dutch auction. The Secondary Auction Procedures, which also use a modified Dutch auction format, are intended to provide for an effective final auction of the entire remaining portfolio. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

The purpose of the proposed amendments is to incorporate the automated Default Management System (''DMS'') and All or Nothing Bidding into the Auction Procedures and make additional clarification and clean-up changes. ICC proposes revisions that reflect the use of the automated DMS to replace certain manual tasks in the auction process. ICC also proposes to allow for All or Nothing Bidding in the Auction Procedures. Currently, should a bid (''Standard Bid'') for 100% of the portfolio be a winning bid, the portion of the auction portfolio awarded to the 100% Standard Bid is shared with any more competitively priced Standard Bids, in which case the award related to the 100% Standard Bid is for less than 100%. Under the revised procedures, in addition to the submission of Standard Bids, participants will be allowed to optionally submit an All or Nothing Bid, in addition to, or in lieu of, one or more Standard Bids. Should an All or Nothing Bid be a winning bid, 100% of the auction portfolio will be awarded to the All or Nothing Bidder, without the award being split amongst any more competitively priced Standard Bids.

Initial Default Auction Procedures

ICC proposes to amend 'The Auction Process' section to incorporate the DMS and make clarifying edits regarding the auction process. Participants currently have an obligation to bid for each lot in a minimum amount determined by ICC (''Minimum Bid Requirement''). ICC proposes to reflect the use of the DMS to communicate the Minimum Bid Requirement and to remove Annex B that contains a template for communicating the Minimum Bid Requirement. ICC also proposes clarifying language regarding the case where a Participant has outsourced its Minimum Bid Requirement to an affiliated Participant. Moreover, under the revised procedures, Auction Specifications (*i.e.,* information on contracts to be auctioned, timing for the bidding process, etc.) are communicated through the DMS and Annex A, which contains a template for communicating Auction Specifications, is removed. ICC proposes to specify that bids must be submitted through the DMS (''Bid Submission''), only during a specified time window and prior to the ''Bidding Close Time'', and make corresponding changes throughout the document. ICC further proposes updates relating to the submission of bids through the DMS, including preventing the submission of bids below the minimum bid size.

ICC proposes changes to 'The Bidding Process' section to allow for All or Nothing Bidding. ICC proposes to define ''AP'' as the auction clearing price for a lot, proportionally scaled to a portfolio

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

size representing 100% of the relevant lot. ICC proposes to define ''BP'' as the more competitive of (1) the weighted average bid price of all valid Standard Bids made by such auction participant and (2) the price of any valid All or Nothing Bid made by such auction participant, both proportionately scaled to a portfolio size representing 100% of the relevant lot. If an auction participant submits only an All or Nothing Bid, or submits an All or Nothing Bid and Standard Bids but the Standard Bids do not meet the Minimum Bid Requirement, then the average price is the price of the All or Nothing Bid. If an auction participant submits only Standard Bids, then the average bid price calculation is unchanged from the current procedures. ICC proposes further revisions that distinguish All or Nothing Bids from Standard Bids. Additionally, to satisfy the Minimum Bid Requirement, ICC proposes to note that any individual bid must be equal to or larger than any applicable minimum bid size.

ICC proposes to update the 'Participation by Customers in the Auction' section, stating that a Participant may make separate bids in respect of its customers and adding a reference to the Auction Specifications.

ICC proposes to amend the 'Selection of the Winning Bid' section. ICC proposes updates related to sorting the submitted bids and determining the auction clearing price. ICC proposes revisions to Examples 1–3, which show the calculation of the auction clearing price, to be more descriptive and incorporate All or Nothing Bidding. The proposed amendments change the first column heading from ''Ranking'' to ''Price Rank''; change the second column heading from ''Cash Bid'' to ''Size x Price'' and move this column second from last; add a column titled ''Is All or Nothing Bid'' directly after the first column; change the third column heading from ''% of Portfolio'' to ''Bid Size (% of Auction Portfolio)''; change the fourth column heading from ''Cash/1%'' to ''Bid Price (Payment per 100%)'' and update the numbers in the column accordingly; and update the auction clearing price to be per 100%. ICC proposes to add a new Example 4, to show the calculation of the auction clearing price with an All or Nothing Bid. ICC also proposes explanatory language relating to All or Nothing Bidding. Specifically, if an All or Nothing Bid sets the auction clearing price, no Standard Bids will receive a share of the auction portfolio even if their bid prices are higher than or equal to the auction clearing price. If there are multiple All or Nothing Bids at the auction clearing price, the portfolio will be allocated equally among the auction participants submitting such All or Nothing Bids. For the case where ICC determines the auction clearing price for less than 100% of the portfolio, ICC proposes clarifications regarding All or Nothing Bidding and updates to such example calculation to conform with Examples 1–3. ICC proposes additional amendments, including publishing an Auction Specification to the DMS for a second auction; making minor grammatical edits, such as replacing definite article ''the'' with indefinite article ''a'' in the phrase ''the 'Winning Bidder' '' and replacing the phrase ''relevant Participant'' with ''relevant Participant(s)''; and using the DMS to notify a bidder of a winning bid.

Secondary Auction Procedures

ICC proposes analogous changes to the Secondary Auction Procedures. ICC proposes to revise 'The Auction Process' section to be consistent with the Initial Default Auction Procedures. ICC proposes to reflect the use of the DMS to communicate the Minimum Bid Requirement and to add clarifying language regarding the case where a Participant has outsourced its Minimum Bid Requirement to an affiliated Participant. The revised procedures use the DMS to communicate Secondary Auction Specifications, clarify that Bid Submission occurs through the DMS until the ''Bidding Close Time'' and make conforming changes throughout the document, and include updates relating to the submission of bids using the DMS.

ICC proposes revisions to 'The Bidding Process' section to allow for All or Nothing Bidding to maintain uniformity with the Initial Default Auction Procedures. ICC proposes to similarly define ''BP'' as the more competitive of (1) the weighted average bid price of all valid Standard Bids made by such secondary auction participant and (2) the price of any valid All or Nothing Bid made by such auction participant, both proportionately scaled to a portfolio size representing 100% of the relevant lot. If a secondary auction participant submits only an All or Nothing Bid, or submits an All or Nothing Bid and Standard Bids but the Standard Bids do not meet the Minimum Bid Requirement, then the average price is the price of the All or Nothing Bid. If a secondary auction participant submits only Standard Bids, then the average bid price calculation is unchanged from the current procedures. ICC proposes further revisions that distinguish All or Nothing Bids from Standard Bids. To satisfy the Minimum Bid Requirement, ICC also proposes to note that any individual bid must be equal to or larger than any applicable minimum bid size.

ICC similarly proposes to update the 'Participation by Customers in the Auction' section, stating that a Participant may make separate bids in respect of its customers and adding a reference to the Auction Specifications.

ICC proposes amendments to the 'Selection of the Winning Bid' section to be consistent with the Initial Default Auction Procedures. ICC proposes updates related to sorting the submitted bids and determining the auction clearing price. With respect to Examples 1–3 and new Example 4, ICC proposes parallel updates to those described in the Initial Default Auction Procedures. Similarly, under the revised procedures, if an All or Nothing Bid sets the secondary auction clearing price, no Standard Bids will receive a share of the auction portfolio even if their bid prices are higher than or equal to the secondary auction clearing price. If there are multiple All or Nothing Bids at the secondary auction clearing price, the portfolio will be allocated equally among the secondary auction participants submitting such All or Nothing Bids. ICC proposes additional changes, including making minor grammatical edits, such as replacing definite article ''the'' with indefinite article ''a'' in the phrase ''the 'Winning Bidder' '' and replacing the phrase ''relevant Participant'' with ''relevant Participant(s)'' and using the DMS to notify a bidder of a winning bid.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act[4] 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; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[5] because ICC believes that the proposed changes to the Auction Procedures enhance ICC's

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] *Id.*

ability to manage the risk of defaults. The proposed changes introduce All or Nothing Bidding to ICC's existing auction methodology. This new bid type rewards auction participants for bidding competitively on both size and price, rather than just price. If an All or Nothing Bid sets the auction clearing price, the revised Auction Procedures award 100% to that bid, rather than splitting the award with participants bidding more competitively on price but with smaller size. Such changes incentivize competitive bidding by rewarding auction participants for bidding competitively on both price and size and are designed to promote effective and efficient auctions to facilitate the close-out of the defaulter's portfolio. Moreover, the proposed changes reflect the use of the automated DMS to replace certain manual tasks in the auction process, including communicating the Minimum Bid Requirement and Auction Specifications, submitting bids, and notifying winning bidders. Such changes allow ICC to more efficiently and safely manage its auction process and reduce the risk of error. The clarification and clean-up changes provide greater specificity and transparency with respect to the Auction Procedures such that auction participants have greater certainty regarding the process for auction participation. ICC believes that the proposed amendments augment ICC's procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.[6]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[7] Rule 17Ad–22(b)(3)[8] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. ICC believes that the proposed revisions enhance its Auction Procedures. As described above, the optional All or Nothing Bid incentivizes competitive bidding, promoting the goal of reaching an efficient auction clearing price that permits ICC to close out the defaulter's portfolio and return ICC to a matched book. Such new bid type rewards auction participants for bidding competitively on both size and price and may increase the willingness and ability of Participants and their customers to participate in an auction and absorb the defaulter's positions through the default management process. Moreover, the proposed changes that reflect the use of the automated DMS to replace certain manual tasks in the auction process promote ICC's ability to efficiently and safely manage its auction process in a default event. In ICC's view, these enhancements represent tools that strengthen ICC's ability to manage its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(b)(3).[9]

Rule 17Ad–22(d)(8)[10] requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act[11] applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures. Under the Auction Procedures, ICC will consult with the ICC CDS Default Committee (consisting of trading personnel seconded from Participants to assist with default management) for key decisions relating to initial default auctions and secondary auctions, including dividing the defaulter's portfolio into discrete auctions, determining the auction clearing price for less than 100% of the portfolio, running additional auctions, or delaying the Bidding Close Time. These governance arrangements continue to be clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the ICC CDS Default Committee is clearly documented, and promote the effectiveness of ICC's risk management procedures by detailing the responsibilities of the ICC CDS Default Committee throughout the Auction Procedures, consistent with the requirements of Rule 17Ad–22(d)(8).[12]

Rule 17Ad–22(d)(11)[13] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. ICC's default management rules and procedures contained in the ICC Rules, the Initial Default Auction Procedures, and the Secondary Auction Procedures are publically available on ICC's website. The proposed clarification and clean-up changes described above provide further specificity and transparency and thus enhance readability of the publically available Auction Procedures. Moreover, the proposed addition of All or Nothing Bidding and the automated DMS enhance ICC's ability to withstand defaults and continue providing clearing services, including by incentivizing competitive bidding to promote effective and efficient auctions that facilitate the close-out of the defaulter's portfolio and maximizing ICC's ability to efficiently and safely manage its auction process in default events, to ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Rule 17Ad–22(d)(11).[14]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to ICC's Initial Default Auction Procedures and Secondary Auction Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

[6] *Id.*

[7] 17 CFR 240.17Ad–22.

[8] 17 CFR 240.17Ad–22(b)(3).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(d)(8).

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 240.17Ad–22(d)(8).

[13] 17 CFR 240.17Ad–22(d)(11).

[14] *Id.*

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice 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, security-based swap submission, or advance notice 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–ICC–2019–011 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2019–011. 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 Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/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–ICC–2019–011 and should be submitted on or before December 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24867 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87496; File No. SR–CBOE–2019–103]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule To Waive Fees Relating to Printing

November 8, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees schedule to waive fees relating to printing. 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

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). Cboe Options migrated its trading platform to the same system used by the Cboe Affiliated Exchanges, and also migrated its current billing system to a new billing system, on October 7, 2019 (the ''migration''). In connection with the migration, the Exchange proposes to waive fees for printer paper and ink from October 7, 2019 through October 31, 2019.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange currently assesses paper and ink fees, which apply to the paper that the Exchange provides for TPHs on the trading floor for use in printing trade tickets. Particularly, the Exchange assesses $5.00 per packet of 500 sheets for any printing on an HP Laser Printer, $19.50 per roll for Zebra Printer Paper, and $19.50 per roll for Zebra Printer Ink. The Exchange notes that in connection with the migration, the Exchange has encountered unforeseen issues with its printers that are not easily rectifiable. Particularly, the Exchange's printers are currently experiencing issues such as printing multiple copies of trade tickets and printing the same trade ticket at multiple printers. These issues have resulted in a substantial amount of paper and ink being consumed inadvertently. As such, the Exchange proposes to waive printing paper and ink fees for the period of October 7, 2019 through October 31, 2019. The Exchange does not believe it's reasonable to assess TPHs the respective printing paper and ink fees in light of the malfunctioning of the Exchange's printers. Indeed, absent a waiver of these fees during this period, TPHs would incur costs that are outside of their control. Additionally, the Exchange notes there is not an easy way to ascertain what the ''actual'' printing costs should be for each TPHs if not for the printer malfunctioning.

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.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] 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)[5] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Waiving fees for paper and ink from October 7, 2019–October 31, 2019 is reasonable as TPHs will not pay any fees for paper and ink since the time the Exchange's printers began malfunctioning. As noted above, in connection with the recent migration, the Exchange has experienced unforeseen issues with its printers that are not easily rectifiable. The Exchange is in the process of resolving the printing issues and cannot say with certainty when the printing issues will fixed. The printers currently continue to print substantial amounts of trade tickets that have not actually been requested by a TPH. The Exchange believes it would therefore be unfair to assess TPHs fees for paper and ink they did not request and have no control over. Also as noted above, the Exchange cannot easily determine what the ''actual'' costs of printing are for each TPH. Therefore waiving the fees from October 7, 2019–October 31, 2019 is reasonable. The proposed change also is equitable and not unfairly discriminatory because it applies uniformly to all TPHs.

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 because the proposed changes applies uniformly to all TPHs. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange represents that it bills its TPHs in arrears; if this filing does not become operative upon filing, the Exchange asserts that it will be forced to assess the above-described paper and ink fees from October 7, 2019 through October 31, 2019. The Exchange would then subsequently refund such TPHs once this filing were to become operative, which the Exchange believes will create unnecessary costs when managing its billing process. Based on the foregoing, the Commission believes it is consistent with the protection of investors and the public interest for the filing to become operative upon filing in order to avoid unnecessary complications when the Exchange bills its TPHs for the month of October. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] *Id.*

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–103 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–2019–103. 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 offices 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–2019–103, and should be submitted on or before December 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24863 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87499; File No. SR–CboeBYX–2019–009]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

November 12, 2019.

On May 2, 2019, Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the BYX fee schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on May 16, 2019.[4] On June 28, 2019, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] In response to the OIP, the Commission received three comment letters, including a response letter from the Exchange.[6]

Section 19(b)(2) of the Act[7] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on May 16, 2019.[8] November 12, 2019 is 180 days from that date, and January 11, 2020 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's response to comments.[9] Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates January 11, 2020 as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CboeBYX–2019–009).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24866 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 85841 (May 10, 2019), 84 FR 22199 (''Notice'').

[5] *See* Securities Exchange Act Release No. 86232, 84 FR 32227 (July 05, 2019) (''OIP'').

[6] *See* Letters from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated July 26, 2019 (''SIFMA Letter''); Tyler Gellasch, Executive Director, Healthy Markets, dated July 26, 2019 (''Healthy Markets Letter''); and Rebecca Tenuta, Counsel, Cboe Global Markets, dated August 9, 2019 (''Exchange Response'').

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Notice, *supra* note 4.

[9] The Commission notes that the Exchange subsequently filed a proposed rule change to institute an identical trading rights fee which contained additional information and analysis with regard to the proposed fee. *See* Securities Exchange Act Release No. 86685 (August 15, 2019), 84 FR 43627 (August 21, 2019) (SR–CboeBYX–2019–013). The Commission suspended and instituted proceedings for that filing to allow for additional analysis of the proposed rule change. *See* Securities Exchange Act Release No. 87140 (September 27, 2019), 84 FR 52917 (October 03, 2019) (SR–CboeBYX–2019–013).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87505; File No. SR–CBOE–2019–040]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend the Cboe Exchange, Inc. Fee Schedule To Modify the Options Regulatory Fee

November 12, 2019.

On August 1, 2019, Cboe Exchange, Inc. (''Cboe'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–CBOE–2019–040) to modify the amount of its Options Regulatory Fee (''ORF'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on August 14, 2019.[5] The Commission received one comment letter, which criticized the proposal.[6] On September 30, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission temporarily suspended the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[7]

On November 7, 2019, the Exchange withdrew the proposed rule change (SR–CBOE–2019–040).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24868 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86604 (August 8, 2019), 84 FR 40445 (August 14, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Notice, *supra* note 3.

[6] *See* Letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), dated August 27, 2019 (''SIFMA Letter'').

[7] *See* Securities Exchange Act Release No. 87170, 84 FR 53213 (October 4, 2019).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87510; File No. SR–CboeBZX–2019–044]

Self-Regulatory Organizations; CboeBZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust To Hold Certain Instruments in a Manner That May Not Comply With Rule 14.11(i), Managed Fund Shares

November 12, 2019.

On May 15, 2019, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust to hold certain instruments in a manner that may not comply with BZX Rule 14.11(i), Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on June 3, 2019.[3] On July 10, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On August 22, 2019, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on June 3, 2019. November 30, 2019 is 180 days from that date, and January 29, 2020 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates January 29, 2020 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2019–044).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24871 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85948 (May 28, 2019), 84 FR 25579.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 86348, 84 FR 34040 (July 16, 2019).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 86737, 84 FR 45184 (August 28, 2019).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87503; File No. SR–NYSEArca–2019–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Scheduling Filing of Statements on Review for an Order of Disapproval of Proposed Rule Change To List and Trade the Shares of Bitwise Bitcoin ETF Trust

November 12, 2019.

On January 28, 2019, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Bitwise Bitcoin ETF Trust under NYSE Arca Rule 8.201–E. The proposed rule change was published for comment in the **Federal Register** on February 15, 2019.[3]

On March 29, 2019, pursuant to Section 19(b)(2) of the Exchange Act,[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85093 (Feb. 11, 2019), 84 FR 4589 (Feb. 15, 2019).

[4] 15 U.S.C. 78s(b)(2).

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 approve or disapprove the proposed rule change.[5] On May 7, 2019, NYSE Arca filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed, and on May 14, 2019, the Commission published the proposed rule change, as modified by Amendment No. 1, for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] On August 12, 2019, the Commission extended the period for consideration of the proposed rule change, as modified by Amendment No. 1, to October 13, 2019.[8]

On October 9, 2019, the Division of Trading and Markets, pursuant to delegated authority,[9] issued an order disapproving the proposed rule change, as modified by Amendment No. 1.[10] On October 15, 2019, the Secretary of the Commission notified NYSE Arca that, pursuant to Commission Rule of Practice 431,[11] the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority had been automatically stayed.[12]

Accordingly, *it is ordered*, pursuant to Commission Rule of Practice 431, that by December 18, 2019, any party or other person may file a statement in support of, or in opposition to, the action made pursuant to delegated authority.

It is further *ordered* that the order disapproving proposed rule change SR–NYSEArca–2019–01 shall remain in effect pending the Commission's review.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24874 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Securities Exchange Act Release No. 85461 (Mar. 29, 2019), 84 FR 13339 (Apr. 4, 2019).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 85854 (May 14, 2019), 84 FR 23125 (May 21, 2019).

[8] *See* Securities Exchange Act Release No. 86629 (Aug. 12, 2019), 84 FR 42036 (Aug. 16, 2019).

[9] 17 CFR 200.30–3(a)(12).

[10] *See* Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 (Oct. 16, 2019).

[11] *See* 17 CFR 201.431.

[12] *See* Letter from Secretary of the Commission to Michael Cavalier, Counsel, and David De Gregorio Senior Counsel, Intercontinental Exchange/NYSE (Oct. 15, 2019), *available at https://www.sec.gov/rules/sro/nysearca/2019/34-87267-letter.pdf.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87508; File No. SR–CboeEDGX–2019–051]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend the Cboe EDGX Exchange, Inc. Fee Schedule To Modify the Options Regulatory Fee

November 12, 2019.

On August 1, 2019, Cboe EDGX Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–CboeEDGX–2019–051) to modify the amount of its Options Regulatory Fee (''ORF'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on August 14, 2019.[5] The Commission received one comment letter on the proposal.[6] On September 30, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission temporarily suspended the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[7] On November 7, 2019, the Exchange withdrew the proposed rule change (SR–CboeEDGX–2019–051).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24870 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86611 (August 8, 2019), 84 FR 40447 (August 14, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Notice, *supra* note 3.

[6] *See* Letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), dated August 27, 2019 (''SIFMA Letter'').

[7] *See* Securities Exchange Act Release No. 87172, 84 FR 53192 (October 4, 2019).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87500; File No. SR–CboeBZX–2019–041]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

November 12, 2019.

On May 2, 2019, Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the BZX fee schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on May 16, 2019.[4] On June 28, 2019, the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] In response to the OIP, the Commission received three comment letters, including a response letter from the Exchange.[6]

Section 19(b)(2) of the Act[7] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 85840 (May 10, 2019), 84 FR 22190 (''Notice'').

[5] *See* Securities Exchange Act Release No. 86233, 84 FR 32230 (July 05, 2019) (''OIP'').

[6] *See* Letters from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated July 26, 2019 (''SIFMA Letter''); Tyler Gellasch, Executive Director, Healthy Markets, dated July 26, 2019 (''Healthy Markets Letter''); and Rebecca Tenuta, Counsel, Cboe Global Markets, dated August 9, 2019 (''Exchange Response'').

[7] 15 U.S.C. 78s(b)(2).

determination. The proposed rule change was published for notice and comment in the **Federal Register** on May 16, 2019.[8] November 12, 2019 is 180 days from that date, and January 11, 2020 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's response to comments.[9] Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates January 11, 2020 as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2019–041).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24859 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* Notice, *supra* note 4.

[9] The Commission notes that the Exchange subsequently filed a proposed rule change to institute an identical trading rights fee which contained additional information and analysis with regard to the proposed fee. *See* Securities Exchange Act Release No. 86686 (August 15, 2019), 84 FR 43633 (August 21, 2019) (SR–CboeBZX–2019–072). The Commission suspended and instituted proceedings for that filing to allow for additional analysis of the proposed rule change. *See* Securities Exchange Act Release No. 87142 (September 27, 2019), 84 FR 52902 (October 03, 2019) (SR–CboeBZX–2019–072).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87495; File No. SR–CBOE–2019–106]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule in Connection With Migration

November 8, 2019.

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 November 1, 2019, Cboe Exchange, Inc. (''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. 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 its Fees Schedule in connection with migration. 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

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, and also migrate its current billing system to a new billing system, on October 7, 2019 (the ''migration''). Accordingly, the Exchange proposes to amend certain fees in the Fees Schedule in connection with the migration.[3]

Consolidated Rate Tables

First, the Exchange proposes to reorganize and rename its standard transaction fee tables. Particularly, the Exchange proposes to consolidate its current rate tables for equity, ETF and ETN, and Index Products excluding Underlying Symbol List A into a single table and relocate its transaction fees relating to Sector Indexes into that table. As proposed, the Fees Schedule will consist of two transaction fee tables renamed as: (1) ''Rate Table—All Products Excluding Underlying Symbol List A'' and (2) ''Rate Table—Underlying Symbol List A''. The Exchange also proposes to make other clarifying, non-substantive changes such as: (i) Separating out Clearing Trading Permit Holder Proprietary fees for Underlying Symbol List A into two line items: (1) Underlying Symbol List A excluding VIX and (2) VIX and (ii) consolidating and relocating fees for Broker-Dealer, Non-Trading Permit Holder Market Maker, Professional and Joint Back Office orders in RUT, RLG, RLV, RUI and UKXM into the section immediately above it (*i.e.,* for fees for Broker-Dealer, Non-Trading Permit Holder Market Maker, Professional and Joint Back Office orders in OEX, XEO, SPX (incl SPXW) and VIX). The Exchange also proposes to indicate in the rate table that fees for RLG, RLV, RUI and UKXM are $0.00, as such fees are currently waived.[4] The Exchange notes the proposed consolidation and non-substantive changes are intended to make the Fees Schedule easier to read and not intended to change any fees other than what is discussed below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on October 4, 2019 (SR–CBOE–2019–097). On October 18, 2019, (but business date October 21, 2019) the Exchange withdrew that filing and replaced it with SR–CBOE–2019–101. On November 1, 2019, the Exchange withdrew that filing and submitted this filing.

[4] The Exchange notes such waiver is in place through December 31, 2019. *See* Cboe Options Footnote 40, which footnote is appended to corresponding rates in the rate table as applicable. The proposed addition of Fee Code WR in the rate table is not intended to make such waiver permanent and Footnote 40 continues to apply.

Fee Codes

The Exchange first proposes to adopt and codify in its Fees Schedule fee codes for its standard transaction fees. The Exchange notes that on the Affiliated Exchanges, rather than returning a monetary value indicating the rebate or charge for an execution, a fee code is utilized as an indication of a fee classification corresponding to an item on the venue's fee schedule. Upon migration, the Exchange's new billing system will also utilize various fee codes. The Exchange believes incorporating these fee codes directly into the fees schedule will provide clarity in the Fees Schedule and allow Trading Permit Holders (''TPHs'') to more easily validate their bills on a monthly basis.[5] The Exchange notes that none of these changes substantively amend any fee or rebate, nor do they alter the manner in which the Exchange assesses fees or calculates rebates.

Linkage

In addition to adopting fee codes for standard transaction fees, the Exchange proposes to adopt fee codes for Linkage Routing Fees. Currently, the Exchange's Fees Schedule provides generally that for Customer orders, in addition to the customary Cboe Options execution charges for each Customer order that is routed, the Exchange passes through the actual transaction fee assessed by the exchange(s) to which the order was routed plus an additional $0.15 per contract.[6] The Exchange also does not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (*e.g.,* PULSe Workstation). For Non-Customer Orders, the Exchange assesses a $0.70 per contract routing fee in addition to the customary Cboe Options execution charges. Effective, October 7, 2019, the Exchange proposes to specifically specify the exact charge for linkage for each type of transaction and adopt a corresponding fee code. Particularly, the Exchange will list the fee code and transaction fee for routed (i) Customer orders routed to NYSE American, LLC (''AMEX''), BOX Exchange LLC (''BOX''), NASDAQ BX, Inc. (''BX''), Cboe EDGX Exchange, Inc. (''EDGX''), Nasdaq MRX, LLC (''MRX''), Miami International Securities Exchange, LLC (''MIAX''), or Nasdaq PHLX LLC (''PHLX'') for ETF orders equal to or greater than 100 contracts, (ii) Customer orders routed to AMEX, BOX, BX, EDGX, MRX, MIAX, or PHLX for ETF orders less than 100 contracts and equity options, (iii) Customer orders routed to NYSE Arca, Inc. (''ARCA''), Cboe BZX Exchange, Inc., (''BZX''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), MIAX Emerald, LLC (''Emerald''), MIAX PEARL, LLC (''Pearl''), or Nasdaq Stock Market LLC (''NOMX'') for ETF orders equal to or greater than 100 contracts in Penny and Non-Penny classes, (iv) Customer orders routed to ARCA, BZX, C2, ISE, GEMX, Emerald, Pearl or NOMX for ETF orders less than 100 contracts and equity options in Penny and Non-Penny classes, (v) and Non-Customer Orders in Penny and Non-Penny classes. The proposed fees are as follows:

Capacity	Fee	Description
Customer	$0.33	Routed to AMEX, BOX, BX, EDGX, MRX, MIAX, PHLX, ≥ 100 contracts, ETF.
	0.15	Routed to AMEX, BOX, BX, EDGX, MRX, MIAX, PHLX, < 100 contracts ETF, Equity.
	0.83	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, ≥ 100 contracts ETF, Penny.
	1.18	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, ≥ 100 contracts ETF, Non-Penny.
	0.65	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, <100 contracts ETF, Equity, Penny.
	1.00	Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, <100 contracts ETF, Equity, Non-Penny.
Non-Customer	1.17	Routed, Penny.
	1.45	Routed, Non-Penny.

The Exchange notes that the linkage routing rates for (i) Non-Customer Orders and (ii) Customer Orders routed to AMEX, BOX, BX, EDGX, MRX, MIAX, and PHLX are not changing. Rather the Exchange is merely expressing the fee as single rate for (1) Non-Customer orders by combining the $0.70 per contract fee and the customary Cboe Options execution charges (*i.e.,* $0.47 per contract for Penny Classes and $0.75 per contract for Non-Penny Classes) and (2) for Customer Orders by combining the $0.15 per contract fee plus the customary Cboe Options execution charges (*i.e.,* $0.00 for equity options and ETF orders less than 100 contracts and $0.18 per contract for ETF orders equal to or greater than 100 contracts) and the actual transaction fee assessed by the Exchange to which the order was routed (*i.e.,* $0.00 for AMEX, BOX, BX, EDGX, MRX, MIAX, and PHLX .The Exchange notes that it is amending the linkage fee with respect to any order routed to ARCA, BZX, C2, ISE, GEMX, Emerald, Pearl and NOMX. Particularly, unlike orders routed to AMEX, BOX, BX, EDGX, MRX, MIAX, and PHLX, which do not assess fees for Customer orders, ARCA, BZX, C2, ISE, GEMX, Emerald, Pearl and NOMX each assess slightly different fees for Customer orders. Instead of assessing different and distinct fees for orders routed to each of ARCA, BZX, C2, ISE GEMX, Emerald, Pearl and NOMX, the Exchange proposes to simplify billing for these orders and instead assess the same fee.[7] Particularly, the Exchange proposes to assess the $0.15 per routing contract fee plus the customary Cboe Options execution charges (*i.e.,* $0.00 for equity options and ETF orders less than 100 contracts and $0.18 per contract for ETF orders equal to or greater than 100 contracts) and the $0.50 per contract for Penny Classes and $0.85 per contract for Non-Penny Classes. The Exchange notes that other exchanges, including two of its Affiliated Exchanges, assess linkage fees expressed as a single fee for orders routed to these exchanges and that the proposed fees are in line with, and in some instances

[5] The Exchange also proposes to publish a list of its fee codes on its website. The list will include the fee or rebate, fee code, and a description for each possible execution that could occur on the Exchange. The Exchange notes that this table is merely a consolidated table which lists each of the proposed fee codes that will be incorporated directly into the Fees Schedule.

[6] Multiple orders from the same executing firm for itself or for a CMTA or correspondent firm in the same series on the same side of the market that are received within 500 milliseconds are currently aggregated for purposes of determining the order quantity and will continue to be aggregated post-migration.

[7] The Exchange notes that the range of standard fees assessed by ARCA, BZX, C2, ISE, GEMX, Emerald, Pearl and NOMX for Customer Orders in Penny Classes is between $0.41 per contract to $0.50 per contract and in Non-Penny Classes is either $0.84 per contract or $0.85 per contract.

lower than, those fees.[8] The Exchange lastly proposes to eliminate the exception that the Exchange will not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (*e.g.,* PULSe Workstation). The Exchange notes that it is not required to maintain such an exception and that it expects the impact of the proposed change to be relatively small.

Capacity

Recently, the Exchange filed to codify capacity codes in its Rules.[9] By way of background, the Exchange currently refers to capacity as ''origin code'', which codes are used to specify which type of market participant the order belongs to. Cboe Options origin codes had previously been codified in Regulatory Circular RG13–038. The recently codified Capacities (effective October 7, 2019), are the same as the Exchange's current origin codes (prior to October 7, 2019), except the proposed rule change replaces ''W'' with ''U'' and deletes ''Y'' (orders for the account of a specialist registered in the underlying stock at the primary exchange for trading the stock), which will not be available following migration. The Exchange's Fees Schedule currently identifies market participant types by ''origin code''. In light of the codified capacity codes in the Exchange Rules, the Exchange proposes to update references to ''origin'' to ''capacity'' and also update the proposed corresponding codes. The codes are as follows: B (account of a broker or dealer, including a Foreign Broker-Dealer), C (Public Customer account), F (OCC clearing firm proprietary account), J (joint back office account), L (non-Trading Permit Holder affiliate account), M (Market-Maker account), N (market-maker or specialist on another options exchange), U (Professional account). Additionally, the Exchange proposes to eliminate all references to the term ''Voluntary Professional'' as the Exchange is eliminating Voluntary Professionals, effective October 7, 2019.[10]

Execution Surcharge

The Exchange currently assesses an Execution Surcharge of $0.21 per contract for SPX Customer and Non-Customer, Non-Market Maker orders during the Regular Trading Hours (''RTH'') session only (*i.e.,* the surcharge does not apply during the Global Trading Hours (''GTH'') session. Additionally, pursuant to Footnote 21 of the Fees Schedule, the Surcharge does not apply to (i) orders in SPX or SPXW options in the SPX electronic book for those SPX or SPXW options that are executed during opening rotation on the final settlement date of VIX options and futures which have the expiration that contribute to the VIX settlement and (ii) orders executed by a floor broker using a PAR terminal. The Exchange proposes to amend the Execution Surcharge in two ways.

First, the Exchange notes that upon migration, the Exchange will use the same Book for GTH and RTH (whereas today, each session has a separate Book). As such, the Exchange proposes to apply the SPX Execution Surcharge in both sessions. The Exchange notes that other executions surcharges, such as the SPXW Execution Surcharge, are also assessed in both RTH and GTH.

Next, the Exchange proposes to amend one of the exceptions to the SPX and SPXW Execution Surcharge. As noted above, the execution surcharge is currently waived for all SPX and SPXW option series that are (i) executed in the electronic book during opening rotation on the final settlement date of VIX options and futures and (ii) which have the expiration that is used to calculate the exercise or final settlement value (''constituent options series''). While the Exchange knows which expiration will be used to calculate the exercise or final settlement value prior to the opening, the actual SPX and SPXW series that the Exchange will use to calculate the exercise or settlement value (''settlement strip'') are not known until after the opening. As such, the current exception applies to all constituent options series, as TPHs do not know which series in the constituent options series will ultimately contribute to the VIX settlement. Upon migration however, the Exchange will determine the settlement strip (*i.e.,* series actually used) pursuant to an algorithm prior to the opening and announce such series.[11] As such, the Exchange believes it's appropriate to limit the current exception and apply it only to SPX/SPXW options that (i) are executed in the electronic book during opening rotation on the final settlement date of VIX options and futures and (ii) which have the expiration that are used in the VIX settlement calculation (as opposed to the constituent options series which encompasses series that may not have ultimately contributed to the VIX settlement calculation).

CFLEX AIM Response

The Exchange currently assesses a fee for CFLEX AIM Responses. More specifically, the CFLEX AIM Response fee applies to all broker-dealer and non-TPH Holder market-maker responses in all FLEX products, except Sector Indexes and Underlying Symbol List A,[12] executed in the FLEX AIM or FLEX SAM auctions. This fee applies to such executions instead of the applicable standard transaction fee. The Exchange notes that currently FLEX Options trade on the Exchange's FLEX Hybrid Trading System (''CFLEX''), which is the Exchange's trading platform that allows FLEX Traders to submit electronic and open outcry request for quotes (''RFQs''), FLEX quotes in response to those RFQs, and FLEX Orders into the electronic book. Upon the Exchange's trading platform migration, FLEX trading will occur on the same Exchange System[13] as all other options trading occurs on the Exchange.[14] The Exchange notes it intends to continue to offer a FLEX AIM and FLEX SAM process to provide FLEX Orders with price improvement and electronic crossing opportunities. As FLEX trading

[8] *See* Cboe BZX Options Exchange Fee Schedule and Cboe EDGX Options Exchange Fee Schedule, which both assess for Routed Customer Orders to ARCA, BZX, C2, ISE, GEMX, Emerald, Pearl and NOMX $0.85 per contract for penny classes and $1.25 per contract for non-penny classes (yielding fee codes RQ and RR, respectively). *See also* MIAX Options Fees Schedule which assess for Routed Customer Orders to ARCA, BZX, C2, ISE, GEMX, Emerald, Pearl and NOMX $0.65 per contract for penny classes and $1.00 per contract for non-penny classes.

[9] *See* Securities Exchange Act Release No 86173 (June 20, 2019) 84 FR 30267 (June 26, 2019) (SR–CBOE–2019–027).

[10] *Id.*

[11] *See* Exchange Rule 5.31(j)(1). The Exchange will disseminate the highest call strike and the lowest put strike that establish the strike range to all subscribers to the Exchange's data feeds that deliver opening auction update messages, no later than 8:45 a.m. Eastern Time on exercise settlement value determination days. The Exchange may update this strike range until 9:15 a.m. Eastern Time, and will disseminate any updates during that time period as soon as reasonably possible. Therefore, the final strike range of the settlement strip that the Exchange disseminates at 9:15 a.m. Eastern Time to market participants will be identical to that which the Exchange will use to calculate the VIX settlement value itself.

[12] As of October 7, 2019, Underlying Symbol List A includes: OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXw) and VIX. *See* Cboe Options Fees Schedule, Footnote 34.

[13] The term ''System'' means the Exchange's hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange, and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub.

[14] In connection with the transition of FLEX trading from the CFLEX system to the same system all other trading will occur, the Exchange proposes to eliminate references to ''CFLEX'' (and ''FLEX Hybrid Trading System'') and replace it with references to ''FLEX''.

(including FLEX AIM and SAM) will occur on the same trading platform as all other options trading (including AIM and SAM), the Exchange no longer wishes to maintain a distinct fee for FLEX AIM responses and proposes to eliminate the separate fee for FLEX AIM responses. The proposed change will result in FLEX AIM and FLEX SAM trades being treated the same as all AIM and SAM executions (*i.e.,* no fees assessed for responses). In connection with the proposed change, the Exchange also proposes to eliminate Footnote 20 which applies to the CFLEX AIM Response Fee.

Facilitation Waiver

Pursuant to Footnote 11 of the Fees Schedule, the Exchange currently waives Clearing Trading Permit Holder Proprietary (capacity codes ''F'' and ''L'') transaction fees for (1) facilitation orders executed in open outcry or as a CFLEX transaction for products other than Sector Indexes and Underlying Symbol List A and (2) facilitation orders executed in open outcry, or electronically via AIM or as a QCC or CFLEX transactions orders in Sector Indexes.[15] Footnote 11 also currently defines ''Facilitation orders'' for this purpose as any order in which a Clearing Trading Permit Holder (''F'' capacity code) or Non-Trading Permit Holder Affiliate (''L'' capacity code) is contra to any other capacity code, provided the same executing broker and clearing firm are on both sides of the transaction (for open outcry) or both sides of a paired. The Exchange proposes to update Footnote 11 to provide that the current waivers for facilitation orders will apply only to volume executed in open outcry. The Exchange believes the proposed change would have a de minimis impact as historically there have been very few facilitation orders executed electronically. Lastly, in light of the proposed change, the Exchange proposes to eliminate Footnote 12 in its entirety. Particularly, Footnote 12 currently provides the Clearing Trading Permit Holder Proprietary Transaction Fee shall be waived for Clearing Trading Permit Holders executing facilitation orders in FLEX Options in all underlying symbols excluding Underlying Symbol List A and Sector Indexes. In light of the proposal to only waive fees for open outcry facilitation, this footnote would no longer be true with respect to facilitation orders executed electronically. The Exchange proposes to eliminate the footnote in its entirety in lieu of updating the footnote as it believes the language is redundant to Footnote 11, and is therefore not necessary to maintain. FLEX open outcry facilitations will continue to be waived and covered under Footnote 11.

Stock-Option Orders

By way of background, stock-option orders are complex instruments that constitute the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock coupled with the purchase or sale of an option contract(s) on the opposite side of the market and execute in the same manner as complex orders. Currently, the stock portions of stock-option strategy orders are electronically communicated by the Exchange to a designated broker-dealer, who then manage the execution of such stock portions. In connection with this functionality, the Exchange assesses a stock handling fee of $0.0010 per share for the processing and routing by the Exchange of the stock portion of stock-option strategy orders executed through those mechanisms. A maximum of $50.00 per order is currently assessed under this fee. The Exchange notes that it largely passes through to TPHs the fees assessed to the Exchange by the designated broker-dealer that manages the execution of the stock portions of stock-option strategy orders. The Exchange also notes that the designated broker-dealer that manages the execution of the stock portions of stock-option strategy orders apply the $50 cap on a per execution basis, instead of a per order basis (meaning the Exchange may end up subsidizing certain orders depending on how they were filled).[16] Now that the Exchange is migrating to a new billing system, the Exchange wishes to modify how the cap is applied in the billing system. Particularly, the Exchange proposes to similarly cap the stock option fee on a per execution basis instead of a per order basis, which will more closely align to how the Exchange's designated broker-dealer applies the cap. The Exchange notes another Exchange similarly caps its stock option handling fee at $50 per trade (instead of order).[17]

Inactive Nominee Stats Change (''Swap'') Fee

Next the Exchange proposes to amend the Inactive Nominee Status Change fees. Particularly, under the Fees Schedule, a fee is assessed each time an inactive nominee swaps places with a nominee on a Trading Permit. The amount of such fee varies depending on what time the request for the swap occurs. Specifically, the Exchange assesses a fee of $55 if the request is submitted prior to 4:00 p.m. CT on the day prior to the effective date of the change; $110 if the request is submitted after 4:00 p.m. CT on the day prior to the effective date of the change and $220 if the request is submitted after 8:00 a.m. CT on the effective date of change. The Exchange recently proposed to waive these fees for the period of October 1–October 4, 2019 as the Exchange's Trading Permit structure was being modified in connection with migration.[18] In order to simplify the fee structure and billing process for these permit changes going forward, the Exchange proposes to eliminate both the current waiver and fee structure and in its place assess a flat fee of $100, regardless of when the request for such change was submitted. The proposed change would therefore apply to all TPHs uniformly.

Subcabinet Trades

Currently, Footnote 32 of the Fees Schedule provides that the Exchange will assess no transaction fees or surcharges for subcabinet trades (*i.e.,* limit orders with a price of at least $0 but less than $1 per options contract, per current Exchange Rule 6.54, Interpretation and Policy .03.)[19] Additionally, the footnote provides that subcabinet trades will not count towards any volume thresholds or volume threshold calculations. To harmonize and simplify the Exchange's billing, the Exchange proposes to treat subcabinet trades (now called ''sub-penny cabinet orders'')[20] the same as cabinet trades (now called penny

[15] Facilitation for Sector Indexes are currently only waived through December 31, 2019. *See* Cboe Options Fees Schedule, Footnote 11. Open-outcry facilitation for Sector Indexes will continue to be waived through December 31, 2019.

[16] For example, take an order that involves 60,000 shares of a stock and is filled via two executions of 30,000 shares each. Under the current per order cap, the Exchange can only assess $50.00 as the fees for the original order is $60 which exceeds the cap (*i.e.,* $0.0010 × 60,000 shares). The Exchange's designated broker-dealer meanwhile bills the exchange for each execution, resulting in $60 to the exchange (*i.e.,* $0.0010 × 30,000 × 2). Under the proposed cap, the Exchange would be able to pass through the full $60 charge as neither execution of 30,000 contracts hit the $50 per execution cap.

[17] *See* NASDAQ ISE Options Pricing Schedule, Section 4.12.

[18] *See* SR–CBOE–2019–080.

[19] The Exchange notes it inadvertently failed to update the Fees Schedule when Rule 6.54.03 was renumbered to 6.54.02. The Exchange also notes that it recently submitted a rule filing to relocate rules relating to both cabinet and subcabinet orders, effective October 7, 2019. *See* SR–CBOE–2019–58.

[20] *See* Cboe Options Rule 5.85(h)(2). A sub-penny cabinet is a limit order with a price less than $0.01 per contact. Bids and offers for opening transactions for sub-penny cabinet orders are only permitted to accommodate closing transactions.

cabinet orders).[21] That is, the Exchange proposes to eliminate Footnote 32 in its entirety, which would result in normal transaction fees and surcharges applying to sub-penny cabinet trades and for such trades to be counted towards any volume thresholds or volume threshold calculations, as cabinet trades are today. The Exchange would also clarify in the Marketing Fee notes section that the Marketing Fee would not apply to sub-penny cabinet trades (which is the case today), as such exception also currently applies to cabinet trades.[22] The [sic] believes it's appropriate to treat subcabinet trades the same as cabinet trades for billing purposes as both orders are similar in that they are trades in listed options on the Exchange that are either worthless or inactive or not actively traded. Additionally, the Exchange believes the proposed change would have a de minimis impact as historically there have been very few sub-penny cabinet trades.

Exchange System Disruption

Footnote 36 of the Fees Schedule currently provides that under the Volume Incentive Program (''VIP''),[23] the Exchange provides that in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options, the Exchange will adjust the national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MXEA, MXEF, MNX, NDX, DJX and XSP (''National Customer Volume'') for the duration of the outage. In connection with the migration, the Exchange wishes to conform how it handles system disruptions to the way they are handled on its affiliate exchanges, Cboe BZX and Cboe EDGX.[24] Particularly, the Exchange proposes to provide that in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options that lasts longer than 60 minutes, the Exchange will adjust the national volume in all underlying symbols excluding Underlying Symbol List A (34), Sector Indexes (47), MXEA, MXEF, DJX and XSP for the entire trading day (instead of the duration of the outage). The Exchange also notes that currently, the Fees Schedule only explicitly addresses how it handles exchange outages and interruptions for VIP and is silent as to if and how it would adjust national volume in other incentive programs.[25] In order to clarify that the Exchange will apply the same approach to any affected incentive program, the Exchange proposes to eliminate the reference to exchange outages/interruptions in Footnote 36 and adopt in its place new Footnote 6.[26] Particularly, Footnote 6 will address how the Exchange handles outages/interruptions for all incentive programs that utilize national volume in determining certain tiers and thresholds, including VIP, as described above.

Large Trade Discount

Next the Exchange proposes to amend the Customer Large Trade Discount Program and a non-customer Large Trade Discount Program. By way of background, the Customer Large Trade Discount Program caps fees for customer orders of a certain size in VIX, SPX/SPXW, XSP, other index options and ETF and ETN options. The Large Trade Discount Program similarly caps fess for non-customer orders of a certain size in VIX options. Both programs provide that for an order to be eligible to qualify for the discount, the order in its entirety must be executed in either Global Trading Hours GTH or RTH, but not both. The Exchange notes that upon migration, the Book used during RTH will be the same Book used during GTH (as compared to today where the Exchange maintains separate Books for each session). As such it is possible for an order to now be executed over both sessions and still otherwise qualify for the caps under the programs. The Exchange therefore proposes to eliminate the language in the notes section of both tables providing that orders must be entirely executed in one session or another, but not both.

AIM Contra Fee

Currently, Footnote 18 of the Fees Schedule provides that the AIM Contra Execution Fee applies to all orders (excluding facilitation orders, per footnote 11) in all products, except Sector Indexes and Underlying Symbol List A, executed in AIM, SAM FLEX AIM and FLEX SAM auctions, that were initially entered as the contra party to an Agency/Primary Order. Footnote 18 also provides that instead of the applicable standard transaction fee, the AIM Contra Fee will apply to AIM Contra executions except if the applicable standard transaction fee is lower than $.07 per contract,[27] in which case the applicable standard transaction fee will apply. To simplify the billing process, the Exchange proposes to eliminate this exception (*i.e.,* the $0.07 per contract AIM Contra Execution Fee will always apply to all orders (excluding facilitation orders) in all products, except Sector Indexes and Underlying Symbol List A, executed in AIM, SAM FLEX AIM and FLEX SAM auctions, that were initially entered as the contra party to an Agency/Primary Order).

HAL to SUM

As part of the migration, the Exchange is harmonizing its rules in connection with routing services, including the Hybrid Agency Liaison (''HAL'') and HAL on the Open (''HALO'') system, to that of the Cboe Affiliated Exchanges. As part of the harmonization, the Exchange has proposed to rename HAL and HALO to ''Step-Up Mechanism'' (or ''SUM''). As such, the Exchange proposes to replace all references to the Hal Agency Liaison, HAL, HAL on the Open or HALO, to ''Step-Up Mechanism'' or ''SUM'', as appropriate. The Exchange believes the proposed

[21] *See* Cboe Options Rule 5.12(h)(1). [sic] A penny cabinet is a limit order with a price of $0.01 per contract.

[22] *See* Cboe Options Fees Schedule, Footnote 6. The Exchange notes that it is relocating the language in current Footnote 6 which governs the Marketing Fee program to the notes section of the Marketing Fee table in an effort to consolidate the Fees Schedule and make it easier to follow. The proposed clarification relating to the exclusion of sub-penny cabinet trades from the Marketing Fee program is therefore reflected in the new notes section and is not marked in Footnote 6. The Exchange also proposes to reference ''penny cabinet trades'' in the notes section instead of referencing ''accommodation liquidations (cabinet trades)'' as it does currently in Footnote 6. The Exchange notes the proposed reference is not a substantive change, but rather conforms terminology to the Exchange's rules.

[23] Under VIP, the Exchange credits each TPH the per contract amount set forth in the VIP table for Public Customer (origin code ''C'') orders transmitted by TPHs (with certain exceptions) and executed electronically on the Exchange, provided the TPH meets certain volume thresholds, in which volume for Professional Customers and Voluntary Professionals (''Professional Customers'') (origin code ''W''), Broker-Dealers (origin code ''B''), and Joint Back-Offices (''JBO'') (origin code ''J'') orders are counted toward reaching such thresholds. Specifically, the percentage thresholds are calculated per month based on the percentage of national customer volume in all underlying symbols entered and executed, excluding those in Underlying Symbol List A, Sector Indexes, MXEA, MXEF, MNX, NDX, DJX and XSP.

[24] *See* Cboe EDGX Options Fees Schedule and Cboe BZX Options Fees Schedule. which provide volume is excluded from certain calculations on any day that the Exchange's system experiences a disruption that lasts more than 60 minutes during regular trading hours.

[25] The Exchange notes that since the Fees Schedule never explicitly specified how the Exchange would adjust national volume in the event of an outage, no adjustments would have been made to any calculations for any program other than VIP.

[26] The language under current Footnote 6 is relocating to the Marketing Fee Program table as discussed above. The Exchange proposes to therefore reuse Footnote 6 and adopt new language relating to system outages.

[27] The Exchange notes that when the Exchange increased the AIM Contra fee from $0.05 per contract to $0.07 per contract, it inadvertently failed to update the increased amount in Footnote 18.

change will provide consistency between the Exchange Rule Book and Fees Schedule and alleviate potential confusion.

MNX and NDX

The Exchange next proposes to amend the Fees Schedule to remove references to MNX and NDX. The Exchange notes that it no longer lists MNX and NDX options and as such proposes to eliminate such references from the Fees Schedule, which will avoid potential confusion and provide clarity in the rules. The Exchange also proposes to modify how the percentage thresholds of National Customer Volume under VIP are calculate with respect to MNX and NDX. Currently, MNX and NDX are excluded from the National Customer Volume percentage thresholds, along with the Exchange's other proprietary products. As the Exchange no longer lists MNX and NDX, it believes it's appropriate to start including MNX and NDX volume in the percentage thresholds of National Customer Volume, as it does with volume from all other non-proprietary products.

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.[28] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[29] 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 Section 6(b)(4) of the Act,[30] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

First, the Exchange believes that a number of its proposed changes alleviate potential confusion and result in a Fees Schedule that is clearer and easier to follow, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Particularly, the Exchange believes its proposal to reorganize and consolidate its rate tables, along with its proposed non-substantive, clarifying changes to the rate tables described above, will result in a more transparent, simplified and easier to read Fees Schedule. The Exchange also believes the proposal to adopt fee codes is reasonable and equitable because the Exchange believes such fee codes provides further clarity in the Fees Schedule and the fee codes do not amend any fees or rebates that apply to trading activity on the Exchange. Rather, the proposed fee codes allow TPHs to more easily validate the bills that they receive from the Exchange, thus alleviating potential confusion.

The Exchange believes its proposal to (i) replace references to origin codes with capacity and capacity codes and (ii) replace references to ''Hybrid Agency Liaison'', ''HAL'' ''HAL on the Open'' and ''HALO'' with ''Step-Up Mechanism'' and ''SUM'' also provides clarity in the Fees Schedule. Particularly, as noted above, the Exchange is codifying in its rules the available capacity codes and replacing references to ''Hybrid Agency Liaison'', ''HAL'' ''HAL on the Open'' and ''HALO'' with ''Step-Up Mechanism'' and ''SUM''. The proposed changes therefore maintains consistency between its Rulebook and its Fees Schedule. Similarly, the Exchange believes it reduces potential confusion to eliminate references to ''CFLEX'' as the Exchange is transitioning its FLEX trading from the CFLEX platform to the same system all other trading will occur on. Removing references to MNX and NDX from the Fees Schedule also eliminates confusion as the Exchange no longer lists these products. The proposal to include MNX and NDX volume in the percentage thresholds under VIP is also reasonable, equitable and not unfairly discriminatory as the proposed change applies to all TPHs and because MNX and NDX are no longer proprietary products traded on the Exchange and should therefore be treated the same as other non-proprietary products.

The Exchange believes its proposed fees relating to linkage are reasonable as the proposed fees continue to take into account routing costs and are in line with amounts assessed by other exchanges, including its Affiliated Exchanges.[31] Moreover, the Exchange notes that all linkage costs are staying the same with the exception of orders routed to ARCA, BZX, C2, ISE GEMX, Emerald, Pearl and NOMX. The Exchange believes the proposed fees for orders routed to ARCA, BZX, C2, ISE GEMX, Emerald, Pearl and NOMX are reasonable as the fees are either the same as, or in some instances even lower than, fees assessed by other Exchanges when routed to these exchanges.[32] Moreover, the Exchange highlights that routing through the Exchange is voluntary and also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive. The Exchange also believes the proposed change is reasonable as it simplifies billing for these orders. Furthermore, two of the Exchange's affiliated exchanges similarly assess linkage fees expressed as a single fee for orders routed to these exchanges and that the proposed fees are lower than those fees.[33] The Exchange believes its proposal to eliminate the exception that the Exchange will not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (*e.g.,* PULSe Workstation) is reasonable as the Exchange is not required to maintain such an exception. Indeed, the Exchange is not aware of other Exchanges with a trading floor that maintain a similar exception to routing fees. The Exchange also expects the impact of the proposed change to be relatively small. The Exchange believes the proposed changes to linkage fees are equitable and not unfairly discriminatory because the proposed changes apply equally to all TPHs who chose to use the Exchange to route orders to other exchanges. TPHs that do not favor the proposed pricing can readily direct order flow directly to

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78f(b)(4).

[31] *See e.g., See* Cboe BZX Options Exchange Fee Schedule and Cboe EDGX Options Exchange Fee Schedule. *See also* NYSE Arca Options Fees and Charges, Routing Fees.

[32] *See* Cboe BZX Options Exchange Fee Schedule and Cboe EDGX Options Exchange Fee Schedule, which both assess for Routed Customer Orders to ARCA, BZX, C2, ISE, GEMX, Emerald, Pearl and NOMX $0.85 per contract for penny classes and $1.25 per contract for non-penny classes (yielding fee codes RQ and RR, respectively). *See also* MIAX Options Fees Schedule which assess for Routed Customer Orders to ARCA, BZX, C2, ISE, GEMX, Emerald, Pearl and NOMX $0.65 per contract for penny classes and $1.00 per contract for non-penny classes.

[33] *See* Cboe BZX Options Exchange Fee Schedule and Cboe EDGX Options Exchange Fee Schedule.

those other exchanges or through competing venues or providers of routing services.

The Exchange believes the proposal to apply the Execution Surcharge to orders in both the RTH and GTH session is reasonable because the amount of the surcharge will be the same for both the RTH and GTH session. Additionally, post-migration, the Exchange will use the same Book for GTH and RTH, as compared to today where each session has a separate Book, and the Exchange therefore believes it's reasonable to assess the fee to both sessions. Moreover, the Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory as other execution surcharges, such as the execution surcharge for SPXW, also applies to orders in both RTH and GTH. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it applies uniformly to all TPHs.

The Exchange believes the amendment to Footnote 21 regarding the exception to the SPX and SPXW Execution Surcharges is reasonable as it will result in market participants at times not being required to pay these surcharges for SPX and/or SPXW transactions in the circumstances described. Particularly, the Exchange notes that it had adopted the exception in recognition that while liquidity is important to open all series on the Exchange, given the potential impact on the exercise settlement value determined for expiring volatility index derivatives, it was important to encourage a fair and orderly opening of the series that expire in the month used to calculate the final settlement value of expiring VIX derivatives. As discussed, the Exchange currently only applies such exception to constituent options series as only the expiration month used to calculate the final settlement is known prior to opening. Upon migration however, the Exchange (and TPHs) will know which series will actually be used to calculate the exercise or final settlement value prior to the opening. Accordingly, the Exchange does not believe the exception should continue to be broadly applied to all constituent options series, since only a subset of such series are used in the settlement value calculation and since such subset will now be known prior to opening. As such, the Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory and also notes it applies uniformly to all TPHs.

The Exchange believes it's reasonable to eliminate the CFLEX AIM Response fee as TPHs will no longer be subject to a fee for FLEX AIM responses. Moreover, as discussed, CFLEX AIM will no longer operate on a separate trading system upon migration. AIM (and SAM) for FLEX orders will operate on the same system as AIM (and SAM) for all other orders and the Exchange therefore believes it's reasonable to assess the same fees for FLEX and non-FLEX AIM and SAM orders. The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies uniformly to all TPHs.

The Exchange believes it's reasonable to limit its waiver of facilitation fees for orders executed in open-outcry only because the Exchange is not required to maintain a facilitation fee waiver for any transactions and notes that TPHs will still be eligible to receive the waiver for open-outcry transactions. Additionally, as noted above there have historically been very few electronic facilitation orders which were eligible for the current waiver, as compared to open-outcry facilitations which tend to be much more common. The Exchange therefore also believes the impact of the proposed change is de minimis. The Exchange believes the proposed change is equitable and not unfairly discriminatory because the proposed change applies uniformly to all TPHs and treats all electronic facilitation orders equally.

The Exchange believes its proposed change relating to how it caps the stock-option order fee is reasonable because the Exchange is capping the transactions the same way the Exchange's designated broker-dealer that manages the execution of the stock portions of stock-option strategy orders caps (and bills the Exchange) for these orders. Specifically, the Exchange will merely no longer be subsidizing certain stock-option order transactions and the modified cap which will more closely align to how the Exchange's designated broker-dealer applies the cap. The Exchange believes the proposed change is also reasonable as it will not result in the Exchange collecting fees beyond what the Exchange itself is billed for by its designated broker-dealer. The Exchange notes another Exchange similarly caps its stock option handling fee at $50 per trade (instead of order).[34] The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will be applied to all TPHs uniformly.

The Exchange believes the proposed change to the inactive nominee swap fee is reasonable because the fee is similar to the fees that were previously assessed for certain swaps. As discussed above, TPHs were previously subject to an inactive nominee swap fee of $55, $110 or $220, depending on the time they submitted their request for a swap. The Exchange believes the proposed change provides for a simplified fee and billing structure (*i.e.,* maintaining a single fee vs multiple fees based on time submissions). The proposed change is equitable and not unfairly discriminatory as it would apply to any TPH that is swapping inactive nominees on a Trading Permit uniformly.

The Exchange believes its proposed change relating to subcabinet trades (now referred to as ''sub-penny cabinet trades'') is reasonable as the proposed change results in sub-penny cabinet trades being treated the same as cabinet trades (now called ''penny-cabinet trades''). The believes it's appropriate to treat sub-penny and penny cabinet trades the same as cabinet trades for billing purposes as both orders are similar in that they are trades in listed options on the Exchange that are either worthless or inactive or not actively traded and are both reported and processed like all other open outcry trades. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it applies equally to all TPHs and because the Exchange believes the proposed change would have a de minimis impact as historically there have been very few sub-penny cabinet trades.

The Exchange believes its proposal to amend how it calculates national volume in the event of a system outage or trading interruption is reasonable as it conforms to the way the [sic] handles such outages on its affiliate exchanges, Cboe BZX and Cboe EDGX.[35] The Exchange also notes that it may not be possible in all instances to adjust national volume numbers for the period of the outage only. The Exchange believes the proposed change also adds clarity to the Fees Schedule, as the Fees Schedule is currently silent as to how it calculates certain thresholds based on national volume for programs other than VIP. The proposed change therefore makes clear how different incentive programs are impacted in the event of a system outage or electronic trading

[34] *See* NASDAQ ISE Options Pricing Schedule, Section 4.12.

[35] *See* Cboe EDGX Options Fees Schedule and Cboe BZX Options Fees Schedule. [sic] which provide volume is excluded from certain calculations on any day that the Exchange's system experiences a disruption that lasts more than 60 minutes during regular trading hours.

interruption. The proposed rule change also applies uniformly to all TPHs.

The Exchange also believes its amendment to the Customer Large Trade Discount Large Trade Discount Programs are reasonable, equitable and not unfairly discriminatory. As discussed, the Book used during RTH will be the same Book used during GTH upon migration (as compared to today where each session has a separate Book). As such it will be possible for an order to be executed over both sessions upon migration and the Exchange therefore believes it's reasonable to eliminate requirement that orders must be entirely executed in one session or another, but not both. The Exchange believes the proposed change is also reasonable as orders that may not have otherwise been eligible for the discounts in the past because to [sic] this requirement may now be eligible. The proposed rule change also applies uniformly to all TPHs.

The Exchange believes its proposal to eliminate the exception to the AIM Contra Fee is reasonable, equitable and not unfairly discriminatory because TPHs will still not be paying more than the current AIM Contra Fee ($0.07) for AIM Contra orders that are subject to the AIM Contra Fee pursuant to Footnote 18. The proposed change also results in a simplified billing process and the Exchange notes that it is not requirement to maintain the current exception to the AIM Contra Fee. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will be applied to all TPHs uniformly.

In sum, the Exchange believes the proposed changes described above incorporate updates to the Fees Schedule in connection with the migration of the Exchange's trading system and new billing system, conform certain billing practices to practices on the Exchange's affiliated exchanges, simplify billing practices and add clarity to the Fees Schedule. For the reasons discussed above, the Exchange believes the proposed changes are reasonable, equitable and unfairly discriminatory will apply uniformly to similarly situated TPHs. Finally, the Exchange believes that the proposed fee schedule will be easier to read for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will be applied equally to all similarly situated TPHs. The Exchange also operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change continues to reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes enhances market quality to the benefit of all TPHs.

The Exchange does not believe that 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. The Exchange also notes that the proposed rule changes are precipitated by its upcoming migration of the Exchange's migration of its trading platform and billing system and not intended to address competitive issues. Rather, the proposed changes are generally being made in connection with changes resulting from migration and/or are designed to simplify the Exchange's billing processes post-migration.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [36] and paragraph (f) of Rule 19b–4 [37] 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–106 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–2019–106. 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–2019–106 and

[36] 15 U.S.C. 78s(b)(3)(A).

[37] 17 CFR 240.19b–4(f).

should be submitted on or before December 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24862 Filed 11–15–19; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0337]

GMB Mezzanine Capital IV, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that GMB Mezzanine Capital IV, L.P., 50 South Sixth Street, Suite 1460, Minneapolis, MN 55402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). GMB Mezzanine Capital IV, L.P. proposes to provide debt and equity security financing to Motion and Flow Control, Inc., 14402 East 33rd Place, Aurora, Colorado 80011.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because GMB Mezzanine Capital II, L.P. is an Associate of GMB Mezzanine Capital IV, L.P., and will receive proceeds from the refinancing of Motion and Flow Control, Inc.; therefore, this transaction is considered *Financing an Associate* requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Dated: October 17, 2019.

A. Joseph Shepard,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2019–24914 Filed 11–15–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 10938]

30-Day Notice of Proposed Information Collection: Evaluation of the Mandela Washington Fellowship for Young African Leaders

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to December 18, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Natalie Donahue, Chief of Evaluation, Bureau of Educational and Cultural Affairs, who may be reached on at *DonahueNR@state.gov* or at (202) 632–6193.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Evaluation of the Mandela Washington Fellowship for Young African Leaders.
- *OMB Control Number:* None.
- *Type of Request:* New collection.
- *Originating Office:* Educational and Cultural Affairs (ECA/P/V).
- *Form Number:* No form.
- *Respondents:* Mandela Washington Fellowship program implementers and participating private individuals and organizations who interacted with the Fellows (including University staff, internship host organizations, peer collaborators, home stay hosts, and site visit/community service organizations).
- *Estimated Number of Academic and Leadership Institute Survey Respondents:* 100.
- *Estimated Number of Academic and Leadership Institute Survey Responses:* 40.
- *Average Time per Academic and Leadership Institute Survey:* 30 minutes.
- *Total Estimated Academic and Leadership Institute Survey Burden Time:* 20 hours.
- *Estimated Number of Professional Development Experience Host Survey Respondents:* 407.
- *Estimated Number of Professional Development Experience Host Responses:* 122.
- *Average Time per Professional Development Experience Host Survey:* 30 minutes.
- *Total Estimated Professional Development Experience Host Survey Burden Time:* 61 hours.
- *Estimated Number of Reciprocal Exchange Alumni Survey Respondents:* 172.
- *Estimated Number of Reciprocal Exchange Alumni Responses:* 52.
- *Average Time per Reciprocal Exchange Alumni Survey:* 30 minutes.
- *Total Estimated Reciprocal Exchange Alumni Survey Burden Time:* 26 hours.
- *Estimated Number of U.S. Community Members Survey Respondents:* 50.
- *Estimated Number of U.S. Community Members Responses:* 15.
- *Average Time per U.S. Community Members Survey:* 25 minutes.
- *Total Estimated U.S. Community Members Survey Burden Time:* 6.25 hours.
- *Estimated Number of Academic and Leadership Institute Staff Key Informant Interview Participants:* 15.
- *Average Time per Academic and Leadership Institute Staff Key Informant Interviews:* 60 minutes.
- *Total Estimated Academic and Leadership Institute Staff Key Informant Interviews Burden Time:* 15 hours.
- *Estimated Number of Professional Development Experience Host Organization Staff Key Informant Interview Participants:* 15.
- *Average Time per Professional Development Experience Host Organization Staff Key Informant Interviews:* 60 minutes.
- *Total Estimated Professional Development Experience Host Organization Staff Key Informant Interviews Burden Time:* 15 hours.
- *Estimated Number of Reciprocal Exchange Alumni Key Informant Interview Participants:* 15.
- *Average Time per Reciprocal Exchange Alumni Key Informant Interviews:* 60 minutes.

- *Total Estimated Reciprocal Exchange Alumni Key Informant Interviews Burden Time:* 15 hours.
- *Estimated Number of U.S. Community Member Focus Group Participants:* 15.
- *Average Time per U.S. Community Member Focus Group:* 90 minutes.
- *Total Estimated U.S. Community Member Focus Group Burden Time:* 22.5 hours.
- *Estimated Number of Fellowship Experience Map Participants:* 40.
- *Average Time per Fellowship Experience Map Interview:* 60 minutes.
- *Total Estimated Fellowship Experience Map Burden Time:* 40 hours.
- *Total Estimated Number of Responses:* 329.
- *Total Estimated Burden Time:* 271.10 annual hours.
- *Frequency:* Once.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Mandela Washington Fellowship for Young African Leaders, begun in 2014, is the flagship program of the Young African Leaders Initiative (YALI) that empowers young people through academic coursework, leadership training, and networking. The Fellows, who are between the ages of 25 and 35, have established records of accomplishment in promoting innovation and positive impact in their organizations, institutions, communities, and countries. This program is funded pursuant to the Mutual Educational and Cultural Exchanges Act of 1961 (22 U.S.C. 2451–2464).

To evaluate the impacts of the program, the U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA) intends to conduct an evaluation of the program which cover Alumni from the 2014 through the 2018 cohorts, Academic and Leadership Institute staff and representatives, Professional Development Experience representatives, Reciprocal Exchange participants, and other U.S. Community Members. This timeframe covers the first five-year grant period of the Mandela Washington Fellowship, which was implemented by IREX. As the Mandela Washington Fellowship has been implemented for five years, ECA is conducting this evaluation to determine the extent to which the program is achieving its long-term goals. In order to do so, ECA has contracted Guidehouse LLP to conduct surveys, interviews, and focus groups with Fellowship Alumni and relevant stakeholders they engaged with during their time in the U.S.

Methodology

To create an understanding of how the Mandela Washington Fellowship impacts individual stakeholder groups who engage in the program, the evaluation team will segment data collection by identifying the impact of the Fellowship program on Alumni, U.S. participants, home communities in Africa and the United States, and overall progress towards U.S. foreign policy objectives. The evaluation team will also review areas for improvement and/or change within the program's operations based on respondent feedback.

The evaluation will use a mixed methods approach to data collection, utilizing qualitative and quantitative techniques, including: Online surveys, stakeholder interviews (remote and in-person), focus group discussions (in-person), and Fellowship Experience Maps of a small sample of Fellowship Alumni and one U.S. representative. The Fellowship Experience Maps are detailed case studies of select Fellows' and Reciprocal Exchange Awardees' experiences during the Fellowship. Data analysis will then be undertaken to illustrate impact and lessons learned, and to draw linkages between program track and outcomes.

Nini Forino,

Acting Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs.

[FR Doc. 2019–24877 Filed 11–15–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–72]

Petition for Exemption; Summary of Petition Received; Embraer Executive Aircraft, Inc.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 9, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–0088 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for

accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Renae Hamlett (202) 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 12, 2019.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0088.

Petitioner: Embraer Executive Aircraft, Inc.

Section(s) of 14 CFR Affected: § 91.9(a) and § 61.55(g).

Description of Relief Sought: Petitioner requests to amend exemption No. 18098 by doing the following: (1) Remove the requirement that Embraer Executive Aircraft, Inc. qualify and designate the pilot-in-command to act ''as a single pilot'' and instead require Embraer Executive Aircraft, Inc. qualify and designate the pilot-in-command to conduct evaluation flights with a customer pilot occupying one of the pilot seats and serving as second-in-command; and require the customer pilot hold a valid commercial or air-transport pilot certificate, with a multi-engine rating, issued by an International Civil Aviation Organization (ICAO), contracting state. (2) Remove the limitation restricting the customer pilot to only the right seat. (3) Remove the requirement that non-FAA certificated customer pilots obtain an FAA certificate under § 61.75.

[FR Doc. 2019–24924 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2120–0559]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: SF–272, Federal Cash Transaction Report; 9550–5, Final Project Report; SF–424 Application for Federal Assistance; SF–3881, ACH Vendor/Miscellaneous Payment Enrollment Form; SF–269, Financial Status Report; SF–270, Request for Advance or Reimbursement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Aviation Administration (FAA) invites public comments about its intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to and/or is necessary for the purpose of grant administration and review in accordance with applicable OMB circulars A–110, and A–21.

DATES: Written comments should be submitted by January 12, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: *www.regulations.gov* (Enter docket number 2120–0559 into search field).

By mail: Trina M. Bellamy, Grants Officer, William J. Hughes Technical Center, Building 300, Acquisition & Grants Division, Atlantic City International Airport, Atlantic City, NJ 08405.

FOR FURTHER INFORMATION CONTACT: Subject Matter Expert (SME) Trina M. Bellamy by email at *Trina.Bellamy@faa.gov;* phone: 609–485–7483.

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: 2120–0559.

Title: Same title as above.

Form Numbers: SF–272, 9550–5, SF–424, SF–3881, SF–269, SF–270.

Type of Review: Renewal.

Background: The FAA Aviation Research Grant Program establishes uniform policies and procedures for the award and administration of research grants and cooperative agreements to colleges, universities, not for profit research institutions for research that is of potential benefit to the long-term growth of civil aviation and Commercial Space Transportation. This program implements OMB Circular A–110, Public Law 101–508, Section 9205 and 9208 and Public Law 101–604, Section 107(d). The information is collected through a solicitation that has been published by the FAA. Prospective grantees respond to the solicitation using a proposal format outlined in the solicitation in adherence to applicable FAA directives, statutes, and OMB circulars.

Respondents: Colleges, Universities, Non-profit research institutions.

Frequency:

Estimated Average Burden per Response: 90 Minutes.

Estimated Total Annual Burden: 90 Minutes per respondent.

Issued in Atlantic City, NJ, on November 13, 2019.

Trina M. Bellamy,

Grants Officer, Acquisition & Grants Division/AAQ–600.

[FR Doc. 2019–24920 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Waiver of Aeronautical Land Use Assurance: Newton City-County Airport (EWK), Newton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent of Waiver with respect to land use change from aeronautical to non-aeronautical.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal from the City of Newton (sponsor), Newton, KS, to release two parcels of land, a Northern Tract (8.31 acres) and a Southern Tract (3.11 acres) from the federal obligation dedicating it to aeronautical use and to authorize this parcel to be used for revenue-producing, non-aeronautical purposes.

DATES: Comments must be received on or before December 18, 2019.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Suzanne Loomis, P.E., City Engineer/Director Public Works, City of Newton, 201 East Sixth, P.O. Box 426, Newton, KS 67114–0426, (316) 284–6020.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106, Telephone number (816) 329–2603, Fax number (816) 329–2611, email address: *amy.walter@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to change two parcels of land, 8.31 acres and 3.11 acres respectively, of airport property at the Newton City-County Airport (EWK) from aeronautical use to non-aeronautical for revenue producing use. The parcels of land are located along the Southwest corner of the airport, at the corner of 5th Street and Oliver Road. These parcels will be leased to Park Aerospace.

No airport landside or airside facilities are presently located on this parcel, nor are airport developments contemplated in the future. There is no current use of the surface of the parcel. The parcel will serve as a revenue producing lot with the proposed change from aeronautical to non-aeronautical. The request submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the change to non-aeronautical status of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

The Newton City-County Airport (EWK) is proposing the use release of two parcels of land, 8.31 acres and 3.11 acres respectively, more or less from aeronautical to non-aeronautical. The use release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The rental of the subject property will result in the land at the Newton City-County Airport (EWK) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market rental value for the property. The annual income from rent payments will generate a long-term, revenue-producing stream that will further the Sponsor's obligation under FAA Grant Assurance number 24, to make the Newton City-County Airport as financially self-sufficient as possible. Following is a legal description of the subject airport property at the Newton City-County Airport (EWK):

Northern Tract

Commencing at the Southwest corner of said SW/4; thence North along the West line of said SW/4 1901.31 feet; thence with a deflection angle 90°01′04″ right-East 75.00 feet (which is to a point that is 50.00 feet south of the centerline of the now existing Hesston College driveway) for the point of beginning; thence continuing East without deflection 544.29 feet; thence with a deflection angle 89°58′56″ right-South parallel with the West line of said SW/4 664.71 feet; thence with a deflection angle 90°01′04″ right-West 544.29 feet to a point that is 75.00 feet East of the West line of said SW/4; thence with a deflection angle 89°58′56″ right-North parallel with the West line of said SW/4 664.71 fee to the point of beginning; containing 8.31 acres, more or less.

Southern Tract

Commencing at the Southwest corner of said SW/4; thence North along the West line of said SW/4 1901.31 feet; thence with a deflection angle 90°01′04″ right-East 75.00 feet (which is to a point that is 50.00 feet south of the centerline of the now existing Hesston College driveway); thence continuing East without deflection 544.29 feet; thence with a deflection angle 89°58′56″ right-South parallel with the West line of said SW/4 664.71 feet for a point of beginning; thence continuing South without deflection and parallel with the West line of said SW/4 249.25 feet; thence with a deflection angle 90°01′04″ right-West 544.29 feet to a point that is 75.00 feet East of the West line of said SW/4; thence with a deflection angle 89°58′56″ right-North parallel with the West line of said SW/4 249.25 feet; thence with a deflection angle 90°01′04″ right-East 544.29 feet to the point of beginning; containing 3.11 acres, more or less.

Any person may inspect, by appointment, the request in person at the FAA office listed above **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Newton City-County Airport.

Issued in Kansas City, MO, on November 8, 2019.

Jim A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2019–24986 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–71]

Petition for Exemption; Summary of Petition Received; Moog, Inc.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 9, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0823 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 8, 2019.

Forest Rawls,

Acting Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0823.

Petitioner: Moog, Inc.

Sections of 14 CFR Affected: §§ 107.3 & 61.3(a)(1)(i).

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner relief so the pilot in command of their MACH 2p2 unmanned aircraft system, that weighs more than 55 pounds, can hold a part 107 remote pilot certificate, rather than an airline transport, commercial, private, recreational, or sport pilot certificate. The proposed operation is for research and development, during daylight hours, within visual line of sight, below 400 feet above ground level, and within Class G airspace.

[FR Doc. 2019–24988 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2019–69]

Petition for Exemption; Summary of Petition Received; Ameristar Air Cargo, Inc.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 9, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0797 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wendy Johnson (202) 267–8624, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 12, 2019.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

PETITION FOR EXEMPTION

Docket No.: FAA–2019–0797.

Petitioner: Ameristar Air Cargo, Inc.

Section(s) of 14 CFR Affected: § 121.407(a)(1)(ii).

Description of Relief Sought: Petitioner requests an exemption to be able to utilize a DC–9–80 series simulator for its FAA approved flight training and checking program to qualify a pilot on a DC–9–10 series aircraft, which is not currently under the existing rule.

[FR Doc. 2019–24925 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2019–0035]

Agency Information Collection Activities: Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 17, 2020.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2020–0035 by any of the following methods:

Website: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Jenkins, 202–366–1067, *daniel.jenkins@dot.gov,* National Travel Behavior Data Program Manager, Federal Highway Administration, Office of Policy,1200 New Jersey Avenue SE, Room E83–414, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Next Generation National Household Travel Survey (Next Gen NHTS).

Type of Request: New request for periodic information collection requirement.

Background: Title 23, United States Code, Section 502 authorizes the USDOT to carry out advanced research and transportation research to measure the performance of the surface transportation systems in the US, including the efficiency, energy use, air quality, congestion, and safety of the highway and intermodal transportation systems. The USDOT is charged with the overall responsibility to obtain current information on national patterns of travel, which establishes a data base to better understand travel behavior, evaluate the use of transportation facilities, and gauge the impact of the USDOT's policies and programs.

The NHTS is the USDOT's authoritative nationally representative data source for daily passenger travel. This inventory of travel behavior reflects travel mode (*e.g.,* private vehicles, public transportation, walk and bike) and trip purpose (*e.g.,* travel to work, school, recreation, personal/family trips) by U.S. household residents. Survey results are used by federal and state agencies to monitor the performance and adequacy of current facilities and infrastructure, and to plan for future needs.

The collection and analysis of national transportation data has been of critical importance for half a century. Previous surveys were conducted in 1969, 1977, 1983, 1990, 1995, 2001, 2009, and 2017. The current survey will be the ninth in this series, and allow researchers, planners, and officials at the state and federal levels to monitor travel trends.

Data from the NHTS are widely used to support research needs within the USDOT, and State and local agencies, in addition to responding to queries from Congress, the research community and the media on important issues. Current and recent topics of interest include:

- Travel to work patterns by transportation mode for infrastructure improvements and congestion reduction,
- Access to public transit, paratransit, and rail services by various demographic groups,
- Measures of travel by mode to establish exposure rates for risk analyses,
- Support for Federal, State, and local planning activities and policy evaluation,
- Active transportation by walk and bike to establish the relationship to public health issues,
- Vehicle usage for energy consumption analysis,
- Traffic behavior of specific demographic groups such as Millennials and the aging population.

Within the USDOT, the Federal Highway Administration (FHWA) holds responsibility for technical and funding coordination. The National Highway Traffic Safety Administration (NHTSA), Federal Transit Administration (FTA), and the Bureau of Transportation Statistics (BTS) are also primary data users, and have historically participated in project planning and financial support.

Proposed Data Acquisition Methodology

NHTS data are collected from a probability-based sample comprised of a representative mixture of households with respect to various geodemographic characteristics. For this purpose, a previously recruited national panel will serve as the sampling frame. Email invitations which will include a link to an online household survey will be sent to selected panel members requesting some basic demographic and contact information inviting them to participate in the survey. The invitation email will mention the purpose of the study, underline the voluntary nature of survey participation, provide some information about incentives, and contain the link that will take respondents directly into the survey. KnowledgePanel members can also access the online survey by logging into their specific KnowledgePanel home page, where they will find a hyperlink to surveys for which they have been selected.

Email reminders will be sent periodically to households who do not respond within the expected timeframe. Monetary incentives will be provided for all households that complete the survey. As the burden is higher for those in households with more people they will receive a larger incentive amount. Households with 3 or fewer eligible members (*i.e.,* 5 years of age or older) will receive $5 when all householders complete the travel survey. Households with 4 or more eligible members will receive $10 for when all householders complete the travel survey.

The household will be considered completed when 75% or more of household members complete a trip diary with 25% or fewer item nonresponse. We will emphasize direct reporting procedures in the instructions, but allow for proxy reporting as a second-best option.

The survey will collect data during an entire 12 month period so that all 365 days of the year including weekends and holidays are accounted for. To maximize the accuracy of the recall information and to provide coverage for every day of the year, all retrieval surveys will collect information about the travel during previous 24 hours. A total of 7,500 households will comprise the national sample for the 2020 data collection. As described below, changes in the establishment of the sampling frame, the promotion of participation, and in data retrieval techniques are planned, as compared to previous surveys, to improve statistical precision, enhance response rates, and increase survey efficiency.

Issues Related to Sampling. In previous years, the household sample was identified using random digit dialing (RDD) techniques. Today, only 54 percent [1] have a landline telephone in the home (down from 75% during the 2009 NHTS) while nearly 88 percent of US households have access to the internet [2]—although estimate of internet access are subject to various measurement challenges due to the many different ways household members can gain access to the web. This survey will leverage this shift in technology, in particular the move away

[1] Blumberg, S.J., and Luke, J.V. (2018). *Wireless substitution: Early release of estimates from the National Health Interview Survey, July—December 2017.* National Center for Health Statistics. Available from *http://www.cdc.gov/nchs/nhis.htm.*

[2] Source: Internet World Stats, 2017. *https://www.internetworldstats.com/stats14.htm#north.*

from home telephone usage, to structure a research design that uses web data collection methods.

In 2020, the NHTS is moving to an online probability-based sample approach. The sample will be drawn from a panel which is representative of the national population. This approach allows for a better response rate, making the NHTS data representative of the nation's travel behavior, while lowering the burden on responding households. This is a change from the national address-based sample (ABS), and the telephone-based random digit dialing (RDD) sample design used in recent NHTS efforts, while also incorporating core data elements that have been part of the NHTS since 1969.

The panel is constructed by drawing from the USPS Delivery Sequence File (DSF), which include all points of delivery in the US. The needed address samples are obtained from Marketing Systems Group (MSG) that provides the ability to match various auxiliary variables to the DSF prior to sample selection. By geocoding the entire sampling frame, MSG can append block-, block group-, and tract-level characteristics from the Decennial Census and the American Community Survey (ACS) to each delivery point.

Sample Size. In total, completed surveys will be secured for a nationally representative sample of 7,500 households for the national sample. Accounting for the various nonresponse and incompleteness rates, however, we anticipate needing a starting sample of about 29,000 households to secure the desired number of completed surveys.

Stratification. The sample for this survey will be designed to ensure broad coverage of the 50 states to produce the most efficient estimates at the national level, as well as those needed for urban and rural areas. Assuming equal costs and population variances across all areas, the most efficient design is one in which the total sample is allocated in proportion to the size of the civilian, noninstitutionalized population in each area. In contrast, the most efficient design for area-level estimates is one in which equal sample sizes are allocated to each area. While different sample allocation options for the national sample are being considered in order to arrive at a final allocation for the NHTS national sample, unless required, otherwise throughout this document it will be assumed that the national sample of 7,500 households will be selected based on a proportional allocation without any geographic oversampling.

Given the availability of a rich reservoir of profile data for all panel members, with the panel approach identifying targeted areas (*e.g.,* urban/rural) that correspond to those for which efficient estimates are needed will be rather straightforward. Moreover, with this approach ambiguities related to addresses that are P.O. boxes or those remaining as simplified (void of delivery details) will be rendered moot.

It should be noted that regardless of the sample allocation plan that will be finalized for the 2020 survey, assignments for recording travel data by sampled households will be equally distributed across all days to ensure an approximately balanced day of week distribution. To this end, the sample will be released periodically through a process that will control the balance of travel days by month.

Data Collection Methods

The questionnaire for this survey will be designed to be relevant, aesthetically pleasing, and elicit participation by including topics of importance to the respondents.

Information Proposed for Collection

Recruitment and retrieval. The survey will begin with emailing the sampled households an invitation to the study. The primary household respondent will complete a short household roster to collect key household information (*e.g.,* enumeration of household members. Once the household roster is complete, the respondent will proceed to a travel diary pre-populated for each eligible member of the household.

Household travel diary. All travel information about a specific day from every household member 5 years of age and older will be collected using the online travel diary.

Once the household roster is completed, the primary household respondent will complete his or her diary and will serve as a proxy responder for all children 5–15 years old in the household. Household members 16 and older will be invited to complete their own online diaries. If they fail to do so in a reasonable amount of time after multiple reminders, the primary household member may be re-contacted to serve as a proxy for non-responding teens and adults in the household.

The household travel diary will be based upon a single database that allows for sophisticated branching and skip patterns to enhance data retrieval by asking only those questions that are necessary and appropriate for the individual participant. Look-up tables are included to assist with information such as vehicle makes and models. The Google map API will be used to assist in identifying specific place names and locations. The location data for the participant's home, workplace, or school are stored and automatically inserted in the dataset for trips after the first report. Household rostering is a list of all persons in the household that allows a trip to be reported from one household member and can include another household member who travel together to be inserted into the record for the second person. This automatic insert of information reduces the burden of the second respondent to be queried about a trip already reported by the initial respondent.

Data range, consistency and edit checks will be automatically programmed to reduce reporting error, survey length, and maintain the flow of information processing. Data cross checks also help reduce the burden by ensuring that the reporting is consistent within each trip.

Estimated Burden Hours for Information Collection

Frequency: This collection will be conducted every 2–4 years in the future.

Respondents. As mentioned earlier, a nationally representative random sample of 7,500 households across the 50 states and the District of Columbia will be included in this survey. Given that household will include an average of 2.5 members 5-years of age or older, travel data for a total of 18,750 individual respondents will be collected for the main survey.

Estimated Average Burden per Response. It will take approximately 5 minutes to complete the roster data form, and 15 minutes to complete the retrieval survey. This results in a total of 20 minutes for the first household member and 15 minutes per additional household member.

Estimated Total Annual Burden Hours. It is estimated that a total of 18,750 persons will be included in the survey. This would result in approximately 5,312.5 hours of support for this data collection effort, assuming an average of 17 minutes per person across the roster survey and retrieval survey.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the USDOT's performance, including whether the information will have practical utility; (2) the data acquisition methods; (3) the accuracy of the USDOT's estimate of the burden of the proposed information collection; (4) the types of data being acquired; (5) ways to

enhance the quality, usefulness, and clarity of the collected information; and (6) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 13, 2019.

Michael Howell,

Information Collection Officer, Federal Highway Administration.

[FR Doc. 2019–24891 Filed 11–15–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2019–0001]

Proposed Information Collections; Comment Request (No. 76)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before January 17, 2020.

ADDRESSES: As described below, you may send comments on the information collections described in this document using the ''*Regulations.gov*'' online comment form for this document, or you may send written comments via U.S. mail or hand delivery. We no longer accept public comments via email or fax.

- *Internet:* To submit comments online, use the comment form for this document posted within Docket No. TTB–2019–0001 on the ''Regulations.gov'' e-rulemaking website at *https://www.regulations.gov;*
- *U.S. Mail:* Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* Delivery comments to the Paper Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB control number (if any) in your comment.

You may view copies of this document, the information collections described in it and any associated instructions, and all comments received in response to this document within Docket No. TTB–2019–0001 at *https://www.regulations.gov.* A link to that docket is posted on the TTB website at *https://www.ttb.gov/forms/comment-on-form.shtml.* You may also obtain paper copies of this document, the information collections described in it and any associated instructions, and any comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or *informationcollections@ttb.gov* (please do not submit comments to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513–0016

Title: Drawback on Wines Exported.

TTB Form Number: TTB F 5120.24.

Abstract: The Internal Revenue Code of 1986, as amended, (IRC) at 26 U.S.C. 5062(b), provides, in general, that exporters of taxpaid domestic wine may claim ''drawback'' (refund) of the Federal excise tax paid or determined on the exported wine. Under the TTB regulations, exporters use form TTB F 5120.24 to document the wine's exportation and to submit drawback claims for the exported wine. TTB uses the provided information to determine if the exported wine is eligible for drawback and to verify the amount of drawback claimed by the exporter. This information is necessary to protect the revenue.

Current Actions: There are no changes to this information collection or its estimated burden, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 40.
- *Average Responses per Respondent:* 4.
- *Number of Responses:* 160.
- *Average per-response Burden:* 67 minutes.
- *Total Burden:* 179 hours.

OMB Control No. 1513–0031

Title: Specific and Continuing Transportation Bonds—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse, Class Six.

TTB Form Number: TTB F 5100.12 and F 5110.67.

Abstract: The IRC at 26 U.S.C. 5214(a)(6) and 5362(c)(4) authorizes the transfer without payment of tax of, respectively, distilled spirits and wine from a bonded premises to certain customs bonded warehouses. Under 19 U.S.C. 1311, bonds are required for such transfers to protect the revenue. In order to provide proprietors of manufacturing bonded warehouses with operational flexibility based on individual need, TTB allows the filing of either a specific bond to cover a single shipment, using form TTB F 5100.12, or a continuing bond to cover multiple shipments, using form TTB F 5110.67.

Current Actions: There are no changes to this information collection or its estimated burden, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 50.
- *Average Responses per Respondent:* One.
- *Number of Responses:* 50.
- *Average per-response Burden:* 1 hour.
- *Total Burden:* 50 hours.

OMB Control No. 1513–0056

Title: Distilled Spirits Plants—Transaction and Supporting Records.

TTB Recordkeeping Number: TTB REC 5110/05.

Abstract: In general, the IRC at 26 U.S.C. 5001 imposes Federal alcohol excise tax on distilled spirits produced or imported into the United States. The IRC at 26 U.S.C. 5207 provides that the proprietor of a distilled spirits plant (DSP) must maintain records related to their production, storage, denaturing, and processing activities, and must render reports covering those activities. In addition, other IRC sections, including 26 U.S.C. 5008, 5062, 5201, 5204, 5211–5215, 5223, 5362, 5370, 5373, 5555, and 5559, place various requirements on DSPs that authorize or require recordkeeping. Under those IRC authorities, the TTB regulations in 27 CFR part 19, require DSP proprietors to keep records regarding their production, storage, denaturing, and processing activities, which DSP proprietors use to generate monthly operations reports (approved under other OMB control numbers) regarding those activities. In addition, under the regulations in 27 CFR parts 19, 26, 27, and 28, DSP proprietors also must keep certain other records, including records related to shipment and transfer of alcohol, plant security, wine tax credit, and alternation of premises. The collected information is necessary to protect the revenue.

Current Actions: There are no program changes associated with this information collection. However, due to a change in agency estimates resulting from continued growth in the number of distilled spirits plants in the United States, TTB is increasing the number of annual respondents, responses, and burden hours reported for this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 3,340.
- *Average Responses per Respondent:* Once per year.
- *Number of Responses:* 3,340.
- *Average per-response Burden:* 21.8 hours.
- *Total Burden:* 72,812.

OMB Control No. 1513–0061

Title: Letterhead Applications and Notices Relating to Denatured Spirits.

TTB Recordkeeping Number: TTB REC 5150/2.

Abstract: Under the IRC at 26 U.S.C. 5214, denatured spirits (alcohol to which denaturants have been added to render it unfit for beverage purposes) may be withdrawn from distilled spirits plants free of tax for nonbeverage industrial purposes in the manufacture of certain personal and household products. Since it is possible to recover potable alcohol from denatured spirits and articles made with denatured spirits, the IRC at 26 U.S.C. 5271–5275 sets forth provisions relating to denatured spirits and articles made with denatured spirits. Under those IRC authorities, the TTB regulations in 27 CFR part 20 require specially denatured spirits (SDS) dealers and manufacturers of nonbeverage products made with denatured alcohol to apply for and obtain a permit. In addition, the part 20 regulations that concern this information collection require such permit holders to submit letterhead applications and notices to TTB regarding certain changes to permit information, use of alternate methods and emergency variations from requirements, adoption or use of certain formulas, discontinuance of business, losses in transit, and requests to waive certain sample shipment and invoice requirements. The information collected implements the IRC's statutory provisions regarding denatured spirits.

Current Actions: While there are no changes to the information collected, TTB is submitting this collection as a revision as a matter of agency discretion. TTB notes that this collection consists of letterhead applications and notices submitted to TTB and, as such, this collection should be characterized as a reporting requirement, rather than as a recordkeeping requirement as previously reported. In addition, due to changes in agency estimates resulting from growth in the number of SDS dealers and in the number of nonbeverage product manufacturers, TTB is increasing the number of respondents, responses, and burden hours associated with this collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; and State, local, and tribal governments.

Estimated Annual Burden

- *Number of Respondents:* 5,000.
- *Average Responses per Respondent:* One.
- *Number of Responses:* 5,000.
- *Average per-response Burden:* 30 minutes.
- *Total Burden:* 2,500 hours.

OMB Control No. 1513–0086

Title: Marks on Equipment and Structures (TTB REC 5130/3), and Marks and Labels on Containers of Beer (TTB REC 5130/4).

Abstract: Under the authority of chapter 51 of the IRC (26 U.S.C. chapter 51), the TTB regulations require marks, signs, and suitable measuring devices at breweries to identify the use and capacity of brewery equipment and structures and the contents of tanks, as well as to identify taxpaid and nontaxpaid beer. To identify products for purposes of administering the IRC's excise tax provisions, the TTB regulations also require marks, labels, and brands on kegs, cases, cans, and bottles of beer. These marks, labels, and brands identify the name or trade name of the brewer, the place of production of the beer, the contents of the container, and the nature of the product (beer, ale, etc.). The placement of the required disclosures and information on brewery structures, equipment, and products is a usual and customary business practice.

Current Actions: There are no program changes associated with this information collection. However, due to a change in agency estimates resulting from continued growth in the number of breweries in the United States, TTB is increasing the number of annual respondents and responses reported for

this collection. However, as an information collection involving usual and customary business practices, the estimated total burden associated with this collection requirement, zero hours, remains unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 10,000.
- *Average Responses per Respondent:* One.
- *Number of Responses:* 10,000.
- *Average per-response and Total Burden:* None. (Per the OMB regulation at 5 CFR 1320.3(b)(2), there is no burden associated with usual and customary business practices such as the marking and labeling of structures, equipment, and product containers.

OMB Control No. 1513–0111

Title: COLAs Online Access Request.

TTB Form Number: TTB F 5013.2.

Abstract: Respondents use this form to apply for access to TTB's COLAs Online system, which allows alcohol beverage industry members to electronically apply for a Certificate of Label Approval (COLA) or for an exemption from label approval. TTB uses the provided information to identify the company on whose behalf the applicant claims to act, to verify the scope of the applicant's authority to act, and to evaluate the applicant's qualifications for access to the COLAs Online system before TTB issues that person a password allowing access to this TTB web-based information system. Controlling access to TTB computer systems is necessary to protect the COLAs Online system from unauthorized users and other threats.

Current Actions: There are no changes to this information collection or its estimated burden, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Annual Burden

- *Number of Respondents:* 3,000.
- *Average Responses per Respondent:* One.
- *Number of Responses:* 3,000.
- *Average per-response Burden:* 18 minutes.
- *Total Burden:* 900 hours.

OMB Control No. 1513–0124

Title: Customer Satisfaction Surveys for Permit Applications, Permits Online (PONL), Formulas Online (FONL), and COLAs Online.

Abstract: As part of TTB's efforts to improve customer service, we survey customers who submit applications for original or amended permits, or for approval of formulas or certificates of label approval (COLAs). These surveys assist TTB in identifying potential customer needs and problems, along with opportunities for improvement in our applications processes, with particular focus on customer experiences with TTB's various electronic application systems, Permits Online (PONL), Formulas Online (FONL), and COLAs Online.

Current Actions: There are no changes to this voluntary information collection or its estimated burden, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 30,000.
- *Average Responses per Respondent:* One.
- *Number of Responses:* 30,000.
- *Average per-response Burden:* 12 minutes.
- *Total Burden:* 6,000 hours.

Dated: November 14, 2019.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2019–25037 Filed 11–15–19; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Periodic Meeting of the U.S. Department of the Treasury Tribal Advisory Committee

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury Tribal Advisory Committee (TTAC) will convene for a public meeting on Tuesday, December 3, from 9:00 a.m.–1:00 p.m. Eastern Time in the Media Room A/B, 4121, 4th Floor, of the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220. The meeting is open to the public, and the site is accessible to individuals with differing abilities.

DATES: The meeting will be held on Tuesday, December 3, 2019, from 9:00 a.m.–1:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the Media Room A/B 4121 at the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting *must register online or by telephone by 5:00 p.m. Eastern Time on November 27, 2019.* Attendees with a valid email address may visit register here to complete a secure online registration form. All other attendees may contact Marie Vazquez Lopez at *marie.vazquezlopez@treasury.gov.* If you require a reasonable accommodation, please contact Lisa Jones at *lisa.jones@treasury.gov* or 202–622–0315. To request a sign language interpreter, please make your request five days prior to the event, if possible by contacting Lillian Wright at *lillian.wright@treasury.gov.* For all other inquiries concerning the TTAC meeting, please contact *TTAC@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Montoya, Policy Analyst, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 1426G, Washington, DC 20220, at (202) 622–2031 (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:

Background

Section 3 of the Tribal General Welfare Exclusion Act of 2014, Public Law 113–68, 128 Stat. 1883, enacted on September 26, 2014 (TGWEA), directs the Secretary of the Treasury (Secretary) to establish a seven member Tribal Advisory Committee to advise the Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers.

Pursuant to Section 3 of the TGWEA and in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1 *et seq.,* the TTAC was established on February 10, 2015, as the ''U.S. Department of the Treasury Tribal Advisory Committee.'' The TTAC's Charter provides that it shall operate under the provisions of the FACA and shall advise and report to the Secretary on:

(1) Matters related to the taxation of Indians;

(2) The establishment of training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian tribes of Federal Indian law and the Federal Government's unique legal

treaty and trust relationship with Indian tribal governments; and

(3) The establishment of training of such internal revenue field agents, and provisions of training and technical assistance to tribal financial officers, about implementation of the TGWEA and any amendments.

Third Periodic Meeting

In accordance with section 10(a)(2) of the FACA and implementing regulations at 41 CFR 102–3.150, Krishna P. Vallabhaneni, the Designated Federal Officer of the TTAC, has ordered publication of this notice to inform the public that the TTAC will convene its third periodic meeting on Tuesday, December 3, 2019, from 9:00 a.m.–1:00 p.m. Eastern Time in Media Room A/B 4121 of the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Summary of Agenda and Topics To Be Discussed

During this meeting, the seven members will review 2019 TTAC activities and progress, provide updates on subcommittee activities and the development of the TTAC's priority matrix, discuss plans for TTAC's 2020 work, and take other actions necessary to fulfill the TTAC's mandate.

Public Comment

Members of the public wishing to comment on the business of the TTAC are invited to submit written statements 15 calendar days in advance of the Public Meeting by any of the following methods:

Electronic Statements

• Send electronic comments to *TTAC@treasury.gov.*

Paper Statements

• Send paper statements in triplicate to the Treasury Tribal Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 1426G, Washington, DC 20220.

The Department of the Treasury will post all statements on its website *https://www.treasury.gov/resource-center/economic-policy/tribal-policy/Pages/Tribal-Policy.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. 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.

Krishna P. Vallabhaneni,

Tax Legislative Counsel.

[FR Doc. 2019–24989 Filed 11–15–19; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 430, 433, et al.

Medicaid Program; Medicaid Fiscal Accountability Regulation; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 430, 433, 447, 455, and 457

[CMS–2393–P]

RIN 0938–AT50

Medicaid Program; Medicaid Fiscal Accountability Regulation

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would promote transparency by establishing new reporting requirements for states to provide CMS with certain information on supplemental payments to Medicaid providers, including supplemental payments approved under either Medicaid state plan or demonstration authority, and applicable upper payment limits. Additionally, the proposed rule would establish requirements to ensure that state plan amendments proposing new supplemental payments are consistent with the proper and efficient operation of the state plan and with efficiency, economy, and quality of care. This proposed rule addresses the financing of supplemental and base Medicaid payments through the non-federal share, including states' uses of health care-related taxes and bona fide provider-related donations, as well as the requirements on the non-federal share of any Medicaid payment.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 17, 2020.

ADDRESSES: In commenting, please refer to file code CMS–2393–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2393–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2393–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Andrew Badaracco, (410) 786–4589, Richard Kimball, (410) 786–2278, and Daniil Yablochnikov, (410) 786–8912, for Medicaid Provider Payments, Supplemental Payments, Upper Payment Limits, Provider Categories, Intergovernmental Transfers, and Certified Public Expenditures.

Timothy Davidson, (410) 786–1167, Jonathan Endelman, (410) 786–4738, and Stuart Goldstein, (410) 786–0694, for Health Care-Related Taxes, Provider-Related Donations, and Disallowances.

Lia Adams, (410) 786–8258, Charlie Arnold, (404) 562–7425, Richard Cuno, (410) 786–1111, and Charles Hines, (410) 786–0252, for Medicaid Disproportionate Share Hospital Payments and Overpayments.

Jennifer Clark, (410) 786–2013, and Deborah McClure, (410) 786–3128, for Children's Health Insurance Program (CHIP).

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

A. Overview

Title XIX of the Social Security Act (the Act) established the Medicaid program as a federal-state partnership for the purpose of providing and financing medical assistance to specified groups of eligible individuals. States have considerable flexibility in designing their programs, but must abide by requirements specified in the federal Medicaid statute and regulations. Each state is responsible for administering its Medicaid program in accordance with an approved state plan, which specifies the scope of covered services, groups of eligible individuals, payment methodologies, and all other information necessary to assure the state plan describes a comprehensive and sound structure for operating the Medicaid program, and ultimately, provides a clear basis for claiming federal matching funds.

As discussed in more detail below, the goal of this proposed rule is to strengthen overall fiscal integrity of the Medicaid program. The proposed rule focuses on four topic areas that are frequently discussed as program vulnerabilities by federal oversight authorities, including the Government Accountability Office (GAO), the Department of Health and Human Services' Office of Inspector General (OIG), and the Medicaid and CHIP Payment and Access Commission (MACPAC). These topics include: Medicaid fee-for-service (FFS) provider payments; disproportionate share hospital (DSH) payments; Medicaid program financing; supplemental payments; and health care-related taxes and provider-related donations. Due to the complex nature of these topic areas, we have organized this proposed rule to separately discuss each topic and describe the programmatic concerns that we seek to address through this proposed rule. However, the proposed provisions would rely on similar strategies to improve our and states' abilities to oversee fiscal integrity by requiring transparency through better data reporting, clarifying regulatory payment and financing definitions, refining administrative procedures used by states to comply with federal regulations, clarifying regulatory language that could be subject to misinterpretation, and removing regulatory requirements that have been difficult to administer and do not further our oversight objectives. As a result, the provisions of the proposed rule aim to address multiple topic areas as part of the overall strategy to improve fiscal integrity.

While some of the proposed policies are new, there are policies within the proposed rule that CMS has operationalized through our work with states and interpretations of the statute in subregulatory guidance and federal regulations. We have implemented this subset of policies using existing legal authority. Some of the proposed policies in the proposed rule, such as the non-bona fide provider related donations provisions, have been reviewed and upheld by the Departmental Appeals Board (DAB) and the courts. Therefore, we are clarifying the regulatory language

in this proposed rule that may have been subject to misinterpretation by states and other stakeholders, or that otherwise could benefit from additional specificity. In these cases, as discussed below, we are not proposing new statutory interpretations, but are merely proposing to codify existing policies into the Code of Federal Regulations (CFR) to improve guidance to states and other stakeholders and, to the extent possible, help prevent states from implementing policies that do not comport with applicable statutory requirements.

B. General Information on Certain Medicaid Financial Topics Addressed in This Proposed Rule

1. Medicaid FFS Provider Payments

a. General Background

States are responsible for developing FFS rates to pay providers for furnishing health care services to beneficiaries who receive covered services through the FFS delivery system. In recognition of the states' front line responsibility, the statute affords states considerable flexibility by not prescribing any particular rate setting approach or method (for most Medicaid services), but instead allows states to develop their own approaches unique to their local circumstances so long as they are consistent with applicable statutory requirements and provide the public and interested parties an opportunity to comment and offer input. In particular, section 4711 of the Balanced Budget Act of 1997 (BBA 97) (Pub. L. 105–33, enacted August 5, 1997) amended section 1902(a)(13)(A) of the Act to give states greater flexibility to develop their own payment methods and standards by replacing prescriptive rate setting requirements with the present standard that rates for inpatient hospital, nursing facility, and intermediate care facility for individuals with intellectual disabilities (ICF/IID) services be established in accordance with a public process. The public process emphasizes transparency in how states approach rate setting by providing stakeholders with a reasonable opportunity to review and comment on the proposed FFS rates, rate setting methodologies, and justifications before states publish final rates, underlying methodologies, and justifications. However, it does not impose any constraints on states with respect to the payment methodologies they may wish to adopt to purchase Medicaid services.

Similarly, states are free to develop their own approach to establishing payment rates for other Medicaid services and, under longstanding regulations at § 447.205, generally must publish public notice in advance to implement new, or change existing, methods and standards for setting payment rates for services. For example, states may decide to use a prospective payment or a retrospective payment system and may elect to reimburse on a per unit, per day, or per discharge basis. Whatever payment methodology or system a state elects to implement, the state must describe the methodology or system comprehensively in its Medicaid state plan and submit the proposed methodology to CMS for review and approval in a manner consistent with 42 CFR part 430, subpart B.

State payment methodologies typically provide for a standard payment to all Medicaid providers on a per claim basis for services rendered to a Medicaid beneficiary in a FFS environment. We refer to these payments as ''base payments.'' Base payments also include any payment adjustments, add-ons, or other additional payments received by the provider that can be attributed to services identifiable as having been provided to an individual beneficiary, including those that are made to account for a higher level of care or complexity or intensity of services provided to an individual beneficiary.

Having established a base payment system, states may wish to offer extra compensation to certain providers by establishing supplemental payments within the state's overall approach to reimbursing Medicaid providers. ''Supplemental payments'' are payments made to providers that are in addition to the base payment the provider receives for services furnished. They can be directed to all providers or directed to a designated set of providers, with the amount of the payment depending upon applicable upper payment limit (UPL) demonstration requirements in §§ 447.272 and 447.321 for inpatient and outpatient settings, respectively. Unlike base FFS payments, which are directly attributable to a covered service furnished to an individual beneficiary, supplemental payments are often made to the provider in a lump sum on a monthly, quarterly, or annual basis apart from payments for a provider claim, and therefore, cannot be directly linked to a provider claim for specific services provided to an individual Medicaid beneficiary. Effectively, the supplemental payments serve to increase total Medicaid payments to a provider for all Medicaid services furnished over a set period of time as shown in the state's UPL demonstration. The UPL demonstration is the means by which the state documents that the Medicaid payments for the applicable services are below the aggregate UPL amount. In general, supplemental payments are recognized as service payments as they supplement base payments previously made to purchase Medicaid services from providers. Typically, they are made under FFS state plan authority but, more recently, states have made similar types of payments through demonstration and managed care authorities.

As discussed previously, for most services, the Medicaid statute does not prescribe a particular payment approach; however, the statute does contemplate that states will be prudent purchasers of health care services. More specific to rate setting, section 1902(a)(30)(A) of the Act requires states to have methods and procedures to assure Medicaid payments for services, including any base and supplemental payments, are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. Under section 1902(a)(30)(A) authority, implementing federal regulations establish UPLs for certain services and rely on these limits to help assure that state Medicaid payments are consistent with ''efficiency and economy.'' Federal financial participation (FFP) is not available for state Medicaid expenditures that exceed an applicable UPL.

Medicaid UPLs are codified in regulations at §§ 447.272 and 447.321 and apply to payments for Medicaid inpatient hospital, nursing facility and ICF/IID services, as well as for outpatient hospital and clinic services. For each of these Medicaid benefits, the UPLs are first constructed by categorizing providers into groups (''ownership groups'') according to the ownership or operational interests: State government-owned or operated, non-state government-owned or operated, and privately-owned and operated. States are restricted, in the aggregate for each ownership group, from paying more than a reasonable estimate of the amount Medicare would pay for the services furnished by the providers in the applicable ownership group. The aggregate application of these UPLs has preserved state flexibility for setting facility-specific payments while creating an overall payment ceiling as a mechanism for determining economy and efficiency of payment for the

services described above, consistent with section 1902(a)(30)(A) of the Act.

Where Medicaid base payments are below the aggregate UPL calculation, states have the ability to make supplemental payments to providers, by ownership group, up to the calculated limit. With the aggregate UPL calculations, states have the ability to pay some providers in excess of a reasonable amount that Medicare would pay those individual providers for their services furnished, so long as the aggregate Medicaid payments are less than or equal to the aggregate UPL amount for the ownership category. Should states wish to make payments up to the UPL and have the non-federal share available to do so, after giving public notice, they may modify their state plan payment methodologies to provide for supplemental payments. We note that, without a regulatory standard to govern UPLs for practitioner services, CMS has allowed states to make Medicaid supplemental payments for practitioner services up to Medicare payment amounts or, based on data documentation, up to the average commercial rate (ACR) made to providers. As discussed later in this proposed rule, ACRs are payments developed using the average of some commercial payers' payment rates for medical services to establish a supplemental Medicaid rate for certain practitioners, typically physicians, under the state plan. Unlike other supplemental payments subject to UPLs, some of these practitioner supplemental payments have resulted in payments to providers in excess of a reasonable estimate of what Medicare would have paid for the services furnished, as the relevant ACRs generally are higher than Medicare rates. This result is possible because there currently is no UPL applicable to payments for practitioner services based on a reasonable estimate of what Medicare would pay.

Under our current UPL regulations and CMS policy, approval of a supplemental payment is not an indication that a state's proposal to use supplemental payments within its payment system is the best approach to setting Medicaid payments. Instead, our approvals have been based on the state's documentation of UPL calculations, where applicable, showing that the total Medicaid payments (base and supplemental) paid to providers under the state plan are within the federal limits. Beyond that test and a review of state plan amendments (SPAs) which propose to add or amend supplemental payment methodologies or aggregate supplemental payments, we have not closely examined how states distribute Medicaid payments to individual providers as a matter of routine oversight.

Through the policies proposed in this proposed rule, we are seeking to better understand the relationship between and among the following: Supplemental provider payments, costs incurred by providers, current UPL requirements, state financing of the non-federal share of supplemental payments, and the impact of supplemental payments on the Medicaid program (such as improvements in the quality of, or access to, care). It often appears to us that most of these payment methodologies do not result in an equitable distribution of payments to improve adequacy of rates across providers within the service class or ownership group, or otherwise improve the Medicaid program in some measurable, value-added way. Instead, many supplemental payment strategies appear to target only those providers that can participate in financing the non-federal share funding required to support a state's claim for FFP. In certain circumstances, this practice may be inconsistent with section 1902(a)(2) of the Act, which requires states to assure that a lack of funds from local sources will not result in lowering the amount, duration, scope, or quality of services or level of administration under the plan, since the payments are only available to providers with the means to provide the non-federal share.

For instance, states might use the entire UPL gap (the difference between the amounts paid in base payments and the aggregate UPL) for each service type and provider ownership group to make a supplemental payment to only a small subset of providers in the group. In an example of this type of supplemental payment structure, one state implemented an inpatient hospital supplemental payment methodology to make payments up to the UPL for non-state government operated hospitals. The supplemental payment was funded by intergovernmental transfers (IGTs) from a local (city) government. Although the total amount of the supplemental payment was based on the available UPL room for 26 non-state government operated hospitals, under the terms of the methodology, only three hospitals qualified to receive the supplemental payment. This resulted in total payments to those three hospitals that far exceeded their reported total cost incurred for all Medicaid services, which is inconsistent with section 1902(a)(30)(A) of the Act.

Supplemental payments now comprise a large and growing percentage of total Medicaid payments. They are commonly paid both to institutional providers (for example, inpatient hospitals, nursing facilities, and ICF/IIDs) and for outpatient services (for example, outpatient hospitals, clinics, and physician services). Currently, 48 states reported using at least one type of supplemental payment methodology under the Medicaid state plan. As a percentage of total Medicaid payments for institutional providers, data from the Medicaid Budget and Expenditure System (MBES) indicate that supplemental payments have steadily increased from 9.4 percent in FY 2010, the first year in which states separately reported these payments, to 17.5 percent of all FFS payments to hospitals, nursing facilities, ICF/IIDs, and physician service payments in FY 2017. Supplemental payments to providers under demonstration authority, which can allow additional flexibility to cover beneficiaries and services not usually permitted under state plan authority, have also grown. In December 2018, MACPAC released the ''Medicaid Inpatient Hospital Services Fee-for Service Payment Policy'' issue brief where it noted that expenditures for hospital UPL supplemental payments increased from 2 to 3 percent of total expenditures for Medicaid benefits between 2001 and 2016.[1] In the MACPAC analysis, the totality of supplemental payments, DSH payments, and uncompensated care payments made under demonstration authority, as a share of the total computable Medicaid payments to hospitals in FY 2016, was 27 percent. In all, the MACPAC analysis concluded that the total expenditures in 2016 for DSH payments were $16.5 billion, for UPL supplemental payments were $16.4 billion, and for uncompensated care payments were $8.5 billion.

b. Current CMS Review of Provider Payments and Oversight Concerns

The Medicaid statute and regulations require states to report program-related information to CMS regarding their payment methodologies and incurred expenditures that are claimed for federal matching funds. Section 1902(a)(6) of the Act requires the Medicaid agency to make reports as the Secretary of Health and Human Services (the Secretary) may require and to comply with provisions the Secretary finds necessary to assure the correctness and verification of such reports. Implementing regulations at 42 CFR 431.107(b) require states to ensure that providers maintain auditable

[1] *https://www.macpac.gov/wp-content/uploads/2016/03/Medicaid-Inpatient-Hospital-Services-Fee-for-Service-Payment-Policy.pdf.*

documentation of the services furnished to beneficiaries for which the state makes program expenditures and claims FFP, to allow the federal government to ensure that all applicable federal requirements are met. Additionally, 42 CFR 430.30(c) requires states to submit the Form CMS–64, which is a quarterly accounting statement of the state's actual recorded expenditures that serves as the primary basis for Medicaid payments to states under section 1903(a)(1) of the Act.

The primary means to collect information on Medicaid program eligibility, services, and expenditures has historically been through CMS' Medicaid Statistical Information System (MSIS), which is populated by FFS claims and managed care encounter data from states' Medicaid Management Information Systems (MMIS), which are an integrated group of procedures and computer processing operations (sub-systems) developed at the general design level to meet principal objectives, and CMS' MBES, which is the system through which states file quarterly Medicaid expenditures on the Form CMS–64. These systems have been essential to both the states and the federal government in operating Medicaid and provide valuable program information. However, neither the modern Transformed Medicaid Statistical Information System (T–MSIS), which has replaced MSIS, discussed further below, nor MBES, separately or together, provides the level of detail on the payment and financing of supplemental payments necessary to effectively monitor and evaluate the use and impact of those payments.

MSIS is an eligibility and claims data set that provides a summary of services and payments linked to specific beneficiaries on the basis of claims submitted to the states by providers. However, the MSIS data include very little information about the providers furnishing services. In addition, MSIS is unable to capture the providers' supplemental payments since those payments are not directly tied to specific beneficiaries, but rather, typically, are made based on the volume of Medicaid services rendered and generally are paid to providers as lump sums, separately from payments for service claims. Another often cited problem with MSIS data is that, in spite of regulations requiring timely reporting, there is generally a considerable time lag between when the services are paid for by the state and when data on those payments is furnished to CMS through MSIS.

To improve the completeness and timeliness of such data for the purposes of program monitoring and oversight, we currently are working with states to collect more robust data through an expansion and update of MSIS, which is referred to as the T–MSIS. T–MSIS data improves our ability to study utilization patterns and trends, identify high cost and high needs populations, analyze expenditures by category of service and provider type, monitor enrollment and expenditures within delivery systems, assess the impact of different types of delivery system models on beneficiary outcomes, and examine access to care issues. However, although we are currently working to improve T–MSIS' reporting capability for supplemental payments, T–MSIS will not capture supplemental payments at the level of detail proposed under this proposed rule. It should be noted that T–MSIS is capable of capturing the non-federal share of base rate payments. Currently, there are significant gaps in state reporting related to this particular data element, which we also are working with states to correct.

MBES data include all state expenditures filed on the Form CMS–64. The Form CMS–64 is a summary of a state's actual Medicaid expenditures, for both state program administration and medical assistance (that is, payments for services furnished to beneficiaries), derived from source documents including invoices, payment vouchers, governmental funds transfers, expenditure certifications, cost reports and settlements, and eligibility records. This form shows the disposition of Medicaid grant funds for the quarter being reported and any prior period adjustments. It also accounts for any overpayments, underpayments, refunds received by the state Medicaid agency, and income earned on grant funds. With limited exceptions, MBES does not contain beneficiary, provider, or claim-level information for the reported expenditures, including supplemental payments. We can only obtain such information by requesting separate supporting documentation from the state. Attempting to improve oversight and transparency of supplemental payments, we added expenditure reporting lines in MBES in 2010 for states to separately report the amounts of supplemental payments made for various types of services. This information is reported at the aggregate service level and does not include details on which providers receive those payments, the specific amount received by each, or the source of the non-federal share that supports those expenditures. While this reporting requirement slightly improved transparency, there were large variations in the total payment amounts reported through MBES and the total payment amounts through UPL demonstrations and we are concerned that state reporting has not always been complete and accurate and should be improved.

We also gather information on the nature and extent of proposed supplemental payments during our review of SPAs. As part of the documentation submitted with payment-related SPAs, states must describe which providers would be eligible for the payments and how the payments would be calculated and distributed, provide an estimate of the fiscal impact, and disclose the source of the non-federal share of the proposed expenditures. The opportunity to evaluate the permissibility and potential impact of supplemental payments is presented when a state submits a proposal. Current regulations do not contemplate that, once we have approved a SPA, as described in part 430, subpart B, we would routinely monitor the implementation and effects of the SPA in a formal, systematic way. The opportunity to review state payments after the agency has approved a SPA generally is limited to the submission of SPAs to update or change the supplemental payment methodology. Our other mechanisms for review are financial management reviews and audits of state programs which may cover any area of the Medicaid program and require advanced planning and are resource intensive for CMS and states. We also have relied upon reviews conducted by other government oversight bodies. These reviews are often resource intensive and require a large amount of data sharing, consultation, discussions, and policy reviews. As such, many years may pass before we are able to finalize the reviews and revisit supplemental payment methodologies, either through financial management review or the submission of a SPA. Because of this, we are unable to periodically evaluate these payment arrangements, including individual underlying provider payment amounts, to determine if the payments have been consistent with economy, efficiency, quality, access, and appropriate utilization, as required by statute. We do not generally collect further information associated with a SPA in a centralized manner, and such information generally is not presented at the provider level.

In its March 2014 *Report to the Congress on Medicaid and CHIP,* MACPAC noted that supplemental payments to hospitals, according to their analysis of supplemental payments

in 5 states, accounted for more than 20 percent of total computable Medicaid FFS payments to hospitals in those 5 states, and in some states account for more than 50 percent of such payments.[2] MACPAC has recommended that the Secretary collect provider-level data on supplemental payments to, among other things, provide greater transparency regarding Medicaid payments and facilitate assessments of Medicaid payments and analysis of the relationship between supplemental payments and access to care, as well as the economy and efficiency of Medicaid payments. In developing this proposed rule, we also considered the findings reported by MACPAC in the March 2012 *Report to the Congress on Medicaid and CHIP,* which identified data limitations regarding lump-sum Medicaid supplemental payments as an impediment to comparing payment levels across providers and states, determining the total amount of Medicaid spending on specific services and populations, and evaluating the impact of Medicaid payment policies.[3]

Without complete provider-level payment information, we do not have sufficient information to evaluate whether rate methodologies result in payments within a service type and provider ownership group that are economic and efficient as required under section 1902(a)(30)(A) of the Act. The GAO has issued a series of reports which note that the lack of reliable CMS data about Medicaid payments to providers and state financing of the non-federal share hinders our ability to adequately oversee the Medicaid program. To help ensure that each state meets the statutory and regulatory requirements regarding its oversight responsibilities, data reporting, and financial participation, the GAO has recommended that regulatory and legislative efforts be strengthened. Specific to Medicaid supplemental payments, the GAO has had longstanding concerns regarding the need for improved transparency and accountability. For example, in 2015, the GAO issued a report entitled, ''Medicaid: CMS Oversight of Provider Payments Is Hampered by Limited Data and Unclear Policy,'' that stated, ''[w]ithout good data on payments to individual providers, a policy and criteria for assessing whether the payments are economical and efficient, and a process for reviewing such payments, the federal government could be paying states hundreds of millions, or billions, more than what is appropriate.''[4] As a result, the GAO has recommended that to better ensure the fiscal integrity of the program, we should establish financial reporting at a provider-specific level and clarify permissible methods for calculating Medicaid supplemental payment amounts.

Since the availability of FFS supplemental payments under the aggregate UPL is driven by the volume of services provided through the FFS system, a shift to managed care or certain demonstration projects results in a lowered UPL estimate and a corresponding decrease in the level of FFS supplemental payments that a state can make. For example, there are instances when pool payments established through a demonstration authorized under section 1115(a) of the Act pay for uncompensated care costs for the provision of health care services to Medicaid beneficiaries, the underinsured, and the uninsured, or for state projects that promote delivery system reforms. States have also authorized pass-through payments or incentive arrangements to providers under managed care contracts that can operate similarly to existing FFS supplemental payments. We have authorized these payments within certain requirements described in 42 CFR part 438 and demonstration terms and conditions, as applicable, noting that the financing requirements in 42 CFR parts 430 and 433 and addressed in this proposed rule are applicable to FFS, managed care, and demonstration authorities.

Given the growing prevalence of supplemental payments and concerns raised by federal oversight agencies, we are concerned that our past practice of basing approval of SPAs regarding supplemental payments primarily on aggregate UPL compliance does not provide us with sufficient information to adequately ensure that supplemental payments are consistent with statutory requirements for economy and efficiency, quality of care, and access, or otherwise with sound program management principles. As a result, as discussed in greater detail in section II. of this proposed rule, the Provisions of the Proposed Rule section, we are proposing to gather additional information to better understand how states distribute supplemental payments to individual providers and whether there are benefits to the Medicaid program resulting from the supplemental payments.

2. Disproportionate Share Hospital (DSH) Payments

a. Background

States have statutory authority to make DSH payments to qualifying hospitals. Section 1902(a)(13)(A)(iv) of the Act requires that states take into account the situation of hospitals that serve a disproportionate share of low-income patients with special needs, in a manner consistent with section 1923 of the Act. These are not considered part of the base rate payments or supplemental payments, as they are made under distinct statutory authority. Section 1923 of the Act contains specific requirements related to DSH payments, including aggregate annual state-specific DSH allotments that limit FFP for statewide total DSH payments under section 1923(f) of the Act, and hospital-specific limits on DSH payments under section 1923(g) of the Act. Under the hospital-specific limits, a hospital's DSH payments may not exceed the costs incurred by that hospital in furnishing inpatient and outpatient hospital services during the year to Medicaid beneficiaries and the uninsured, less payments received from or on behalf of the Medicaid beneficiaries or uninsured patients. In addition, section 1923(a)(2)(D) of the Act requires states to provide an annual report to the Secretary describing the DSH payment adjustments made to each DSH.

Section 1001(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted December 8, 2003) added section 1923(j) of the Act to require states to report additional information about their DSH programs. Section 1923(j)(1) of the Act requires states to submit an annual report including an identification of each DSH that received a DSH payment adjustment during the preceding fiscal year (FY) and the amount of such adjustment, and such other information as the Secretary determines necessary to ensure the appropriateness of the DSH payment adjustments for such fiscal year. Additionally, section 1923(j)(2) of the Act requires states to submit an independent certified audit of the state's DSH program, including specified content, annually to the Secretary.

[2] Medicaid and CHIP Payment and Access Commission, *Report to the Congress on Medicaid and CHIP, March 14, 2014,* 184 (2014), *https://www.macpac.gov/wp-content/uploads/2015/01/2014-03-14_Macpac_Report.pdf.*

[3] Medicaid and CHIP Payment and Access Commission, *Report to the Congress on Medicaid and CHIP, March 15, 2012,* 167 (2012), *https://www.macpac.gov/wp-content/uploads/2015/01/State_Approaches_for_Financing_Medicaid_and_Update_on_Federal_Financing_of_CHIP.pdf.*

[4] U.S. Gov't Accountability Office, GAO–15–322, Medicaid: CMS Oversight of Provider Payments Is Hampered by Limited Data and Unclear Policy, 46 (2015), *https://www.gao.gov/assets/670/669561.pdf.*

b. Concerns Raised Regarding Overpayments Identified Through Annual DSH Audits

The ''Medicaid Program; Disproportionate Share Hospital Payments'' final rule published in the December 19, 2008 **Federal Register** (73 FR 77904) (and herein referred to as the 2008 DSH audit final rule) requires state reports and audits to ensure the appropriate use of Medicaid DSH payments and compliance with the hospital-specific DSH limits under section 1923(g) of the Act.

The regulations at 42 CFR part 455, subpart D, implement section 1923(j)(2) of the Act. FFP is not available for DSH payments that are found in the independent certified audit to exceed the hospital-specific limit. Amounts in excess of the hospital-specific limit are regarded as overpayments to providers, under 42 CFR part 433, subpart F. The discovery of overpayments necessitates the return of the federal share or redistribution by the state of the overpaid amounts to other qualifying hospitals, in accordance with the state's approved Medicaid state plan. The regulations in part 433, subpart F provide for refunding of the federal share of Medicaid overpayments paid to providers. While the preamble to the 2008 DSH audit final rule generally addressed the return or redistribution of provider overpayments identified through DSH audits, it did not include specific procedural requirements for returning or redistributing overpayments. As described below, we are proposing to incorporate into regulation procedural requirements associated with the return and redistribution of DSH overpayments.

While the information included in the independent certified audits and associated reports provides CMS and states with robust data, we are often unable to determine whether a DSH overpayment to a provider has occurred, the root causes of any overpayments, and the amount of the overpayments associated with each cause. Despite the robust data, potential data gaps may exist as a result of an auditor identifying an area, or areas, in which documentation is missing or unavailable for certain costs or payments that are required to be included in the calculation of the total eligible uncompensated care costs. Therefore, in current practice, an auditor may include a finding (or ''caveat'') in the audit stating that the missing information may impact the calculation of total eligible uncompensated care costs, instead of making a determination of the actual financial impact of the identified issue. This lack of transparency results in uncertainty and restricts CMS' and states' ability to ensure proper recovery of all FFP associated with DSH overpayments identified through annual DSH audits. For example, an audit may identify that a hospital was unable to satisfactorily document the outpatient services it provided to Medicaid-eligible patients, indicating that charges and payments were not included in the DSH uncompensated care calculation. Based on this lack of documentation, the audit includes a caveat of its finding indicating that the hospital's uncompensated care cost may be misstated as a result of this exclusion and that the impact is unknown. Given this lack of quantification of the financial impact of this finding, we are unable to determine whether an overpayment, if any, has resulted from this audit finding. To obtain such information, either CMS and/or the state would have to conduct a secondary review or audit, which would be burdensome and largely redundant. Specifically, conducting a secondary review or audit after the independent auditors have completed theirs would lengthen the review process, and therefore, delay the results of the audit. It would also require additional time, personnel, and resources by CMS, states, and hospitals to participate in a secondary review or audit.

The OIG and GAO have raised concerns similar to ours with respect to our ability to adequately oversee the Medicaid DSH program. Specifically, the OIG published the report, ''Audit of Selected States' Medicaid Disproportionate Share Hospital Programs'' in March 2006,[5] in which the OIG recommended that we establish regulations requiring states to implement procedures to ensure that future DSH payments are adjusted to actual incurred costs, incorporate these adjustment procedures into their approved state plans, and include only allowable costs as uncompensated care costs in their DSH calculations. The 2008 DSH audit final rule addressed the concerns raised by the OIG in regulations implementing the independent certified audit requirements under section 1923(j) of the Act, by requiring states to include data elements as specified in § 447.299(c) with their annual audits. In 2012, the GAO published the report, ''Medicaid: More Transparency of and Accountability for Supplemental Payments are Needed,''[6] in which the GAO examined how information on DSH audits facilitates our oversight of DSH payments. In the report, GAO analyzed the 2010 DSH audits submitted by states. Of the 2,953 audits submitted to CMS, 228 had data reliability or documentation issues that inhibited the auditor's ability to determine compliance with DSH audit requirements. While the independent certified audit requirements have allowed us to identify various compliance issues and quantify some provider overpayments, in some instances, audits have identified issues related to incomplete or missing data and have failed to make a determination regarding the financial impact of these issues. Therefore, we have identified this area as an opportunity to strengthen program oversight and integrity protections, specifically with respect to the overpayment and redistribution reporting process and requirements for identifying the financial impact of audit findings. In proposing an additional data element, as discussed below, we hope to further enhance our oversight to better ensure the integrity of hospital-specific limit calculations.

The new data element we are proposing to add to annual DSH reporting would require auditors to quantify the financial impact of any finding, including those resulting from incomplete or missing data, which may affect whether each hospital has received DSH payments for which it is eligible within its hospital-specific DSH limit. We believe that requiring the quantification of these findings would limit the burden on both states and CMS of performing follow-up reviews or audits and will help ensure appropriate recovery and redistribution, as applicable, of all DSH overpayments.

To enhance federal oversight of the Medicaid DSH program and improve the accuracy of DSH audit overpayments identified and collected through annual DSH audits, we are also proposing to require states to report overpayments identified through annual DSH audits and related payment redistributions on the Form CMS–64 in a timely and transparent manner. Specifically, we propose to clarify the reporting requirement for overpayments identified through the annual DSH audits at § 447.299(f), by directing states to return payments in excess of hospital-specific cost limits to the federal government by reporting the excess amount on Form CMS–64, as a decreasing adjustment. We are proposing to require states to report these decreasing adjustments to

[5] Audit of Selected States' Medicaid Disproportionate Share Hospital Programs,'' March 2006 (A–06–03–00031), *https://www.oig.hhs.gov/oas/reports/region6/60300031.pdf.*

[6] *https://www.gao.gov/assets/660/650322.pdf.*

correspond with the fiscal year DSH allotment on the Form CMS–64. Additionally, we are proposing to establish reporting requirements on the redistribution of DSH overpayments, as determined under § 447.299(g) of this chapter in accordance with a redistribution methodology in the approved Medicaid state plan. We propose to require states to report the redistribution of DSH overpayments to correspond with the fiscal year DSH allotment and Medicaid state plan rate year, on the Form CMS–64. This proposal memorializes our redistribution policy in regulations and enhances proper oversight. We are proposing that overpayment amounts be redistributed within 2 years from the date of discovery, as proposed under § 447.299(g).

c. Modernizing the Publication of Annual DSH Allotments

Section 447.297 provides a process and timeline for CMS to publish preliminary and final annual DSH allotments and national expenditure targets in the **Federal Register**. The current requirements specify that we publish DSH allotments and national expenditure targets, in preliminary and final formats, by October 1st (preliminary target and allotments) and April 1st (final target and allotments) of each federal fiscal year. We have found the current regulatory **Federal Register** publication process to be time consuming and administratively burdensome and are concerned that the information is not available to states and other interested parties in a timely and easily accessible manner. In this proposed rule, we propose to make allotment and national expenditure targets available more timely by posting the information on *Medicaid.gov* and in MBES, or its successor website or system, instead of publishing this information in the **Federal Register**.

3. Medicaid Program Financing

a. Background

Medicaid expenditures are jointly funded by the federal and state governments. Section 1903(a)(1) of the Act provides for payments to states of a percentage of medical assistance expenditures authorized under the approved state plan. FFP is available when there is a covered Medicaid service provided to a Medicaid beneficiary, which results in a federally matchable expenditure that is funded in part through non-federal funds from the state or a non-state governmental entity (except when the statute provides a 100 percent federal match rate for specified expenditures). The percentage of federal funding is the federal medical assistance percentage (FMAP) that is determined for each state using a formula set forth in section 1905(b) of the Act, or other applicable federal matching rates specified by the statute.

The foundation of federal-state shared responsibility for the Medicaid program is that the state must participate in the financial burdens and risks of the program, which provides the state with an interest in operating and monitoring its Medicaid program in a manner that results in receiving the best value for the funds expended. Sections 1902(a), 1903(a), and 1905(b) of the Act require states to share in the cost of medical assistance and in the cost of administering the state plan. Section 1902(a)(2) of the Act and its implementing regulation in part 433, subpart B require states to share in the cost of medical assistance expenditures and permit other units of state or local government to contribute to the financing of the non-federal share of medical assistance expenditures. These provisions are intended to safeguard the federal-state partnership, irrespective of the Medicaid delivery system or authority (for example, FFS, managed care, and demonstration authorities), by ensuring that states are meaningfully engaged in identifying, assessing, mitigating, and sharing in the risks and responsibilities inherent in a program as complex and economically significant as Medicaid and are accordingly motivated to administer their programs economically and efficiently.

Of the permissible means for financing the non-federal share of Medicaid expenditures, the most common is through state general funds, typically derived from tax revenue appropriated directly to the Medicaid agency. Revenue derived from health care-related taxes can be used to finance the non-federal share only when consistent with federal statutory requirements at section 1903(w) of the Act and implementing regulations at part 433, subpart B. The non-federal share may also be funded in part from provider-related donations to the state, but these donations must be ''bona fide'' in accordance with section 1903(w) of the Act and implementing regulations, which means truly voluntary and not part of a hold harmless arrangement that effectively repays the donation to the provider (or to providers furnishing the same class of items and services).

Non-federal share financing sources can also come from IGTs or certified public expenditures (CPEs) from local units of government or other units of state government in which non-state governmental entities contribute funding of the non-federal share for Medicaid either by transferring their own funds to and for the unrestricted use of the Medicaid agency or by certifying to the state Medicaid agency the amount of allowed expenditures incurred. In each instance, allowable IGTs and CPEs, as with funds appropriated to the state Medicaid Agency, must be derived from state or local tax revenue or from funds appropriated to state university teaching hospitals. IGTs may not be derived from impermissible health care-related taxes or provider-related donations (discussed below); they are subject to all applicable federal statutory and regulatory restrictions. Even when using funds contributed by local governmental entities, the state must meet the requirements at section 1902(a)(2) of the Act and § 433.53 that obligate the state to fund at least 40 percent of the non-federal share of total Medicaid expenditures (both service related and administrative expenditures) with state funds. Additionally, these authorities require states to assure that a lack of funds from local sources will not result in lowering the amount, duration, scope, or quality of services or level of administration under the plan in any part of the state.

The extent to which private providers may participate in the funding of any Medicaid payment (for example, managed care, FFS base, or supplemental payments) is essentially restricted to the state's authority to levy limited health care-related taxes and to rely on bona fide provider-related donation in accordance with statutory and regulatory requirements. Since the use of IGTs and CPEs are restricted to governmental entities, states and providers increasingly have turned to the use of health care-related taxes to enable the maintenance of, or increases to, Medicaid payments to providers. In addition, several states have explored the use of provider-related donation arrangements to further leverage private provider funding.

b. Current CMS Review of Medicaid Financing and Oversight Concerns

We employ various oversight mechanisms to review state methods for funding the non-federal share of Medicaid payments including, but not limited to, reviews of proposed SPAs, quarterly financial reviews of state expenditures reported on the Form CMS–64, focused financial management reviews, and reviews of state health care-related tax and provider-related donation proposals and waiver requests. As discussed in detail above, states

must submit Medicaid SPAs to CMS for review and approval when adding or changing FFS provider payment methodologies. We review the SPAs to ensure the methodologies meet all federal requirements and the proposed payments and sources of the non-federal share may be approved and serve as the basis for FFP. In making approval decisions, we ask for certain information from states to document the source of the non-federal share during our SPA review process.

In response to our inquiries, states will typically describe whether the non-federal share is sourced through funds appropriated by the state legislature directly to the single state Medicaid agency, or whether the state relies on state or local government units to participate in funding the non-federal share through IGTs or CPEs. Additionally, states are asked to disclose whether the underlying financing involves a health care-related tax or a provider-related donation. When states rely on IGTs and CPEs as the source of the non-federal share, we request details on the transferring or certifying entities that participate in funding expenditures, including assurances that the entities are units of government, and the source of a unit of government's IGT. Based on the information that we receive from states, we may also ask for additional documentation to ensure the source of non-federal share complies with all applicable federal laws, regulations, and requirements, particularly those describing permissible health care-related taxes and provider-related donations.

Though our current SPA review processes allow us to ensure states identify a permissible source of non-federal share at the time that we approve an amendment, we have no reliable mechanism to track and understand whether the source of the non-federal share changes after a SPA has been approved. Based on studies conducted by the GAO (see for example, *States' Increased Reliance on Funds from Health Care Providers and Local Governments Warrants Improved CMS Data Collection,* GAO–14–627, July 29, 2014), we are aware that states are increasingly reliant on non-state units of government to fund the non-federal share through IGTs, CPEs, and health care-related taxes. In fact, the GAO cites Medicaid supplemental payments and the associated non-federal share as a Medicaid High Risk Issue (*GAO Report to Congressional Committees High-Risk Series Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas,* GAO–19–157SP, March 6, 2019) and has called for CMS to implement improved oversight and data collection processes to track sources of non-federal share.

It is important to acknowledge that section 1903(w)(6)(A) of the Act specifically permits state and local units of government to share in financing the Medicaid program through IGTs and CPEs. Such local participation is inherent in the Medicaid program and recognizes the shared role that state and local government units can play in delivering Medicaid services. Nothing in this proposed rule would result in limiting state and local government units from contributing to the Medicaid program through allowable IGT and CPE funding sources. However, as discussed in the GAO's studies, the increasing reliance on Medicaid funding derived from units of state and local government may serve to undermine the state and federal financing partnership, as where states establish payment methodologies that favor certain providers solely on the basis of whether a unit of state or local government can provide the non-federal share to support Medicaid supplemental payments. Notably, section 1902(a)(2) of the Act requires states to assure that a lack of funds from local sources will not result in lowering the amount, duration, scope, or quality of services or level of administration under the plan. We have concerns that, in certain circumstances, increased reliance on units of states or local government to fund the non-federal share may result in conflicts with section 1902(a)(30)(A) of the Act.

For example, we have identified and worked to address various Medicaid financing arrangements that appear designed to increase the federal share of Medicaid funding without a commensurate state or local contribution as required by sections 1902(a), 1903(a), and 1905(b) of the Act, which require states to share in the cost of medical assistance and in the cost of administering the state plan. We have identified manipulations of Medicaid UPL demonstration calculations that would serve to increase a state's ability to make supplemental payments above a reasonable Medicare estimate in states that have used, or proposed to use, an unallowable IGT to fund the state share of a Medicaid supplemental payment. We have also identified the manipulation of cost identification data providers rely on to certify Medicaid expenditures through a CPE process that, whether intentional or not, results in the federal government paying for costs that are unallowable under the Medicaid program.

Some of the more complicated, and unallowable, Medicaid financing arrangements we have reviewed resulted from public-private partnership arrangements between private entities and units of government. These arrangements attempt to mask non-bona fide provider-related donations as an allowable IGT and result in increased supplemental payments to the donating private entity or entities. Discussed in detail in State Medical Director Letter (SMDL) 14–004 and elsewhere in this preamble, partnership arrangements between a private provider and a government entity have involved the private provider providing cash, a service, or other in-kind donation to the government entity that is seemingly unrelated to the Medicaid program. In exchange for the private provider's contribution, the government entity will make an IGT to the Medicaid agency, which is then used as the non-federal share of supplemental Medicaid payments which are then returned to the private entity to repay them for the non-bona fide provider-related donation consistent with the underlying hold harmless agreement. The IGT is derived from funds that the government entity previously would have spent on the medical services (or other obligation) that are now being provided or paid for by the private entity. These funds would not be available to use as state share of Medicaid expenditures, if not for the public-private partnership arrangement, since the funds are derived from the non-bona fide provider-related donation (and not derived from state or local tax revenue or from funds appropriated to the state university teaching hospitals).[7]

The provisions of this proposed rule seek to address these and similar financing concerns through a number of strategies. Proposed improvements to state reporting associated with supplemental payments and sources of the non-federal share would allow CMS to monitor changes in non-federal share funding after a SPA is approved and any associated increases in federal expenditures for supplemental payments, relative to state expenditures. Additional specificity in definitions relevant to Medicaid financing arrangements and in requirements for information states must provide to support various funding mechanisms and supplemental payments would strengthen oversight of program expenditures by us and the states. Finally, we propose to address certain egregious funding schemes that mask

[7] Dep't of Health & Human Servs., CMS, State Medicaid Director Letter 14–004, Accountability #2: Financing and Donations, 3, (2014), *https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-004.pdf.*

non-bona fide donations as allowable IGTs by clarifying where an indirect hold harmless arrangement may exist and by expressly prohibiting supplemental payments that support these schemes. Together, proposed new policies and the proposed codification of existing policies related to Medicaid financing aim to provide CMS and states with better information and guidance to identify existing and emerging financing issues, provide more clarity on allowable financing arrangements, promote state accountability, and strengthen the fiscal integrity of the Medicaid program.

4. Health Care-Related Taxes and Provider-Related Donations

a. Background

States first began to use health care-related taxes and provider-related donations in the mid-1980s as a way to finance the non-federal share of Medicaid payments (Congressional Research Service, ''Medicaid Provider Taxes'', August 5, 2016, p.2). Providers would agree to make a donation or would support (or not oppose) a tax upon their activities or revenues, and these mechanisms would generate funds that could then be used to raise Medicaid payment rates to the providers. Frequently, these programs were designed to hold Medicaid providers ''harmless'' for the cost of their donation or tax payment. As a result, federal expenditures rapidly increased without any corresponding increase in state expenditures, since the funds used to increase provider payments came from the providers themselves and were matched with federal funds. In 1991, the Congress passed the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments (Pub. L. 102–234, enacted December 12, 1991) to curb the use of provider-related donations and health care-related taxes to finance the non-federal share of Medicaid expenditures. Section 1903(w)(1)(A) of the Act specifies that, for purposes of determining the federal matching funds to be paid to a state, the total amount of the state's Medicaid expenditures must be reduced by the amount of revenue the state collects from impermissible health care-related taxes and non-bona fide provider-related donations.

The statute requires that taxes be imposed on a permissible class of health care items or services; and be broad based, meaning that all non-federal, nonpublic providers and all items and services within a class of health care items or services would be taxed, as well as uniform, meaning that the tax rate would be the same for all health care items or services in a class, as well as providers of such items or services. The statute prohibits hold harmless arrangements in which collected taxes are returned directly or indirectly to taxpayers. The Secretary is required by section 1903(w)(3)(E) of the Act to waive either the broad based and/or uniformity requirements as long as the state establishes, to the Secretary's satisfaction, that the net impact of the tax and associated expenditures is generally redistributive in nature, and the amount of the tax is not directly correlated to Medicaid payments for items and services with respect to which the tax is imposed.

Section 1903(w)(2)(A) of the Act defines a provider-related donation as any donation or other voluntary payment (in-cash or in-kind) made directly or indirectly to a state or unit of a local government by a health care provider, an entity related to a health care provider, or an entity providing goods or services under the state plan for which payment is made under section 1903(a)(2), (3), (4), (6), or (7) of the Act (generally, administrative goods and services). Section 1903(w)(2)(B) of the Act defines a bona fide provider-related donation as a provider-related donations that has no direct or indirect relationship (as determined by the Secretary) to payments made under title XIX to that provider, to providers furnishing the same class of items and services as the donating provider, or to any related entity, as established to the satisfaction of the Secretary. The statute gives the Secretary the authority to specify, by regulation, types of provider-related donations that will be considered to be ''bona fide.'' Regulations at part 433, subpart B describe the requirements necessary, irrespective of the Medicaid delivery system authority (for example, FFS, managed care, or demonstration authorities), for a donation to be considered bona fide.

In response to the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, we published the ''Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals'' interim final rule with comment period in the November 24, 1992 **Federal Register** (57 FR 55118) (November 1992 interim final rule) and the subsequent final rule published in the August 13, 1993 **Federal Register** (58 FR 43156) (August 1993 final rule) establishing when states may receive funds from provider-related donations and health care-related taxes without a reduction in medical assistance expenditures for the purposes of calculating FFP. These rules established the statistical tests used to judge requests for waivers of the broad-based and uniformity requirements and defined bona fide provider-related donations.

After the publication of the August 1993 final rule, we revisited the issue of health care-related taxes and provider-related donations in the ''Medicaid Program; Health-Care Related Taxes'' final rule (73 FR 9685) which published in the February 22, 2008 **Federal Register** (February 2008 final rule). The February 2008 final rule, in part, implemented section 1903(w)(7)(A)(viii) of the Act by expanding the Medicaid managed care organization (MCO) class of health care items and services (73 FR 9698) to include all MCOs specified in section 6051 of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006). Specifically, it amended the class of health care services and providers specified in § 433.56(a)(8) from services of Medicaid MCOs to services of MCOs including health maintenance organizations (HMOs) and preferred provider organizations (PPOs). As a result of this change, states could no longer impose a tax solely on MCOs providing services to only Medicaid beneficiaries.

The regulation also made explicit that certain practices would constitute a hold harmless arrangement, in response to certain state tax programs that we believed contained hold harmless provisions. Five states had imposed a tax on nursing homes and simultaneously created programs that awarded grants or tax credits to private pay residents of nursing facilities that enabled these residents to pay increased charges imposed by the facilities, which thereby recouped their own tax costs. We believed that these payments held the taxpayers (the nursing facilities) harmless for the cost of the tax, as the tax program compensated the facilities indirectly, through the intermediary of the nursing facility residents. However, in 2005, the DAB (Decision No. 1981) ruled that such an arrangement did not constitute a hold harmless arrangement under the regulations then in place. To clarify agency interpretation that this practice does constitute a hold harmless arrangement, the February 2008 final rule clarified the direct guarantee test found at § 433.68(f) by specifying that a direct guarantee to hold the taxpayer harmless for the cost of the tax through a direct or indirect payment will be found when, ''a payment is made available to a taxpayer or party related

to a taxpayer'' so that a reasonable expectation exists that the taxpayer will be held harmless for all or part of the cost of the tax as a result of the payment (73 FR 9694). As an example of a party related to the taxpayer, the preamble cited the example of, ''as a nursing home resident is related to a nursing home (73 FR 9694). As a result, whenever there existed a ''reasonable expectation'' (73 FR 9695) that the taxpayer would be held harmless for the cost of the tax, a hold harmless situation would exist and the tax would be impermissible.

b. Concerns Relating to Health Care-Related Tax Waivers

States and their units of local government have the ability to impose broad-based and uniform health care-related taxes without explicit CMS approval. However, if the tax implemented by the state or unit of local government is not broad-based and/or uniform, the state must apply to CMS for a waiver of the applicable tax requirements. As part of these requirements, the state must demonstrate to the satisfaction of the Secretary that the tax passes a statistical test specified in regulation to waive either the broad-based requirement, or the uniformity requirement, or both, as specified in § 433.68(e)(1) or (2). These tests were designed to evaluate whether or not a proposed tax would be ''generally redistributive,'' as required by section 1903(w)(3)(E)(ii)(I) of the Act. The preamble to the November 1992 interim final rule indicated that, in interpreting the statutory phrase ''generally redistributive,'' we ''attempted to balance our desire to give states some degree of flexibility in designing tax programs with our need to preclude use of revenues derived from taxes imposed primarily on Medicaid providers and activities'' (57 FR 55128). In the preamble of August 1993 final rule, we interpreted ''generally redistributive'' to mean ''the tendency of a state's tax and payment program to derive revenues from taxes imposed on non-Medicaid services in a class and to use these revenues as the state's share of Medicaid payments'' (57 FR 55128).

At the time of these rules, we anticipated the two mathematical tests in § 433.68(e)(1) and (2) would be sufficient to ensure that a proposed tax would be ''generally redistributive,'' as we interpret that statutory language. Specifically, the first test known as the ''P1/P2 test'' in § 433.68(e)(1) is required for taxes that are uniform, but not broad based. At the time of these rules, we anticipated the two mathematical tests in § 433.68(e)(1) and (2) would be sufficient to ensure that a proposed tax would be ''generally redistributive,'' as we interpret that statutory language. Specifically, the first test known as the ''P1/P2 test'' in § 433.68(e)(1) is required for taxes that are uniform, but not broad based. As described in the November 1992 interim final rule (57 FR 55128), the test requires the State to calculate the proportion of the tax applicable to Medicaid under a broad-based tax (designated as P1), and the proportion applicable to Medicaid under the tax as imposed by the State (called P2). By dividing P1 by P2, the test was intended to measure whether or not the uniform, but non-broad based tax was redistributive. Resulting values higher than one indicated the tax was more redistributive than a broad-based and uniform tax, while values less than one would indicate it was less redistributive and placed a disproportionate share of the tax burden on the Medicaid program (57 FR 55128).

The November 1992 interim final rule (57 FR 55128) also described the second test known as the ''B1/B2 test,'' applying in situations when the state requests a waiver of the uniformity requirement whether or not the tax is broad-based. In this test, the State would calculate the slope of two linear regressions: One for the tax program for which waiver is requested, and one for the tax if it were applied uniformly and as a broad-based tax where the slope (that is, the X coefficient) of the linear regression applicable to the hypothetical broad-based uniform tax (called B1) is divided by the slope of the linear regression applicable to the tax for which a waiver is sought (called B2) (57 FR 55128). Similar to the P1/P2 test for uniform taxes that are not broad based, the B1/B2 test was designed to show that values higher than one indicate the non-uniform tax was more redistributive than a broad-based and uniform tax, while values less than one would indicate that it was less redistributive and disproportionately burdened the Medicaid program (57 FR 55128).

However, subsequent experience has proven that the two mathematical tests do not ensure, in all cases, that proposed taxes that pass the applicable test are generally redistributive. Certain states have identified a loophole where taxes can pass the statistical test(s) despite their imposition of undue burden on the Medicaid program. For example, several states have imposed taxes on managed care entities that, by design, clearly impose a greater and undue tax burden on the Medicaid program than other payers. States have structured the taxes by dividing the universe of entities subject to taxation into smaller taxpayer groups based on various attributes, such as annual member-months by payer. In this example, states have imposed significantly higher rates on some taxpayer groups defined by a relatively higher number of Medicaid member-months than on commercial payer member-months, with some Medicaid activity (member-months in this example) subject to taxation at a rate more than 25 times higher than the rate for otherwise similar commercial activity. Counterintuitively, these taxes are able to pass the statistical tests designed to ensure that the tax is generally redistributive, despite the states' own information indicating, in one state, that plan revenue from Medicaid paid 88 percent of the assessed tax even though only 45 percent of the member months subject to the tax were attributable to Medicaid beneficiaries. Under these tax conditions, the proposed rule would give CMS the authority to determine that the tax is not generally redistributive, despite the fact that it could pass the applicable statistical test under current regulations, because it places an undue burden on the Medicaid program (as indicated in the example by the disproportionate share of the tax attributable to Medicaid relative to Medicaid's share of total member months). The August 1993 final rule noted that, ''to the extent a tax is imposed more heavily on low Medicaid utilization than high Medicaid providers, the tax would be considered redistributive,'' in that case, there would be a ''tendency of a state's tax and payment program to derive revenues from taxes imposed on non-Medicaid services in a class and to use these revenues as the state's share of Medicaid payments'' (57 FR 55128). However, in the situations involving the type of statistical manipulation described above, the exact opposite is the case. In these instances, states are imposing taxes that place a greater tax burden on Medicaid-reimbursed health care items and services, and providers of such items and services, than on comparable entities not reimbursed by Medicaid. Such a tax is not generally redistributive in nature.

In an effort to more effectively prohibit tax arrangements that are not generally redistributive, for us to approve a waiver of the broad based and/or uniformity requirements, this proposed rule would require that a tax must not impose undue burden on health care items or services paid for by Medicaid or on providers of such items and services that are reimbursed by

Medicaid. Generally, as discussed in greater detail below, we would provide that the tax may not be structured in a way that places a greater tax burden on taxpayer groups that have a greater level of Medicaid activity, as proposed to be defined below, than those that have less or no Medicaid activity.

Some states have designed non-broad based and/or non-uniform tax structures that exclude, or lower tax rates on, taxpayers grouped together on the basis of their lack of or low levels of Medicaid activity compared to other taxpayers in the class. We believe that such tax structures inherently impose undue burden on the Medicaid program, and therefore, do not meet the statutory generally redistributive requirement. Similarly, we are concerned that some states might provide tax relief to taxpayers grouped together ostensibly on a basis other than Medicaid activity, but that the specific basis for the grouping is designed to obscure a true purpose to define the group based on lack of or relatively low Medicaid activity. For example, a state could attempt to exclude from taxation or place a lower tax rate on all hospitals within a certain geographic area that has certain demographic characteristics, such as all counties with populations between 40,000 and 85,000 residents. Under the particular conditions in the state, it could result that this commonality serves as a substitute for the included hospitals having low or no Medicaid activity. In this example, the commonality could be viewed as a substitute for Medicaid activity if only two counties in the state met this criteria, and the hospitals in these two counties had relatively low Medicaid activity compared to hospitals in the other counties in the state, as might occur in the case of a county with relatively low Medicaid enrollment in the county and surrounding counties. Such a tax program likely would result in the Medicaid program funding a disproportionate share of tax revenues, as counties containing hospitals with low levels of Medicaid activity would be excluded by the structure of the tax. In that case, the burden of the tax would fall upon hospitals with higher Medicaid activity. Therefore, as discussed below, we are proposing to consider tax structures not to be generally redistributive when taxpayers are grouped together in a manner that isolates taxpayers with relatively higher or lower levels of Medicaid activity and when taxpayers with relatively higher Medicaid activity are taxed relatively more heavily. We propose to consider the totality of the circumstances when deciding whether the tax program involves taxpayer groupings that, by proxy, have the effect of sorting taxpayers by relatively higher or lower levels of Medicaid activity. The proposed rule would retain the two statistical tests currently at § 433.68 when determining whether or not the proposed tax waiver would be generally redistributive as required by statute. However, in determining whether or not a tax program is generally redistributive, consideration would also be given to examine the totality of the circumstances in addition to the applicable statistical test.

We aim to balance preserving state flexibility in designing tax programs with ensuring health care-related taxes meet statutory generally redistributive requirements. We do not intend to interfere with states' ability to exclude from taxation or impose lower tax rates on health care items and services or on providers based on genuine commonalities that meet legitimate policy objectives. However, it is incumbent upon us to prevent tax structures designed to impose an undue burden on the Medicaid program, including on participating providers and/or health care items and services for which Medicaid pays, in contravention of federal statutory requirements.

c. Concerns Relating to the Definition of a Health Care-Related Tax

Section 1903(w)(3)(A)(i) of the Act defines a health care-related tax using multiple tests that must be applied to tax proposals. Section 1903(w)(3)(A)(i) of the Act stipulates health care-related taxes are related to: (1) Health care items or services; (2) the provision of, or the authority to provide, health care items or services; or (3) payment for health care items or services. Section 1903(w)(3)(A)(ii) of the Act further stipulates that a tax is a health care-related tax when it is not limited to health care-related items or services, but provides for treatment of individuals or entities that provide or pay for health care-related items or services that is different than treatment of ''other individuals or entities.'' Any tax must be fully evaluated against all components of the statutory definition to determine whether it qualifies as a health care-related tax.

In determining whether a tax is related to health care items or services, section 1903(w)(3)(A) of the Act also specifies that if at least 85 percent of the tax burden falls on health care providers, it is considered to be related to health care items or services. However, this provision does not establish a safe harbor for any tax on health care providers that falls below the threshold. Section 433.55(c) specifies that if less than 85 percent of the tax burden falls on health care items or services, the tax may still be considered to be health care-related if differential treatment exists for entities providing or paying for health care items or services relative to other entities. If less than 85 percent of the tax burden falls on health care items or services, the treatment of those entities must still be analyzed to determine if the tax treats them equally.

Outside oversight bodies have raised concerns that states have attempted to subvert federal regulations regarding health care-related taxes by masking them as part of larger non-health care-related taxes. States may do so by including impermissible health care-related taxes inside larger tax programs that include non-health care-related taxes in such a way so as to avoid being considered a health care-related tax in accordance with § 433.55. The OIG identified one such attempt in a May 2014 report (A–03–13–00201),[8] in which the OIG described a state that appeared to be taxing only income from Medicaid MCO services by incorporating only Medicaid MCOs into larger (often existing) state and local taxes otherwise unrelated to Medicaid, despite the DRA provisions which prohibited taxation of only Medicaid MCOs. Specifically, section 6051 of the DRA amended section 1903(w)(7)(A) of the Act to change the relevant permissible class of health care items and services from ''[M]edicaid managed care organizations'' to MCOs generally. In its report, the OIG recommended that CMS issue clarification to states regarding its interpretation of statute and regulations regarding health care-related taxes as soon as possible and warned that failure to do so could result in a proliferation of similar Medicaid MCO taxes if states believed that it was permissible to incorporate otherwise impermissible health care-related taxes into pre-existing, non-health care-related tax programs as long as less than 85 percent of the tax burden fell on health care providers. Absent clarifying guidance, we were also concerned that states could mistakenly believe that selectively incorporating a tax on health care items or services for which Medicaid is a significant payer, like home and community-based services (HCBS), into a broader state tax program would result in the HCBS tax not being defined as health-care related.

[8] *https://oig.hhs.gov/oas/reports/region3/31300201.pdf.*

In July 2014, we issued State Health Official (SHO) letter #14–001 (SHO #14–001) on health care-related taxes. This guidance clarified that even in cases where less than 85 percent of a tax falls on health care items or services, the tax can be considered health care-related. If a tax treats health care items or services differently, the tax is still considered a health care-related tax. Specifically, SHO #14–001 stated that taxing a subset of health care services or providers at the same rate as a statewide sales tax, for example, does not result in equal treatment if the tax is applied specifically to a subset of health care services or providers (such as only Medicaid MCOs), since the providers or users of those health care services are being treated differently than others who are not within the specified universe. Despite this guidance, some states have continued to selectively incorporate health care items or services into larger tax programs that also levy taxes on goods and services unrelated to health care in an apparent attempt to circumvent the statutory restrictions on health care-related taxes. These impermissible tax arrangements have not been limited to states incorporating only Medicaid MCOs into broader state or local taxes, but have included other health care items or services, such as private non-medical institution services.

Often, the health care items and services (or providers) subject to such taxes are subsets of health care items and services (or providers) highly utilized by Medicaid beneficiaries and/or do not meet the permissible class definition in § 433.56. For example, a state may try to impose a tax on a service that is mostly (if not entirely) reimbursed by Medicaid, which does not fall under an existing permissible class at § 433.56, such as HCBS. A state may include a service like this among other goods and services that are taxed under a larger tax program that is not explicitly related to health care, such as a tax program principally concerned with natural resources or telecommunications. The proposed rule clarifies that by targeting a specific type of health care-related item or service and incorporating it into a larger tax (the HCBS portion of this tax to continue with the above example) would be considered health care-related—even if 85 percent of the revenue from the tax overall did not come from health care-related items or services or providers of such items or services.

The preamble to the November 1992 interim final rule with comment period discussed the circumstances in which health care items and services included within a larger non-health care related-tax would cause the tax to be considered health care-related in situations where they did not constitute 85 percent of the tax revenue. To illustrate when such taxes would or would not be considered health care-related, the preamble gave the hypothetical example of a 5 percent tax on the gross revenues of hospitals and gas stations that generated $100 million dollars in tax revenue. The preamble stated that if the hospitals paid $90 million of the tax, then the tax would be considered to be health care-related because this would exceed the 85 percent threshold. However, if the hospitals paid only $60 million dollars, then the tax would not be considered health care-related because the tax rate is the same for health care items or services and non-health care items or services and the hospitals would be taxed at under the 85 percent threshold established in regulation.

We are aware that this example may not have been as clear as possible and could have led to confusion as to what different treatment for health care items and services means in the context of § 433.55(c). Specifically, we are concerned some parties misinterpreted this example as indicating approval of states selecting specific health care-related items and services for inclusion within a broader tax program without the tax being considered health care-related as long as less than 85 percent of the tax burden falls on such items and services. We believe this potential misinterpretation is inconsistent with section 1903(w)(3)(A)(ii) of the Act, § 433.55(c), and the preamble to the August 1993 final rule, which stated in response to a commenter, ''We believe section 1903(w)(3)(A)(ii) [of the Act] prevents the state from implementing a tax that may be masked by an existing non-health care-related tax'' (58 FR 43160). In the aforementioned preamble example, a tax in which hospitals paid $60 million and gas stations paid $40 million under a flat 5 percent gross revenues tax was not necessarily considered health care-related because the burden on providers of health care items and services is less than 85 percent. While § 433.55(c) states that in situations where less than 85 percent of the tax burden falls on health care items or services the tax may still be considered health care-related if differential treatment exists for entities providing or paying for health care items or services. However, § 433.55(c) does not specify the reference group against which one should measure differential treatment.

While statute and regulation specify that differential treatment results in a tax being considered health care-related, existing law and regulations do not explicitly describe what constitutes differential treatment. Therefore, we are proposing to clarify what constitutes differential treatment to clarify when taxes are health care-related and when they are not. We believe this clarification would assist in prohibiting state or local units of government from incorporating an impermissible tax on health care items or services into a larger existing tax, such as a state-wide sales tax, or creating a new tax that treats health care items or services differently to avoid federal statutory and regulatory requirements related to health care-related taxes. Therefore, we are proposing to clarify that differential treatment occurs when a tax program treats some individuals or entities that are providing or paying for health care items or services differently than (1) individuals or entities that are providers or payers of any health care items or services that are not subject to the tax or (2) other individuals or entities that are subject to the tax.

Due to the complexity of this issue, we are providing a few illustrative examples of when a tax program does or does not constitute differential treatment. First, we are providing examples relating to evaluating differential treatment of individuals or entities that are providing or paying for health care items or services that are subject to the tax compared to individuals or entities that are providers or payers of any health care items or services that are not subject to the tax. For example, if the state imposes a tax on telecommunication services, but also includes inpatient hospital services, this would constitute differential treatment. Given that inpatient hospital services are not reasonably related to the other services subject to taxation (that is, telecommunication services), as discussed below, we would consider the tax to be treating inpatient hospital services differently than other individuals or entities providing or paying for health care items or services, which are not included in the tax. While some might consider this example as being similar to the example involving a tax on gas stations and hospitals in the November 1992 interim final rule, we are taking this opportunity to clarify our interpretation of section 1903(w)(3)(A)(ii) of the Act. We have never ruled out the extistence of differential treatment in all instances where health care items or services are included in a larger non-health care-related tax program, even where less than 85 percent of the tax burden falls on health care providers and all entities

and services are subject to the same tax rate. As we emphasized in the 2014 SHO letter, taxes where less than 85 percent of the tax burden falls on health care items or services may still be considerd health care-related if only a subset of health care items or services are taxed, even if they are taxed at the same rate as items or services not related to health care that are also included in the tax. Prior to the issuance of the 2014 SHO letter, several states attempted to mask taxes on such subsets, including Medicaid-only MCOs, by including them within larger, non-exclusively health care-related tax programs. Notably, the taxes on Medicaid-only MCOs would not have been approvable on their own, if implemented by the state separately from the taxation of items and services unrelated to health care. States included taxes on Medicaid-only MCOs within larger, non-exclusively health care-related tax programs, such as sales taxes and gross receipts taxes, in an attempt to bypass federal statutory and regulatory prohibitions by effectively masking the health care-related component of the tax. We have worked with the OIG to ensure that these and similar practices that ran counter to the letter and spirit of federal statute and regulation were stopped. We view this proposed rule as a continuation of our efforts to ensure that health care-related taxes follow all applicable requirements.

In instances where a state or other unit of government imposes a tax on reasonably related items or services that includes some non-health care items or services and some health care items or services, we would not consider differential treatment to occur if all health care items or services that are reasonably related to the taxed universe are included in the tax and all health care items and services subject to the tax are taxed at the same rate as the non-health care items or services subject to the tax. We will consider items or services within the tax to be reasonably related if there exists a logical or thematic connection between the items or services or individuals or entities being taxed. Examples of such a connection could include, but would not be not limited to, industry, such as electronics; geographical area, such as city or county; net revenue volume; or number of employees. When determining whether or not individuals, entities, items, or services are reasonably related, we will examine the parameters of the given tax. In this context, the parameters of the tax means the grouping of individuals, entities, items or services, on which the tax is imposed. For example, if a state or unit of government imposed a one percent tax on all revenue from licensed professional services (for example, accounting services, legal services, etc.), including revenue from services provided by medical professionals, this would not constitute differential treatment, because all health care items or services reasonably related to the universe of items and services subject to the tax are themselves subject to the tax, and such services are taxed at the same rate as the included non-health care items or services. Provided that less than 85 percent of the tax burden falls on health care providers, the tax in this example would not be considered a health care-related tax. However, if the state or unit of government imposing the tax structures the parameters of the tax in such a way to include items or services that are not reasonably related and only selected health care items or services are included in the tax while others are excluded, the tax would be considered health care-related, as in the above example of a tax on telecommunications services and inpatient hospital services.

When determining whether or not differential treatment occurs, we evaluate the totality of the circumstances of the arrangement. For example, under some circumstances, it could be permissible for the state or unit of government to impose a tax on businesses employing 50 to 500 full-time equivalent (FTE) employees; such that the tax likely would include a number of entities providing or paying for health care items and services, and a number of entities selling non-health care items and services, within its parameters. However, it could be that, within a certain geographical area of the state, most businesses employing 50 to 500 FTE employees are entities providing or paying for health care items and services. If the tax were geographically targeted to include this area but not other areas of the state or unit of government's jurisdiction with a more diverse mix of businesses employing 50 to 500 FTE employees, this targeting could be evidence that the state or unit of government is using the numeric FTE employee parameter as a proxy to concentrate the tax burden on certain entities providing or paying for health care items or services.

While the examples given above illustrate hypothetical taxes we would consider to be health care-related where less than 85 percent of the tax falls on providers of health care items or services, they do not represent an exhaustive list of all possible forms of differential treatment, as we cannot foresee every possible arrangement. Differential treatment may still exist even in situations other than those described previously and identified in proposed § 433.55(c)(1) and (2). Therefore, we are also proposing to examine the parameters of the tax as defined by the state or other unit of government, as well as the totality of the circumstances relevant to which individuals, entities, items, or services are subject (and not subject) to the tax, and the tax rate applicable to each, in determining whether the tax program involves differential treatment as provided in section 1903(w)(3)(A)(ii) of the Act. The proposed rule aims to preserve appropriate state flexibility on tax and health care policy, while clarifying what constitutes differential treatment within the meaning of section 1903(w)(3)(A)(ii) of the Act and § 433.55(c) and helping ensure that states do not design tax structures to circumvent statutory requirements.

d. Concerns About Hold Harmless and Health Care-Related Taxes

We have become aware of impermissible arrangements that exist where a state or other unit of government imposes a health-care related tax, then uses the tax revenue to fund the non-federal share of Medicaid payments back to the taxpayers. The taxpayers enter into an agreement, which may or may not be written, to redistribute these Medicaid payments to ensure that taxpayers, when accounting for both the original Medicaid payment (from the state, unit of local government, or MCO) and any redistribution payment from another taxpayer or taxpayers, receive all or any portion of their tax amount back. The net effect of the arrangement is clear evidence that taxpayers have a reasonable expectation that their forthcoming Medicaid payment (including any redistribution), which results in participating taxpayers being held harmless for all or a portion of the tax amount. Regardless of whether the taxpayers participate voluntarily, whether the taxpayers receive the Medicaid payments from a MCO, or whether taxpayers themselves make redistribution payments from funds other than Medicaid to other taxpayers, the net effect of the arrangement is the same: The taxpayers have a reasonable expectation to be held harmless for all or a portion of their tax amount.

Such arrangements undermine the fiscal integrity of the Medicaid program and are inconsistent with existing statutory and regulatory requirements prohibiting hold harmless arrangements. The February 2008 final rule on health

care-related taxes and provider-related donations specified that hold harmless arrangements prohibited by § 433.68(f)(3) exist ''. . . when a state payment is made available to a taxpayer or a party related to the taxpayer (for example, as a nursing home resident is related to a nursing home), in the reasonable expectation that the payment would result in the taxpayer being held harmless for any part of the tax'' (73 FR 9694). Despite the statutory and regulatory prohibitions, we are concerned that states, local units of government, and/or providers continue to design and execute hold harmless practices that are antithetical to federal law and regulation. To aid in preventing and ending such complex financing arrangements, the proposed rule would add clarifying language to the hold harmless definition in § 433.68(f)(3) to specify that CMS considers a ''net effect'' standard in determining whether or not a hold harmless arrangement exists.

In the example cited above involving some taxpayers that received more in Medicaid reimbursement (from the state, unit of local government, or MCO) than the amount of tax paid which they then transfered to other taxpayers that did not, we would consider such an arrangement to include a hold harmless arrangement because the taxpayers had a reasonable expectation to be held harmless from all or a portion of the cost of their tax through either or both of the Medicaid payments from the state or other unit of government or from MCOs, and redistribution payments from other taxpayers participating in the arrangement whose payments from the state or other unit of government or from MCOs met or exceeded their own tax cost. The fact that a private entity makes the redistribution payment does not change the essential nature of the payment, which constitutes an indirect payment from the state or unit of government to the entity being taxed that holds it harmless for the cost of the tax. As noted in the February 2008 final rule, ''An indirect payment to the taxpayer would also constitute a direct guarantee'' (73 FR 9896). When looking for the presence or absence of a hold harmless arrangement in health care-related taxes, conclusive evidence lies not in the presence or absence of individual elements, but the sum total of all the elements when viewed collectively. While the presence or absence of a single individual factor may not be sufficient to establish conclusively that such an arrangement exists, the cumulative effect of many such factors may be sufficient to make such a determination. Only after reviewing the totality of the circumstances and making a judgment about how the overall arrangement operates are we able to determine whether or not the state provides for a direct or indirect payment, offset, or waiver that holds the taxpayer harmless for any portion of the tax. This proposal does not reflect any change in policy or approach, but merely codifies currently prohibited practices, and would provide further clarification to states regarding how they may finance the non-federal share of Medicaid expenditures.

e. Concerns Regarding Permissible Tax Classes of Health Care Services and Providers

Over the past several years, we have become aware that several states have instituted taxes on health insurers or health insurance premiums. In an effort to maintain consistent federal oversight of health care-related taxes, modernize the permissible class definitions, and permit states additional flexibility to implement health care-related taxes, this rule proposes to add services of health insurers, other than MCOs listed in § 433.56 (a)(8), as permissible classes of health care items or services under § 433.56, under section 1903(w)(7)(A)(ix) of the Act. In an effort to avoid being overly prescriptive, we have decided against proposing a narrow definition of the term ''health insurer.'' However, the definition of ''health insurance issuer'' at 45 CFR 144.103 provides a helpful point of reference. That regulation defines a health insurance issuer as an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a state and that is subject to state law that regulates insurance (within the meaning of section 514(b)(2) of ERISA). However, the term health insurer in the proposed additional class at § 433.56, explicitly excludes MCOs such as HMOs because these organizations are already included under section 1903(w)(7)(A)(viii) of the Act, unlike the term health insurance issuer at § 144.103. The proposed class would include insurers that issue policies for the group market and/or the individual market, including such coverage with high-deductible or ''catastrophic'' plans. The proposed class would also include issuers of short-term limited-duration policies as defined in § 144.103, as well as issuers of coverage for ''excepted benefits'' defined in 45 CFR 146.145 in the group market and the individual market at 45 CFR 148.220, such as dental-only and vision-only policies. Such a health care-related tax could include, but need not be limited to, an assessment on health insurance premiums, covered lives, or revenue. The class may include cost sharing measures, including premiums, from Medicare, such as private FFS plans under Medicare Advantage offered as part of Medicare Part C or prescription drug insurance plans as part of Medicare Part D, as well as any premiums paid by individuals as part of a section 1115 waiver where Medicaid funding is used for premium assistance to help beneficiaries purchase commercial health insurance plans. Such a tax cannot include CMS or any state agencies involved in administering title XVIII, title XIX, or title XXI, including state Medicaid agencies. We are soliciting comments on the definition of this permissible class to ensure that the appropriate entities and services are included.

f. Concerns Regarding Non-Bona Fide Provider-Related Donations

We are concerned that certain states, localities, and private health care providers have designed complex financing structures to mask non-bona fide, provider-related donations used to fund the non-federal share of Medicaid payments. States, localities, and private providers appear to be utilizing these complex arrangements to obfuscate the source of non-federal share and avoid the statutorily-required reduction to state medical assistance expenditures. They also appear to violate a variety of requirements in section 1903(w) of the Act and its implementing regulations, which mandate that the state's Medicaid expenditures for which FFP is provided shall be reduced by the sum of any revenues resulting from provider-related donations received by the state during the fiscal year other than bona fide provider-related donations. Such practices may also run afoul of section 1902(a)(30)(A) of the Act, which requires that payments be made consistent with efficiency, economy and quality of care. Additionally, they may result in payments that are inconsistent with the proper and efficient operation of the state plan (see section 1902(a)(4) of the Act) and its design for a cooperative state-federal partnership by generating increases in federal spending without a corresponding increase in state financial participation, with no direct link to additional services furnished, beneficiaries assisted, or other benefit to the Medicaid program.

Often, these arrangements involve a transfer of value of some kind from a private provider to a governmental entity and the governmental entity does

not reimburse the private entity at fair market value. For example, the transfer may involve the private provider assuming an obligation previously performed by a governmental entity without being reimbursed fair market value, performing services previously performed by a governmental entity without being reimbursed at fair market value, or renting real property from a governmental entity at a price above fair market value. In such cases, the difference between the fair market value of the assumption of the obligation, performance of the services, or rental value of the property and the value actually transferred is in effect a donation by the private provider to the governmental entity. The governmental entity then executes an IGT, funded by the donation, to the state Medicaid agency, which is then used to fund the non-federal share of Medicaid expenditures. The Medicaid agency then makes a supplemental payment to the private donating provider, which effectively compensates it for the value it transferred to the governmental entity (the assumption of an obligation, performance of services, or excess rent paid). Often, this arrangement will not be executed as a contract or other formal business arrangement, or otherwise reduced to writing of which evidence is available to us. Instead, it will be based on a series of reciprocal actions performed by each party. As a result of such an arrangement, the private provider makes a direct or indirect donation, and the state returns all or a portion of the value of the donation to the private provider effectively using only federal dollars without a corresponding outlay in state expenditures, and such an arrangement constitutes a non-bona fide donation becase there is a pre-existing hold harmless agreement. The net effect of such an arrangement is to artificially inflate the state Medicaid expenditures eligible for FFP, sometimes up to 100 percent, in a manner inconsistent with statute and regulation.

Recently, we have identified and taken action to prevent or end impermissible financing practices in which states have attempted to mask non-bona fide provider-related donations. Some of these arrangements include instances where transfers of licenses occur without consideration of, or below, fair market value from a private provider to a unit of government to enable formerly private providers to receive certain supplemental payments available to governmental providers. In other situations, governmental entities have leased the same facilities back to private providers at rents above fair market value as a way of allowing the private facilities to make non-bona fide donations to the governmental entity, which then transfers the funds to the state Medicaid agency through IGTs. Ultimately, these schemes have the net effect of reducing the overall percentage of total computable Medicaid expenditures funded with state dollars, while at the same time causing a corresponding increase in federal funding.

We have taken several steps to curtail public-private partnerships that lead to non-bona fide provider-related donations. In 2014, we issued SMDL #14–004, the second in a series of two SMDLs that discuss mutual obligations and accountability with respect to the Medicaid program for the federal government and states. SMDL #14–004 addressed the deleterious impact that public-private partnerships designed to skirt federal requirements concerning provider-related donations can have on fiscal integrity. In 2016, we issued a disallowance to recover FFP associated with impermissible provider-related donations where private providers assumed financial obligations of local governmental entities to free up government funds, and the freed up funds were then used as the state's share of supplemental payments to the donating provider. The CMS disallowance was upheld when the state appealed to the DAB (DAB No. 2886, Texas Health and Human Services Commission (2018)).

This proposed rule would clarify the hold-harmless definition related to donations to account for the net effect of complex donation arrangements, including where the donation takes the form of the assumption of governmental responsibilities. In the provisions of § 433.54 addressing when a guarantee would exist to hold the provider harmless for value related to a donation to the governmental entity, this proposed rule would establish a net effect standard. Any exchange of value that constitutes a governmental entity reimbursing a private entity for value related to the private entity's donation need not arise to the level of a legally enforceable obligation, but must be considered in terms of its net effect, thus incorporating the language in DAB No. 2886, Texas Health and Human Services Commission (2018). In that case, the DAB held that ''the net effect of the arrangements under review amounted to impermissible provider donations'' and that as a result, the supplemental payments made by state Medicaid agency to the private provider were impermissible (p.25). The DAB also found that it is not necessary for a legally enforceable obligation to exist, such as under a statute or contract, for a donation to be found. In line with the Board's reasoning, we are proposing to establish a net effect standard to look at the overall arrangement in terms of the totality of the circumstances to judge if a non-bona fide donation of cash, services or other transfer of value to a unit of government has occurred. In § 433.52, the proposed definition of ''provider-related donation'' would clarify that the assumption by a private entity of an obligation formerly performed by a unit of government where the unit of government fails to compensate the private entity at fair market value would be considered an indirect donation made from the private entity to the unit of government. This proposed rule would also clarify that such an exchange need not arise to the level of a legally enforceable obligation.

C. Previous CMS Efforts To Understand and Monitor Medicaid Payments and Financing

We have already taken action to strengthen our approach to authorizing, monitoring, and evaluating Medicaid payments and financing to ensure that statutory and regulatory requirements are satisfied. To monitor supplemental payments made under state plan authority, in 2010, we began requiring states to separately report through MBES amounts paid for the most common and largest supplemental payments in accordance with § 430.30(c). States report statewide aggregate amounts for only some supplemental payments and do not include provider-level detail. In 2013, we issued SMDL #13–003, which discussed a submission process to comply with the UPL requirements in §§ 447.272 and 447.321. This SMDL discussed methods of complying with these two regulations through annual UPL submissions apart from the normal state plan process, as the regulations do not specify time frames for the submission of UPL demonstrations. The SMDL also provided further guidance regarding UPL calculation methodologies and requested that states identify the source of non-federal funding for the payments described in the UPL demonstration. This guidance improved our ability to analyze supplemental payments and validate that aggregate supplemental payments for each class of provider ownership group do not exceed what Medicare would have paid for the services or, in an alternative approach that may be selected by the states, do not exceed the cost of providing those services.

We have also intensified our examination of SPAs proposing supplemental payments, and their associated funding arrangements, and have developed a greater understanding of how to ensure that payment and financing arrangements comply with statutory requirements. These reviews focus on ensuring more transparency for supplemental payments by requiring more comprehensive SPA language so that providers and other stakeholders can fully understand how providers will receive payment and any conditions on those payments. We are also asking more questions regarding states' assumptions about the value that proposed supplemental payments would bring to the Medicaid program, including in terms of improving access and quality of care outcomes, in our efforts to ensure that states' payment systems are consistent with section 1902(a)(30)(A) of the Act.

Although we made improvements to the parameters around aggregate payment levels as reflected in UPL demonstrations, there have been concerns from oversight entities, noted elsewhere in the preamble, regarding payments to individual providers, including concern that some governmental providers were being paid Medicaid payments far in excess of the costs incurred in providing the underlying services. In response to those concerns, we issued the ''Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Financial Partnership'' final rule with comment period in the May 29, 2007 **Federal Register** (72 FR 29748), which limited payments to any governmentally operated provider to the cost incurred for delivery of Medicaid services. The May 29, 2007 final rule with comment period was challenged by states and health care providers. After a series of Congressional moratoria against its implementation, Congress stated its sense that it should not be implemented. In 2010, the final rule was rescinded (75 FR 73972) and we have not moved forward with this or any similar approach.

We have previously recognized the need in other instances to obtain provider-level payment reporting. Section 1923(j) of the Act and its implementing regulations delineate annual DSH audit and reporting requirements. To ensure that Medicaid DSH payments are in compliance with federal statutory requirements, we published the 2008 DSH audit rule, which requires that states report and account for certain provider-level information on the hospitals receiving these payments. The rule also requires states to have their DSH payment programs independently audited to verify that the payments comply with applicable hospital-specific DSH limits. Such information includes reporting of supplemental payments and ensuring that such payments are factored into the hospital-specific DSH limit. However, this data set is limited in that it only includes reporting for those hospitals that receive Medicaid DSH payments and are due to us more than 3 years after the completion of each state plan rate year. Therefore, in § 447.288 of this proposed rule, to help ensure timely and comprehensive reporting on the Medicaid financing for all payments to hospitals, we are proposing to require the annual amount of total Medicaid DSH payments made to any provider be reported in the annual provider-level payment data report for this regulation, along with all Medicaid supplemental payments.

II. Provisions of the Proposed Rule

A. Proposed Provisions

1. Disallowance of Claims for FFP (§ 430.42)

Section 1116(d) and (e)(1) of the Act outline the disallowance reconsideration process and provide that a state may request administrative reconsideration of a disallowance if such a request is made within a 60-day period that begins on the date the state receives notice of the disallowance. However, the statute does not specify the format of the notice of disallowance or request for reconsiderations. We are proposing to amend § 430.42 to alter the means of communication with regard to the disallowance reconsideration process from one based on registered or certified mail to one based on electronic mail or another electronic system as specified by the Secretary. When § 430.42 as now in effect was finalized, certified mail was considered to be the optimal way to establish the dates on which a communication was sent and received, which is important to establish compliance with timeframes specified in regulation. However, email is a preferred form of communication today in the normal course of agency business and can be used to establish the time when a communication is sent and received, since email messages typically are transmitted near-instantaneously. Further, by eliminating mailing and paper costs, the use of email could slightly reduce the administrative burden associated with the disallowance process under § 430.42. As a result, we are proposing to revise all of the references to registered or certified mail or to ''written requests'' to make clear that such requests need not be in a physical, as opposed to an electronic format in § 430.42(b)(2)(i)(A) introductory text, (b)(2)(i)(B) and (C), (c)(3), (c)(4)(i), (c)(6), and (d)(1) to replace references to registered or certified mail with references to electronic mail (email) or another electronic system as specified by the Secretary. In addition, we propose to remove the word ''written'' from § 430.42(b)(2)(i)(A) and (B) to avoid a possible misunderstanding that the request must be in the form of a physical writing, since we propose to adopt an electronic process. The date that the communication is successfully sent or received by electronic mail (email) or electronic system as specified by the Secretary would be substituted for current references to the date that the communication was sent or received by registered or certified mail.

2. State Share of Financial Participation (§ 433.51)

We are proposing to amend § 433.51 to more clearly define the allowable sources of the non-federal share to more closely align with the provisions in section 1903(w) of the Act. In § 433.51(a) and (c), we are proposing to replace the current reference to ''public funds'' with ''state or local funds'' which is consistent with statutory language as in section 1903(w)(6)(A) of the Act. Public funds is not a phrase used in section 1903(w) of the Act, and the use of this phrase in regulation has caused confusion with respect to permissible sources of non-federal share. We are proposing to revise § 433.51(b) by similarly replacing the current reference to public funds and by specifying more precisely the funds that states may use as state share. Although we have applied the statutory language to our review and approval of state financing mechanisms, the term public funds in the regulatory text has created confusion among states, and has led to state requests to derive IGTs from sources other than state or local tax revenue (or funds appropriated to state university teaching hospitals), which is not permitted under the statute in section 1903(w)(6)(A) of the Act. The proposed amendment to paragraph (b) would clearly limit permissible state or local funds that may be considered as the state share to state general fund dollars appropriated by the state legislature directly to the state or local Medicaid agency; IGTs from units of government (including Indian tribes), derived from state or local taxes (or funds appropriated to state university

teaching hospitals), and transferred to the state Medicaid Agency and under its administrative control, except as provided in proposed § 433.51(d); or CPEs, which are certified by the contributing unit of government as representing expenditures eligible for FFP and reported to the state as provided in proposed § 447.206.

We are proposing these revisions to specifically align the allowable sources of the non-federal share with the statute. The proposed provisions would make clear that allowable state general fund appropriations under § 433.51(b)(1) are those made directly to the state or local Medicaid agency, and are differentiated from appropriations made to other units of government that otherwise may be tangentially involved in financing Medicaid payments through IGTs or CPEs. We would describe allowable IGTs and CPEs in proposed § 433.51(b)(2) and (3), respectively. The statute clearly differentiates between these sources of funds. Specifically, section 1903(w)(6)(A) of the Act provides that states generally may finance the state share using funds derived from state or local taxes (or funds appropriated to state university teaching hospitals) transferred from or certified by units of government within a state as the non-federal share of Medicaid expenditures. The phrase ''transferred from or certified by'' refers to the IGT and CPE, respectively, and the statute clearly indicates that those funding mechanisms must be derived from state or local taxes (or funds appropriated to state university teaching hospitals). The inclusion of the above reference to ''funds appropriated to state university teaching hospitals'' in § 433.51(b)(2) is a direct reference to language in section 1903(w)(6)(A) of the Act to more precisely implement the Act in this regulatory provision.

We are proposing to identify ''certified public expenditures'' specifically in regulation as an allowable source of state share in a manner consistent with section 1903 of the Act, and to describe the protocols states may use to identify allowable Medicaid expenditures associated with the use of a CPE as the source of non-federal share. Thus, we propose to include a reference in § 433.51(b)(3) to proposed § 447.206 to require that, for a state to use a CPE as a source of state share, the state must meet the requirements of proposed § 447.206, discussed in detail below, with respect to payments funded by the CPE. In particular, in § 447.206(b)(1), we propose that such payments, to a provider that is a unit of government, would be limited to the state or non-state government provider's actual, incurred cost of providing covered services to Medicaid beneficiaries using reasonable cost allocation methods.

Lastly, we are proposing to add paragraph (d) to this section to clearly indicate that state funds provided as an IGT from a unit of government but that are contingent upon the receipt of funds by, or are actually replaced in the accounts of, the transferring unit of government from funds from unallowable sources, would be considered to be a provider-related donation that is non-bona fide under §§ 433.52 and 433.54. This language is intended to implement the preclusion under section 1903(w)(6)(A) of the Act on the use of IGTs where the IGT is derived from a non-bona fide provider-related donation by making it abundantly clear that, as indicated in the statute, the IGT must come from state or local tax revenue (or funds appropriated to state university teaching hospitals), and any IGTs that are derived from, or are related to, non-bona fide provider-related donations would be prohibited.

3. General Definitions (§ 433.52)

The terms ''Medicaid activity'' and ''non-Medicaid activity'' are used in the proposed § 433.68(e)(3), discussed in detail below, in determining whether a health care-related tax program is generally redistributive in nature in accordance with section 1903(w)(3)(E)(ii)(I) of the Act. The definitions for ''Medicaid activity'' and ''non-Medicaid activity'' in this proposed rule would apply only to determining whether a state or other unit of government tax program is generally redistributive as required in section 1903(w)(3)(E)(ii)(I) of the Act. We are proposing to define ''Medicaid activity'' to mean any measure of the degree or amount of health care items or services related to the Medicaid program or utilized by Medicaid beneficiaries, including, but not limited to, Medicaid patient bed days, the percentage of an entity's net patient revenue attributable to Medicaid, Medicaid utilization, units of medical equipment sold to individuals utilizing Medicaid to pay for or supply such equipment or Medicaid member months covered by a health plan.

We are proposing to define ''non-Medicaid activity'' to mean any measure of the degree or amount of health care items or services not related to the Medicaid program or utilized by Medicaid beneficiaries. Such a measure could include, but would not necessarily be limited to, non-Medicaid patient bed days, percentage of an entity's net patient revenue not attributable to Medicaid, the percentage of patients not utilizing Medicaid to pay for health care items or services, units of medical equipment sold to individuals not utilizing Medicaid funds to pay for or supply such equipment, or non-Medicaid member months covered by a health plan.

We are proposing to define the term ''net effect'' to mean the overall impact of an arrangement, considering the actions of all of the entities participating in the arrangement, including all relevant financial transactions or transfers of value, in cash or in kind, among participating entities. The net effect of an arrangement is determined in consideration of the totality of the circumstances, including the reasonable expectations of the participating entities, and may include consideration of reciprocal actions without regard to whether the arrangement or a component of the arrangement is reduced to writing or is legally enforceable by any entity.

The term ''parameters of a tax'' is used in the proposed § 433.55(c), discussed in detail below, in determining whether a tax is health care-related as provided in section 1903(w)(3)(A) of the Act. We are proposing to define ''parameters of a tax'' to mean the grouping of individuals, entities, items or services, on which a state or unit of government imposes a tax.

Currently, § 433.52 specifies a definition of ''Provider-related donation'' that includes an introductory paragraph and three numbered paragraphs. We propose to redesignate paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and to add a new paragraph (2). Proposed paragraph (2) would specify that any transfer of value where a health care provider or provider-related entity assumes an obligation previously held by a governmental entity and the governmental entity does not compensate the private entity at fair market value would be considered a donation made indirectly to the governmental entity. We are proposing that such an assumption of obligation need not rise to the level of a legally enforceable obligation to be considered a donation, but would be considered by examining the totality of the circumstances and judging the arrangement's net effect. For example, if a private provider assumes any contractual obligation, such as staffing costs for accounting services, of a non-state governmental entity without a corresponding transfer of value at market value, we would consider that to

be a provider-related donation from the private provider to the unit of government.

This proposal does not represent a new policy, but a clarification of current law designed to aid in preventing and, where they currently may exist, terminating impermissible financing practices involving provider-related donations. The current definition does not explicitly address circumstances involving the assumption of a governmental obligation, or our policy to determine the net effect of an arrangement in determining whether or not a donation has occurred.

We are also proposing to revise newly redesignated paragraphs (3) and (4) by changing the term ''health care related'' to ''provider-related'' to align with usage where provider-related donations are addressed throughout part 433, subpart B, and by changing the language in newly redesignated paragraph (4) from ''the percentage of donations the organization received from the providers during that period'' to ''the percentage of the organization's revenue during that period that was received as donations from providers or provider-related entities.'' We are proposing this change because we believe that this language is clearer and more transparent for states.

Some health care-related tax programs exclude certain items, services, or providers from taxation or impose variable rates. To do so, states or non-state units of government often divide the universe of entities subject to taxation into groups based on various attributes. We are proposing to define ''taxpayer group'' to mean one or more entities grouped together based on one or more common characteristics for purposes of imposing a tax on a class of items or services specified under § 433.56. This term is used in proposed § 433.56(e)(3), which is discussed in detail below, in determining whether or not a tax program is generally redistributive in nature, in accordance with section 1903(w)(3)(E)(ii)(I) of the Act.

4. Bona Fide Donations (§ 433.54)

Section 1903(w)(2)(B) of the Act provides that the Secretary may by regulation specify types of provider-related donations described in that subparagraph that will be considered to be bona fide provider-related donations. The statute requires that bona fide provider-related donations may have no direct or indirect relationship (as determined by the Secretary) to Medicaid payments to the provider, providers furnishing the same class of items and services as the provider, or to any related entity, as established by the state to the satisfaction of the Secretary. Accordingly, implementing regulations in § 433.54(b) require that bona fide provider-related donations must not be returned to the individual provider, provider class, or related entity under a hold harmless provision or practice as described in § 433.54(c). We are proposing to revise § 433.54(c)(3) to clarify the standard used to determine whether the state (or other unit of government) receiving a donation provides for any direct or indirect payment, offset, or waiver, such that the provision of that payment, offset, or waiver directly or indirectly guarantees the return of any portion of the donation to the provider (or other party or parties responsible for the donation). The clarification would make express our current policy of examining the totality of the circumstances that determine the net effect of an arrangement between the state (or other unit of government) and the provider, provider class, or provider-related entity responsible for the donation. Specifically, we are proposing that a direct guarantee of the return of all or part of a donation would be found to exist where, considering the totality of the circumstances, the net effect of an arrangement between the state (or other unit of government) and the provider (or other party or parties responsible for the donation) results in a reasonable expectation that the provider, provider class, or related entity will receive a return of all or a portion of the donation either directly or indirectly. As noted in the 2008 final rule on Health Care-Related Taxes, ''An indirect payment to the taxpayer would also constitute a direct guarantee'' (73 FR 9698). Section 433.68 at paragraphs (f)(1), (2) and (3) describe the three situations that constitute a direct hold harmless arrangement. Paragraphs (f)(3)(i)(A) and (B) detail the two ''prongs'' of the indirect hold-harmless guarantee test. These two ''prongs'' constitute the ''safe harbor threshold'' of 6 percent and the ''75/75'' test. The safe harbor threshold states that taxes that are under 6 percent of net patient revenue attributable to an assessed permissible class pass the indirect hold harmless test. If a tax collection exceeds the 6 percent net patient revenue threshold, the second prong is applied. This prong is known as the ''75/75'' test and states that CMS will consider an indirect hold harmless arrangement to exist if 75 percent or more of the taxpayers receive 75 percent or more of their total tax costs back in enhanced Medicaid payments or other state payments. If the tax fails this prong, CMS considers an indirect hold harmless arrangement to exist. Direct and indirect payments are used in the proposed rule in the same way as they are used currently in § 433.68(f). This clarification is designed to aid in preventing and, where they may currently exist, eliminating complex financing arrangements designed to obfuscate the fact that non-bona fide provider-related donations are the source of the non-federal share of certain Medicaid payments. This is consistent with our current policy, which we have applied in the past and discussed in SMDL 14–004 on impermissible provider-related donations. We are also proposing to revise paragraph (c)(3) to clarify that a singular party, not just multiple ''parties,'' could be responsible for a provider-related donation described in this paragraph.

5. Health Care-Related Taxes Defined (§ 433.55)

Section 1903(w)(3)(A) of the Act defines a health care-related tax as a tax that is (1) related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services; or (2) is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals or entities. In the case of (1), a tax is considered related to health care items or services if at least 85 percent of the tax burden falls on health care providers. Implementing regulations are codified in § 433.55(c). This proposed rule would amend § 433.55(c) by clarifying that differential treatment occurs when a tax program treats some individuals or entities that are providing or paying for health care items or services differently than (1) individuals or entities that are providers or payers of any health care items or services not subject to the tax or (2) other individuals or entities subject to the tax. Additionally, we would amend § 433.55(c) to clarify that we examine the parameters of the tax as defined by the state or other unit of government, as well as the totality of the circumstances relevant to which individuals, entities, items, or services are subject (and not subject) to the tax and at which rate, in determining whether the tax program involves differential treatment as provided in section 1903(w)(3)(A)(ii) of the Act. Finally, the proposed rule would also add paragraphs (c)(1) and (2) to clarify when CMS would consider the treatment of individuals or entities providing or paying for health care

items or services to be different from the treatment provided to other individuals or entities.

In the proposed § 433.55(c)(1), we propose to clarify that differential treatment for providers of health care items or services would occur where the state or other unit of government imposing the tax makes some individuals or entities providing or paying for health care items or services subject to the tax, but excludes others. For example, a state imposing a tax on telecommunication services and inpatient hospital services would constitute differential treatment because some providers or payers of health care items or services subject to the tax are being treated differently than providers or payers of health care items or services not subject to the tax. States or local units of government imposing a tax cannot structure the parameters of the tax in such a way as to include items or services that are not reasonably related so that only selected health care items or services are included in the tax while others are excluded. Selective incorporation would also occur when the state or other unit of government imposing the tax structures the parameters of the tax in a way that has the effect of specifically excluding or including certain providers of health care items or services from the tax. This would constitute differential treatment because it would have the same effect as selecting certain health care items or services for inclusion in the tax when such items or services are not reasonably related to the other items being taxed.

Additionally, we propose in § 433.55(c)(2) to specify that differential treatment would result when entities providing or paying for health care items or services are treated differently than other entities also included in the tax. For example, if the state taxes all businesses in the state, but places a higher tax rate on hospitals and nursing facilities than on other businesses, this would result in differential treatment.

We are concerned that taxes of the sort described in proposed § 433.55(c)(1) and (2) are not consistent with applicable statutory (and current regulatory) requirements because they may include individuals or entities providing or paying for health care items or services that receive high levels of reimbursement from Medicaid for such items or services, and that may receive a return of their tax costs in the form of increased Medicaid payments. In particular, we are concerned about tax programs that treat health care items or services that are mostly reimbursed by Medicaid differently than other health care items or services with low Medicaid reimbursement. For example, a statewide revenue tax of 5 percent of net revenue on all businesses in the state that includes only a subset of health care items or services that happens to be reimbursed heavily by Medicaid, such as HCBS, but which is designed to exclude other providers of health care items or services with lower rates of Medicaid reimbursement such as continuing care retirement facilities (CCRCs), would result in differential treatment. Any time a tax structure selectively incorporates a subset of health care items or services for inclusion in a tax and excludes others, we would consider this differential treatment, as reflected in proposed § 433.55(c)(1). Selective incorporation generally occurs in two situations: First, when the state or unit of government includes some, but not all, health care-related items or services and those items or services are not reasonably related to the other items being taxed. Second, when the state or other unit of government structures the parameters of the tax in such a way that has the effect of such selective incorporation described above. Reasonably related means there exists a logical or thematic connection between the items or services being taxed. Examples of such a connection include, but are not limited to, industry, such as electronics; geographical area, such as city or county; net revenue volume; or number of employees.

Additionally, any time the tax treats individuals or entities providing or paying for health care items or services differently than other entities also included in the tax, we would also consider this to be differential treatment, as reflected in proposed § 433.55(c)(2). We note that the examples provided in these proposed paragraphs do not constitute an exhaustive list of all possible manifestations of differential treatment. Other circumstances constituting differential treatment for health care items or services, or entities providing or paying for health care items or services, would result in the tax being considered health care-related based on the differential treatment provisions in § 433.55(c).

The proposed language related to selective incorporation does not mean that the state or other unit of government must tax every provider of health care items or services within its jurisdiction to avoid its tax being considered health-care related in situations where less than 85 percent of the tax burden falls on health care items or services. It does mean that the state or other unit of government cannot include in or exclude from the tax only certain providers, or a class or classes of providers, by its own specification of the parameters of the tax. In addition, the state cannot structure the parameters of the tax in such a way so as to have the same effect of carving out or in only certain providers, or a class or classes of provider.

6. Classes of Health Care Services and Providers Defined (§ 433.56)

Section 1903(w)(7)(A)(ix) of the Act provides that the permissible classes of health care items and services include such other classifications consistent with section 1903(w)(7)(A) of the Act as the Secretary may establish by regulation. In addition to the specific classifications that Congress identified in statute, current regulations in § 433.56(a) specify certain additional classes established by the Secretary. We are proposing to add a new class of health care items and services to the list of permissible classes at § 433.56(a) by redesignating paragraph (a)(19) as paragraph (a)(20), revising paragraph (a)(18), and adding a new paragraph (a)(19). We propose to strike ''and'' from paragraph (a)(18), to accommodate the proposed paragraph (a)(20). In new proposed paragraph (a)(19), we would permit states and units of local government to impose taxes on services of health insurers beside those already identified in paragraph (a)(8) of the same section.

We have become aware that a number of states may be imposing taxes on health insurers in the form of a tax on health insurance premiums or volume of services. Section 1903(w)(7)(A)(ix) of the Act delegates to the Secretary the power to specify such other classification of health care items and services consistent with the paragraph as the Secretary may establish by regulation. We are proposing to expand the permissible class list to provide states with additional flexibility, while maintaining the fiscal integrity of the Medicaid program by ensuring that the proposed new permissible class would not be limited to items or services that are primarily or exclusively provided or paid for by the Medicaid program. Taxes imposed on health care items or services or providers of such items or services financed primarily or exclusively by Medicaid would harm the fiscal integrity of the Medicaid program by imposing a higher tax burden on the program and would not be generally redistributive as required by section 1903(w)(3)(E)(ii)(I) of the Act. Specifically, we are proposing to establish services of health insurers,

besides services of MCOs (including HMOs and PPOs), as a new permissible class. Services of MCOs (including HMOs and PPOs) are already a permissible class of services identified in § 433.56(a)(8). Some examples of possible metrics that could be used to assess a tax on services of health insurers include health care premiums, covered lives, or revenue. The proposed class would include health insurers offering plans to Medicaid beneficiaries under a section 1115 demonstration for a premium assistance program to such beneficiaries to purchase qualified health plans through the Health Insurance Exchange. We are seeking comment on the exact scope of this permissible class to ensure all appropriate services of health insurers are included within this class. As with other permissible classes, taxes imposed on this proposed category of health care services would be subject to applicable legal requirements, including the broad-based requirements in § 433.68(b)(1), the uniformity requirements in § 433.68(b)(2), and the hold harmless provisions in § 433.68(f).

The preamble of the August 1993 final rule listed criteria that should be met by any additional class of health care items and services under consideration to be added to the permissible classes under section 1903(w)(7)(A) of the Act. The preamble stated three criteria: The revenue of the class is not predominantly from Medicaid and Medicare (not more than 50 percent from Medicaid and not more than 80 percent from Medicaid, Medicare, and other federal programs combined); the class must be clearly identifiable, such as through designation for state licensing purposes, recognition for federal statutory purposes, or being included as a provider in state plans; and the class must be nationally recognized and not be unique to a state (58 FR 43162). We believe that the class of providers of health care items or services which we are proposing to add to § 433.56 meets all of these requirements. First, according to the most recent data available from the U.S. Census Bureau (See Health Insurance Coverage in the United States, September 12, 2018, Report Number P–60 264, Edward R. Berchick, Emily Hood, and Jessica C. Barnett, p. 1–2), 67.2 percent of individuals in the United States that are insured have private health insurance, whereas 37.7 percent have government coverage including 19.3 percent that have Medicaid and 17.2 percent that have Medicare. In addition, not all Medicaid or Medicare beneficiaries must pay premiums or cost sharing, and the amounts that they do pay, when required, are generally limited by federal statute and regulation and typically are lower than premiums and cost sharing amounts paid by enrollees in private insurance coverage. As a result, we do not believe that revenue from the proposed class, services of health insurers besides services of MCOs (including HMOs and PPOs) is predominantly from Medicaid and Medicare. Specifically, we believe that such revenue is not more than 50 percent from Medicaid and not more than 80 percent from Medicaid, Medicare, and other federal programs combined. Second, each state already defines and regulates health insurers in the state, through state law. As a result, the class is clearly identifiable. To the extent that state law specifically includes or excludes certain types of issuers of health insurance policies as health insurers, we propose deferring to the state in determining which such entities are included within the proposed class and which are not. For example, certain groups of businesses may band together to offer health insurance plans to their employees, a practice known as association health plans under section 3(5) of the Employee Retirement Income and Security Act (ERISA) (Pub. L. 93–406, enacted September 2, 1974). The degree to which an issuer of an association health plan is considered to be a health insurer depends on state law. Finally, health insurers exist nationwide, and are not particular to any individual state. Neither we (that is, CMS, either with respect to our administration of Medicare or Medicaid), the state Medicaid agency, or any agency involved in administering title XVIII, title XIX, or title XXI is considered to be a health insurer in terms of the proposed class to be added at § 433.56. As a result, the proposed class meets all of the criteria specified in the 1993 final rule and is appropriate to add to the classes of health care items and services upon which states may impose health care-related taxes without a reduction in FFP, subject to all applicable federal statutory and regulatory requirements.

7. Permissible Health Care-Related Taxes (§ 433.68(e) and (f))

Section 1903(w)(3)(E)(ii)(I) of the Act provides that the Secretary shall approve a state's application for a waiver of the broad based and/or uniformity requirements for a health care-related tax, if the state demonstrates to the Secretary's satisfaction that the tax meets specified criteria, including that the net impact of the tax and associated Medicaid expenditures as proposed by the state is generally redistributive in nature. Implementing regulations in § 433.68(e) specify a statistical test for evaluating whether a proposed tax is generally redistributive: If the state is seeking only a waiver of the broad based requirement, paragraph (e)(1) specifies a test referred to as ''P1/P2'' described above, while a state seeking a waiver of the uniformity requirement or both the broad-based and uniformity requirements must meet the test specified in paragraph (e)(2), referred to as ''B1/B2'', also described above. Although these tests were designed to ensure that a proposed tax is generally redistributive in accordance with section 1903(w)(3)(E)(ii)(I) of the Act, we have found that these tests alone have been insufficient in some circumstances as described above. As a result, we are proposing to add § 433.68(e)(3), to ensure that a proposed tax is truly generally redistributive.

Specifically, we are proposing to amend § 433.68(e) to provide that a proposed tax must satisfy both paragraph (e)(3) of this section, and, as applicable, paragraph (e)(1) or (2) of this section. At paragraph (e)(3), we propose that a tax must not impose undue burden on health care items or services paid for by Medicaid or on providers of such items and services that are reimbursed by Medicaid. We would consider a tax to impose undue burden under this paragraph if taxpayers are divided into taxpayer groups and any one or more of the following conditions apply: (1) The tax excludes or places a lower tax rate on any taxpayer group defined by its level of Medicaid activity than on any other taxpayer group defined by its relatively higher level of Medicaid activity; (2) within each taxpayer group, the tax rate varies based on the level of Medicaid activity, and the tax rate imposed on any Medicaid activity is higher than the tax rate imposed on any non-Medicaid activity (except as a result of excluding from taxation Medicare revenue or payments as described in § 433.68(d)); (3) the tax excludes or imposes a lower tax rate on a taxpayer group with no Medicaid activity than on any other taxpayer group, unless all entities in the taxpayer group with no Medicaid activity meet at least one of four specified exceptions; or (4) the tax excludes or imposes a lower tax rate on a taxpayer group defined based on any commonality that, considering the totality of the circumstances, CMS reasonably determines to be used as a proxy for the taxpayer group having no Medicaid

activity or relatively lower Medicaid activity than any other taxpayer group. These four conditions represent specific parameters of tax structures that, in addition to those identified through the P1/P2 and B1/B2 test, inherently result in undue burden on the Medicaid program. CMS considers taxes that pose an undue burden on the Medicaid program to be inherently not generally redistributive because they impose a higher tax burden on health care items or services, or providers of such items and services, that are financed by Medicaid than those not financed by Medicaid, as explained in the preamble to the August 1993 final rule, discussed above.

We are proposing to require states to ensure compliance with the proposed requirement at paragraph (e)(3) to avoid placing an undue burden on the Medicaid program beginning on the effective date of any final rule for tax waivers that have not yet been approved before the effective date of any final rule. For tax waivers approved before the effective date of any final rule, we are proposing that states must come into compliance with this requirement when submitting a new waiver request. As described below, in § 433.72, we are proposing to add new paragraphs (c)(3) and (4) to specify the date on which a waiver approved under § 433.72(b) will no longer be effective. We are proposing that an approved waiver would have a 3-year term; for a waiver approved before the effective date of the final rule the 3-year term would run from the effective date of the final rule. A state would be free to apply for renewal of an expired or expiring waiver, subject to the same approval criteria applicable to an initial waiver request under § 433.72(b). As a result, for existing tax waivers, we are proposing to require states to come into compliance with proposed § 433.68(e)(3) when they submit a new tax waiver request, which we are proposing would be no later than 3 years after the effective date of any final rule, depending on whether the state makes any substantial changes to the health care-related tax as specified in proposed § 433.72(d). We believe that this time frame would ensure our goal of supporting the fiscal integrity of the Medicaid program while giving states the necessary time to comply with the proposed regulatory amendments.

It is important to note that nothing in this proposed rule would interfere with states' permissible use of tax revenues to fund provider payments or reliance on such use of tax revenues to justify or explain the tax in the legislative process, as provided in section 1903(w)(4) of the Act. Tax structures that place an undue burden on Medicaid, however, would not be considered to be generally redistributive for the purposes of § 433.68(e). We seek comment on our proposed amendments to § 433.68(e), and on additional conditions that could result in a tax program imposing undue burden on the Medicaid program, and therefore, failing to be generally redistributive in nature that are not included in this proposed list.

Section 1903(w)(1)(A)(iii) of the Act states that the total amount expended during the fiscal year as medical assistance under the state plan shall be reduced by the sum of any revenues received by the state during the fiscal year from a broad-based health care-related tax if there is in effect a hold harmless provision with respect to the tax. Section 1903(w)(4)(C) of the Act states that there is in effect a hold harmless provision with respect to a health care-related tax if the state or other unit of government imposing the tax provides directly or indirectly for any payment, offset, or waiver that guarantees to hold the taxpayer harmless for any portion of the costs of the tax. Section 433.68(f)(3) echoes this language. The proposed rule would add a net effect standard to § 433.68(f)(3). This proposed change represents a clarification of existing policy and would not impose any new obligations or place any new restrictions on states that do not currently exist. The language added by the proposed rule would specify that a direct or indirect hold harmless guarantee will be found to exist where, considering the totality of the circumstances, the net effect of an arrangement between the state (or other unit of government) and the taxpayer results in a reasonable expectation that the taxpayer will receive a return of all or any portion of the tax amount as discussed above. We propose that the net effect of such an arrangement may result in the return of all or any portion of the tax amount, regardless of whether the arrangement is reduced to writing or is legally enforceable by any party to the arrangement.

Proposed § 433.68(f)(3) aims to thwart efforts by states to skirt hold harmless provisions by paying supplemental payments to private entities, who then pass these funds on to other private entities that have lost gross revenue due to a health care-related tax. The use of an intermediary does not change the essential nature of the transaction: That it is a payment made by a state or unit of government to a provider that holds that provider harmless for the cost of the tax. While states are free to impose broad-based and uniform health care-related taxes, or generally redistributive health care-related taxes that meet applicable requirements for a waiver of either or both of these requirements, to fund the non-federal share of Medicaid expenditures, states may not do so in a way that guarantees to return all or part of the cost of the tax to the taxpayers. The proposed language adding the net effect standard to the direct hold harmless guarantee test at § 433.68(f)(3) clarifies to states the range of permissible tax and reimbursement arrangements for health care-related taxes. Such clarifying language allows states and CMS to work more harmoniously together by solidifying a shared understanding regarding what constitutes a guarantee to hold taxpayers harmless for the cost of a health care-related tax and reduces the likelihood of disagreement concerning the interpretation of the regulation. As such, the proposed amendment would allow states to operate their Medicaid financing programs with greater clarity and consistency than before.

We seek comment on our proposed amendments to § 433.68(f)(3). Additionally, we are soliciting comments on other qualitative or quantitative measures that could further safeguard the fiscal health and integrity of the Medicaid program through modifications to the provisions of § 433.68.

8. Waiver Provisions Applicable to Health Care-Related Taxes (§ 433.72)

In § 433.72, we are proposing to add new paragraphs (c)(3) and (4) to specify the date on which a waiver approved under paragraph (b) of this section would no longer be effective. We are proposing that an approved waiver should have a 3-year term; for a waiver already approved before the effective date of the final rule, if this proposal is finalized, the 3-year term would run from the effective date of the final rule. A state would be free to apply for renewal of an expired or expiring waiver, subject to the same approval criteria applicable to an initial waiver request under § 433.72(b). We are proposing a 3-year limit to ensure the tax program continues to meet all applicable requirements under part 433, subpart B, including whether or not the tax program continues to meet generally redistributive requirements at § 433.68(e)(1) and (2) and proposed paragraph (e)(3).

We are proposing to limit waiver approvals to 3 years because the provider data that states provide to CMS for use in the statistical tests at § 433.68 and the providers in the class subject to the waiver change over time. As a result,

while a tax may be generally redistributive when the state first requests the waiver, it may cease to be so as the composition of the providers or payers, or the volume of items or services subject to the tax changes. In an effort to ensure consistent fiscal oversight of the non-federal share of Medicaid expenditures and to ensure that health care items and services, and providers of health care items or services, financed by Medicaid are not taxed more heavily than those not financed by Medicaid, we believe that this proposed time period would aid in ensuring state tax programs are and remain consistent with section 1903(w)(3)(E)(ii) of the Act. This provision establishes that the Secretary will approve waivers if the state establishes to the satisfaction of the Secretary that the net impact of the tax is generally redistributive in nature and the amount of the tax is not directly correlated to Medicaid payments. We believe it is necessary for the proper and efficient operation of the Medicaid program to establish that a tax for which a state seeks a waiver meets statutory requirements not just when the waiver is initially approved, but on an ongoing basis as well. We propose to allow states with already existing health care-related tax waivers 3 years from the effective date of the final rule, as stated in proposed § 433.72(c)(4), to seek reapproval of their waivers, in an effort to provide states with sufficient time to evaluate and, as may be necessary, modify existing tax programs to comply with applicable requirements.

We are proposing to add new § 433.72(d), to ensure ongoing compliance of tax waivers with the original conditions of the waiver approval. In this proposed paragraph, we would specify that, for a state to continue to receive tax revenue (within specified limitations) under an approved waiver without a reduction in FFP as would otherwise be required under section 1903(w)(1)(A)(ii) of the Act and § 433.70, the state must: (1) Ensure that the tax program for which CMS approved the waiver continues to meet the waiver conditions identified in § 433.72(b)(1) through (3) at all times during which the waiver is in effect; and (2) request a new waiver if the state or other unit of government imposing the tax modifies the tax program in specified ways. We propose that, if the state or other unit of government imposing the tax modifies the tax in a non-uniform manner, meaning the change in tax or tax rate does not apply in an equal dollar amount or percentage change to all taxpayers, the state would be required to request a new waiver subject to effective date requirements in § 433.72(c). If the state or other unit of government imposing the tax modifies the criteria for defining the taxpayer group or groups subject to the tax, the state would be required to request a new waiver subject to effective date requirements in § 433.72(c). As with the 3-year waiver validity period at proposed § 433.72(c)(3) and (4), the proposed new requirements at paragraph (d) would help ensure that the tax remains generally redistributive while the waiver is in effect, since these changes could affect the determination whether it meets applicable requirements. States would be permitted to make changes that would not affect the compliance of the tax with all applicable broad-based and uniformity standards (including waiver standards) without receiving a new approval of a tax waiver from CMS. However, states wishing to make changes to their tax structures that modify any of the proposed, specified elements would be required to submit a new tax waiver request and obtain approval from us before beginning to collect such a tax. States may not make changes to the tax structure that result in taxpayers being held harmless for some or all of the cost of the tax without experiencing a reduction in their amount of medical assistance expenditures for purposes of claiming FFP as specified by section 1903(w)(1)(A) of the Act.

9. When Discovery of Overpayment Occurs and its Significance (§ 433.316)

Section 1903(d)(2)(C) of the Act provides that, when an overpayment by a state is discovered, the state has a 1-year period to recover or attempt to recover the overpayment before an adjustment is made to FFP to account for the overpayment. Currently, regulations in § 433.316 provide for determining the date of discovery of an overpayment, which is necessary to determine the statutory 1-year period, in three distinct cases: When the overpayment results from a situation other than fraud, under § 433.316(c); when the overpayment results from fraud, under § 433.316(d); and when the overpayment is identified through a federal review, under § 433.316(e). It is not explicitly clear in the current regulations how the date of discovery is determined when an overpayment is discovered through the annual DSH independent certified audit required under § 455.304. Therefore, we believe an amendment is appropriate to specify the date of discovery of overpayments as it relates to the annual DSH independent certified audit. Accordingly, we are proposing to redesignate paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i), respectively, and to add new proposed paragraph (f). In new paragraph (f), we are proposing that in the case of an overpayment identified through the DSH independent certified audit required under part 455, subpart D, we will consider the overpayment as discovered on the earliest of the date that the state submits the DSH independent certified audit report required under § 455.304(b) to CMS, or any of the dates specified in § 433.316: Paragraph (c)(1) (the date on which any Medicaid agency official or other state official first notifies a provider in writing of an overpayment and specifies a dollar amount that is subject to recovery); paragraph (c)(2) (the date on which a provider initially acknowledges a specific overpaid amount in writing to the Medicaid agency); and paragraph (c)(3) (the date on which any state official or fiscal agent of the state initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing).

10. State Plan Requirements (§ 447.201)

We are proposing to add new § 447.201(c) to specify that the state plan may not provide for variation in FFS payment for a Medicaid service on the basis of a beneficiary's Medicaid eligibility category, enrollment under a waiver or demonstration, or federal matching rate available for services provided to a beneficiary's eligibility category under the plan. As discussed below, this provision would implement sections 1902(a)(4) and (a)(30)(A) of the Act, and codify our current practice, by prohibiting variations in service payments on the basis of available FFP.

States seeking to increase payments only on the basis of a higher available FFP for the relevant beneficiary population creates inequity in the Medicaid program. By approving Medicaid state plan payments, we are making an administrative decision that the payment rates are consistent with section 1902(a)(30)(A) of the Act; specifically, that such payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. In the absence of an access issue, it would not be consistent with efficiency and economy to pay providers more, only because the federal matching rate is increased with respect to certain categories of beneficiaries. In addition,

where payment rates under the state plan do result in insufficient access for Medicaid beneficiaries, the state must increase rates to rectify the access problem for all Medicaid beneficiaries, not only those for whom the statute provides for an increased FMAP.

We have allowed states to set payment rates based on higher costs for the delivery of care (for example, difference in acuity or particular health needs); however, we have not allowed states to pay higher rates based on policies that are unrelated to actual increases in the cost of furnishing services to the relevant beneficiaries. For example, we have allowed states to pay higher rates to a provider based upon a higher provider qualifications, which may be equated with a higher cost of furnishing services, but that payment difference is for all Medicaid beneficiaries that receive services provided by that provider. Similarly, we have not allowed states to target higher payments based on eligibility status or enhanced matching rates, since those factors are not established to have any relationship to the cost of delivering care. Rates that are structured without regard to service costs and care delivery are not economic and efficient and are inconsistent with section 1902(a)(30)(A) of the Act. This proposed provision is intended to make clear that variation in payment rates solely on the basis of FFP is prohibited, as it would be inconsistent with efficiency and economy to allow states to pay providers more, only because such payments can be funded by drawing down additional federal dollars at a marginally increased cost to the state (and at net savings to the state, versus the costs the state would incur if the relevant beneficiary population qualified for standard FMAP). We believe that this proposed provision is necessary to ensure the proper and efficient operation of the Medicaid state plan, in a manner that complies with the requirements of section 1902(a)(4) and (a)(30)(A) of the Act.

This proposed approach would be consistent across both FFS and managed care. Specifically, in the 2016 Medicaid managed care final rule, we articulated in § 438.4(b)(1) that any differences among capitation rates according to covered populations must be based on valid rate development standards and not be based on the FFP associated with the covered populations (81 FR 27566).

We also considered proposing a rule that would require states to pay the same rate to a facility for all beneficiaries, unless the state could demonstrate that different case mixes or health care needs, or other reasons consistent with economy, efficiency, quality of care, and access justified paying a different rate for a different group of beneficiaries. We decided instead to propose that the plan must provide for no variation in FFS payment for a Medicaid service on the basis of a beneficiary's Medicaid eligibility category, enrollment under a waiver or demonstration project, or FMAP rate available for services provided to an individual in the beneficiary's eligibility category, because, as stated above, where payment rates under the state plan do result in insufficient access for Medicaid beneficiaries, the state must increase rates to rectify the access problem for all Medicaid beneficiaries, not only those for whom the statute provides for an increased FMAP. We seek comment on proposed § 447.201.

11. Payments Funded by Certified Public Expenditures Made to Providers That are Units of Government (§ 447.206)

We are proposing to add § 447.206 to codify longstanding policies implementing the following sections of the statute: Section 1902(a)(4) for proper and efficient operation of the state plan; section 1902(a)(30)(A) requiring that payments be economic and efficient; and section 1903(w)(6)(A) permitting states to use CPEs, which are expenditures certified by units of government within a state, as a source of non-federal share. The specific standards for states to document Medicaid expenditures that units of government may certify through a CPE for a claim for FFP has not previously been defined in regulation. While CPEs are not necessarily ''payments'' in the usual sense of the term, instead they are transactions which take the place of regular FFS payment. However, we refer to payments generally to mean the total computable amount the provider receives for performing Medicaid services. We are proposing in § 447.206(a) to specifiy that § 447.206 applies only to payments made to providers that are state government providers or Non-state government providers, as defined in proposed § 447.286, where such payments to such providers are funded by a CPE, as specified in § 433.51(b)(3), as proposed by this rule. Further, we are proposing in § 447.206(b)(1) that CPE-funded payments made to state government providers or non-state government providers would be limited to reimbursement not in excess of the provider's actual, incurred cost of providing covered services to Medicaid beneficiaries using reasonable cost allocation methods as specified in 45 CFR part 75 and 2 CFR part 200, or, as applicable, to Medicare cost principles specified in 42 CFR part 413.

In the case of CPEs, states allow providers that are state or local government entities to expend funds in order to provide services to Medicaid beneficiaries. These providers document that the monies were spent furnishing covered services to Medicaid beneficiaries and certify their expenditures to the state. Without any funds actually changing hands between the state or local government entity that is the provider, and the Medicaid agency (such as via an IGT), and without the state appropriating associated funds directly to the Medicaid agency, the state uses the amount of the CPE as non-federal share to claim FFP.

To document the expenditure, we are proposing to add new § 447.206(b), which would define general rules for these CPE cost protocols. We are proposing to codify our practice of relying upon the cost allocation principles in federal regulations in 45 CFR part 75, 2 CFR part 200, and, as applicable, Medicare cost principles specified in part 413, as the methods and principles to identify Medicaid program expenditures eligible to support a CPE. First, we propose that Medicaid payments funded by a CPE would be limited to reimbursement not in excess of the provider's actual, incurred cost of providing covered services to Medicaid beneficiaries using reasonable methods of identifying and allocating costs to Medicaid, as stated above. We recommend that states use the Medicare cost reports as the basis for determining Medicaid cost where available for an applicable service (for example, Medicare 2552–10 Hospital Cost Report or the Medicare 2540–10 Skilled Nursing Facility Cost Report). However, since a number of states already have developed and currently use a state-developed cost report that is based on the Medicare cost report, meaning that the state cost report uses data taken from the calculations in the Medicare cost report, we are not requiring that states only use the Medicare cost report as we do not desire to increase state burden in this area.

Section 447.206(b)(2), as proposed, would provide that the state must establish and implement documentation and audit protocols, which must include an annual cost report to be submitted by the state government provider or non-state government provider to the state agency that documents the provider's costs incurred in furnishing services to Medicaid beneficiaries during the provider's fiscal

year. Section 447.206(b)(3) would provide that only the certified amount of the expenditure may be claimed for FFP. The claimed amount is limited because the CPE must only represent amounts that were spent providing the Medicaid services, as authorized by sections 1903(a)(1) and (w)(6)(A) of the Act, which authorize federal matching funds for state Medicaid expenditures and allows funds certified by units of government within a state as the non-federal share of expenditures, respectively.

Proposed § 447.206(b)(4) would require the certifying entity of the CPE to receive and retain the full FFP associated with the Medicaid payment, consistent with the cost identification protocols in the Medicaid state plan and in accordance with proposed § 447.207. We are proposing to require that certifying entities receive and retain the FFP a state claims from CMS to prevent inappropriate recycling of federal funds and any other potential redirection of federal funds that would be prohibited under the statute. In recent years, we have found that states have been drawing down FFP to match CPEs, retaining the federal share and using these federal funds as the non-federal share for other Medicaid payments. This practice is not consistent with the existing § 433.51(c), which generally prohibits the use of federal funds to match other federal funds. When a state makes a claim for FFP on a medical assistance expenditure, that claim for the FFP is singularly for that medical assistance expenditure and a recognition of the state and federal partnership of the Medicaid program. To claim and receive FFP for an expenditure, and to reuse that FFP to claim additional federal matching funds or to otherwise redirect the FFP to pay costs unrelated to the expenditure for which the FFP was claimed results, in effect, in the federal government alone funding the full Medicaid payment to the provider that originally certified the CPE, or, viewed another way, covering costs ineligible for FFP. Such a result is not consistent with sections 1902(a)(2), 1902(a)(4), and 1903 of the Act.

Proposed § 447.206(c) would specify other criteria for states when a CPE is used to fund a Medicaid payment. Under paragraph (c)(1), the state would be required to implement processes by which all claims for medical assistance would be processed through the MMIS in a manner that identifies the specific Medicaid services provided to specific enrollees. Paragraph (c)(2) would provide that the state is required to utilize most recently filed cost reports as specified in proposed paragraph (b)(2) to develop interim payments rates, which may be trended by an applicable health care-related index. Interim rates are rates that reflect the provider's expected cost of providing services throughout the year. Requiring states to establish interim rates ensures that providers would receive payments throughout the year, calculated to closely reflect the provider's expenditures in furnishing services to Medicaid beneficiaries. This would provide cash flow to support the provider's ongoing operations, and, with the interim rates based on the provider's most recent filed cost reports (trended forward by an applicable health care-related index, at state option), would potentially minimize reconciliation payments to providers (in the case of underpayment) or collections from providers (in the case of overpayments) at the end the year during the reconciliation process. The term ''health care-related index'' means a trend factor which would project increases or decreases in expected costs, so as to minimize potential over- or under-payments to the provider certifying the CPE. One such index is the CMS Market Basket, which we publish for purposes related to the Medicare program. However, states could also propose to use an alternative health-care related index, provided the state demonstrates that the alternative is likely to reliably project increases or decreases in providers' costs of furnishing covered services to Medicaid beneficiaries in the upcoming year. In reviewing a state-proposed health-care related index, we would require the state to identify the index in the state plan and provide a justification for the use of this index rather than other national indices, such as the CMS Market Basket.

We propose that reconciliations would be performed by reconciling payments made during the year based on the interim Medicaid payment rates, to the provider's filed cost report for the state plan rate year in which interim payments were made. Section 455.301 defines the state plan rate year as the 12-month period defined by a state's approved Medicaid state plan in which the state estimates eligible uncompensated care costs and determines corresponding DSH payments, as well as all other Medicaid payment rates. The period usually corresponds with the state's fiscal year or the federal fiscal year but can correspond to any 12-month period defined by the state as the Medicaid state plan rate year (73 FR 77951). Proposed paragraph (c)(3) would require that final settlement be performed annually by reconciling any interim payments to the finalized cost report for the state plan rate year in which any interim payment rates were made. Final settlement would be required to be made no more than 24 months from the relevant cost report year end, except under circumstances identified in 45 CFR 95.19. The 24-month period was chosen to comply with the generally applicable 2-year time limit for claiming payment for expenditures in 45 CFR 95.7.

During the reconciliation and final settlement process, we expect that the state would receive the provider's cost report and review the reported expenditures via a desk review process. As part of the desk review, the state would gather, organize, and analyze the provider's cost report, including by comparing current period expenditures to prior period expenditures to identify audit risks. During the desk review, we expect that the state may request explanations of or adjustments to the reported cost based upon generally accepted accounting principles (GAAP). Upon finalization of the desk review, the state would notify the provider of the final determination of total cost. Once the state has made a final determination of the provider's final cost, if the provider's actual total cost is not equal to the sum of its interim rate payments for the period, one of two actions may occur. If the provider has been underpaid, meaning the total interim rate payments were less than the total calculated cost amount, the state may draw down and pay to the provider FFP associated with the total computable expenditure certified by the provider as a prior period adjustment to the CMS 64, equal to the difference between the total interim payments and total cost. In the event the provider was overpaid, meaning the interim rate payments exceeded the provider's total cost, the state would calculate the overpayment, which would be equal to the difference between the total interim payments and the provider's total cost, and return the federal share of that amount to CMS as a prior period adjustment under part 433 subpart F. In the event of an overpayment, the state is obligated to return the FFP whether or not the state seeks a return of payment from the provider as articulated in § 433.316. All of these steps would establish an auditable basis for the state's claims for FFP associated with the CPEs, as contemplated under section 1902(a)(42)(A) of the Act, which requires that the state plan must provide that the records of any entity participating in the plan and providing

services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan.

Proposed § 447.206(d) would specify requirements for the state plan when the state proposes to use a CPE to fund a Medicaid payment. We propose that, if CPEs are used as a source of non-federal share under the state plan, the state plan would be required to specify cost protocols in the service payment methodology applicable to the certifying provider, such protocols would be required to meet all of the following criteria: (1) Identify allowable cost using either a Medicare cost report, or a state-developed Medicaid cost report prepared in accordance with the cost principles in 45 CFR part 75 and 2 CFR part 200; (2) define an interim rate methodology that would be used to pay a provider on an interim basis; (3) describe an attestation process by which the certifying entity would attest that the costs are accurate and consistent with 45 CFR part 75 and 2 CFR part 200; (4) include, as necessary, a list of the covered Medicaid services being furnished by each provider certifying a CPE; and (5) define a reconciliation and settlement process consistent with proposed § 447.206(c)(3) and (4). Regarding the inclusion in paragraph (d)(4) of a list of the covered Medicaid services being furnished by each provider, CMS is referring to instances where the services included in a cost report either extend across multiple Medicaid benefit categories or do not encompass all services within a benefit category. In such circumstances, we believe that this information is necessary to determine the services for which FFP is available. For example, in a setting where some but not all services within a Medicaid benefit category are furnished, such as a residential rehabilitation hospital that does not furnish all inpatient hospital services, the state would be required to document the services for which the state will be claiming FFP with respect to the provider. In most settings where the provider certifies a CPE, this step is not necessary, since the services furnished by the provider certifying the CPE will be coextensive with a Medicaid benefit category (for example, the ''inpatient hospital services'' Medicaid benefit category typically is coextensive with the services furnished by an inpatient hospital that might certify a CPE).

We are soliciting comment on our overall proposal, including the proposed cost reporting and process requirements, state plan requirements, and whether to require the use of the Medicare cost report where one exists for an applicable service for which the provider certifies a CPE. We believe requiring the use of a Medicare cost report where one exists for CPE protocols would allow for a consistent application of allowable cost principles, however, Medicare cost reports only exist for a relatively small number of services that states may cover in their Medicaid programs and requiring the use of Medicare cost reports would remove some state flexibility in determining the appropriate cost reporting mechanism for providers certifying CPEs in the state's Medicaid program.

12. Retention of Payments (§ 447.207)

In § 447.207, we propose to require that payment methodologies must permit the provider to receive and retain the full amount of the total computable payment for services furnished under the approved state plan (or the approved provisions of a waiver or demonstration, if applicable). This provision is intended to implement sections 1902(a)(4) and (a)(32) of the Act. These provisions respectively require that the state plan for medical assistance provide such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and generally provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise, unless certain enumerated exceptions apply as described in more detail below. Payment arrangements that comply with an exception in section 1902(a)(32) of the Act and the implementing regulation in § 447.10 would not be deemed out of compliance with this proposed provision.

The Secretary would determine compliance with this provision by examining any associated transactions that are related to the provider's total computable Medicaid payment to ensure that the state's claimed expenditure, which serves as the basis for FFP, is consistent with the state's net expenditure, and that the full amount of the non-federal share of the payment has been satisfied. The term ''state's net expenditure'' in this section means a state's Medicaid expenditure, less any returned funds or contributions from the provider to the state, related to the Medicaid payment. This view of a return of any portion of a Medicaid payment is consistent with the treatment of provider-related donations in § 433.54, particularly paragraph (e) of that section which states CMS will deduct the amount of an impermissible provider-related donation from a state's medical assistance expenditures before calculating FFP (73 FR 9698). Consideration for the state's net expenditure would include a review of potential ''hold harmless'' arrangements as described in § 433.54(c), which provides that an impermissible hold harmless practice exists if the Medicaid payment is positively correlated to a donation, varies based only on the amount of a donation (including if payment is conditioned upon the receipt of a donation), or directly or indirectly guarantees to return any portion of a donation to the donating provider (or other party responsible for the donation), which implements section 1903(w)(2)(B) of the Act. We have noted circumstances in some states where participation in a Medicaid supplemental payment under the state plan is conditioned upon the state receiving a portion of that payment back, whether as a direct payment from the provider or netted from payments to the provider where the state retains a portion of the provider's payment before sending the remaining payment to the provider.

We anticipate that ''associated transactions'' may include, but would not necessarily be limited to, the payment of an administrative fee to the state as a fee for processing provider payments or IGTs. For example, in some states, we have found that the Medicaid agency has charged a percentage administrative fee for each Medicaid claim that was processed. Essentially, the state was charging providers for submitting claims to the Medicaid program, and since the administrative charge was based on claims volume and amount of Medicaid payment, this practice amounted to a tax on Medicaid claims for services. States are already able to, and often do, claim administrative match for Medicaid claims processing costs; states should be using the appropriate mechanisms for claiming where authority exists and not unnecessarily shifting costs to the Medicaid providers. We propose that in no event could administrative fees be calculated based on the amount a provider receives through Medicaid payments or amounts a unit of government contributes through an IGT as funds for the state share of Medicaid payments. Structuring an administrative fee in this way would be tantamount to a Medicaid-only provider tax, which is not allowable under § 433.55, and would be expressly prohibited under the proposed § 447.207(a). Conversely, if

a state charged a flat fee for claims processing that did not vary based on the volume of claims or amount of Medicaid payments processed, the payment of such a fee would not be considered an associated transaction. Likewise, the use of Medicaid revenues to fund payments that are normal operating expenses of conducting business, such as payments related to taxes (including permissible health-care-related taxes), fees, or business relationships with governments unrelated to Medicaid in which there is no connection to Medicaid payment would not be considered an associated transaction.

We are soliciting comment on all of § 447.207, including comments on the types of transactions that we propose would and would not be considered ''associated transactions'' for the purpose of this section.

13. State Plan Requirements (§ 447.252)

We are proposing to add paragraphs (d) and (e) to § 447.252 regarding state plan requirements for payments for inpatient hospital and long-term care facility services, to implement new approval requirements for state plans and any SPAs proposing to make supplemental payments to providers of these services and to define a transition period for currently authorized supplemental payments to begin to meet the proposed new requirements. In § 447.302, we propose similar requirements for supplemental payments proposed for outpatient hospital services, as described in more detail below. We are proposing to limit approval for any Medicaid supplemental payments to a period of not more than 3 years, and to require states to monitor a supplemental payment program during the term of its approval to ensure that the supplemental payment remains consistent with section 1902(a)(30)(A) of the Act. As discussed in this section and other sections of this preamble, the proposed revisions to §§ 447.252, 447.288(b), and 447.302 include considerable data reporting requirements which would implement section 1902(a)(6) of the Act which provide that the state agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports. We believe the robust payment data we propose to require is necessary to ensure the proper and efficient administration of the plan; to ensure that payments are consistent with efficiency, economy, and quality of care; and otherwise to assist us in appropriately overseeing the Medicaid program.

Specifically, we propose in § 447.252(d) that CMS may approve a supplemental payment, as defined in § 447.286, provided for under the state plan or a SPA for a period not to exceed 3 years. A state whose supplemental payment approval period has expired or is expiring may request a SPA to renew the supplemental payment for a subsequent period not to exceed 3 years, consistent with the requirements of § 447.252. A time-limited supplemental payment allows CMS and the state an opportunity to revisit state plan supplemental payments to ensure that they remain consistent with efficiency, economy, and quality of care, as required under section 1902(a)(30)(A) of the Act. Over the years, CMS and various oversight bodies conducting financial management reviews and audits have identified areas where unchecked supplemental payments have resulted in payments that appeared to be excessive, and CMS had little recourse to take action. Such audits and financial reviews conducted by CMS or other oversight agencies could take years and require a large number of state and federal resources to complete, and ultimately resolve. As noted earlier in this preamble, in 2015, the GAO issued a report entitled, ''Medicaid: CMS Oversight of Provider Payments Is Hampered by Limited Data and Unclear Policy,'' in which it concluded that, ''[w]ithout good data on payments to individual providers, a policy and criteria for assessing whether the payments are economical and efficient, and a process for reviewing such payments, the federal government could be paying states hundreds of millions, or billions, more than what is appropriate.'' [9] As a result, the GAO has recommended that, to better ensure the fiscal integrity of the program, we should establish financial reporting at a provider-specific level and clarify permissible methods for calculating Medicaid supplemental payment amounts. Based on this and other oversight entity recommendations, and CMS' experience administering the Medicaid program at the federal level, we believe that the time-limited approval of supplemental payments is necessary for the proper and efficient administration of state Medicaid plans to ensure the continuing consistency of supplemental payments with applicable statutory requirements and generally to ensure appropriate oversight.

We are not proposing to limit the number of times a state may request, and receive approval for renewal of, a supplemental payment program, provided that each request meets all applicable requirements. We propose that a state plan or SPA that would provide for a supplemental payment would be required to include: (1) An explanation of how the state plan or SPA will result in payments that are consistent with section 1902(a)(30)(A) of the Act, including that provision's standards with respect to efficiency, economy, quality of care, and access, along with the stated purpose and intended effects of the supplemental payment, for example, with respect to the Medicaid program, providers, and beneficiaries; (2) the criteria to determine which providers are eligible to receive the supplemental payment; (3) a comprehensive description of the methodology used to calculate the amount of, and distribute, the supplemental payment to each eligible provider, including specified content; (4) the duration of the supplemental payment authority (not to exceed 3 years); (5) a monitoring plan to ensure that the supplemental payment remains consistent with the requirements of section 1902(a)(30)(A) of the Act and to enable evaluation of the effects of the supplemental payment on the Medicaid program, for example, with respect to providers and beneficiaries; and (6) for a SPA proposing to renew a supplemental payment for a subsequent approval period, an evaluation of the impacts on the Medicaid program during the current or most recent prior approval period, for example, with respect to providers and beneficiaries, and including an analysis of the impact of the supplemental payment on compliance with section 1902(a)(30)(A) of the Act. For the state's comprehensive description of the methodology used to calculate the amount of, and distribute, the supplemental payment to each eligible provider as required under item (3), we would require the state to provide all of the following: (i) The amount of the supplemental payment made to each eligible provider, if known, or, if the total amount is distributed using a formula based on data from one or more fiscal years, the total amount of the supplemental payments for the fiscal year or years available to all providers eligible to receive a supplemental payment; (ii) if applicable, the specific criteria with respect to Medicaid

[9] U.S. Gov't Accountability Office, GAO–15–322, Medicaid: CMS Oversight of Provider Payments Is Hampered by Limited Data and Unclear Policy, 46 (2015), *https://www.gao.gov/assets/670/669561.pdf.*

service, utilization, or cost data from the proposed state plan rate year to be used as the basis for calculations regarding the amount and/or distribution of the supplemental payment; (iii) the timing of the supplemental payment to each eligible provider; (iv) an assurance that the total Medicaid payment to an inpatient hospital provider, including the supplemental payment, will not exceed the upper limits specified in § 447.271; and (v) if not already submitted, an UPL demonstration as required by § 447.272 and described in proposed § 447.288.

We already request the information specified in items (1) through (3), above, from states when a state makes a state plan submission that includes a supplemental payment. Currently, we request this information either informally, by seeking assurances from the state in connection with the request for a SPA, or more formally, by requesting changes to the language of the proposed SPA itself. These requirements also are consistent with § 430.10, which requires a state plan to be a comprehensive written statement which serves as the basis for FFP; as such, we are proposing to specify in regulation the essential elements of a comprehensive written methodology for a Medicaid supplemental payment. Consistent with longstanding policy, for a state plan to be comprehensive, it must include the detailed methodologies by which the state makes payments, such that we and the state have the information necessary to determine which providers qualify for a payment, the amount of each provider's payment, and the manner in which payments are distributed to the qualifying providers.

While items (1) through (3), above, would codify our current practice in the regulation, items (4) through (6) would be new requirements. Item (4) would require the state to identify an expiration date, or sunset date, for the supplemental payment, not to exceed a duration of 3 years. A 3-year approval period would also be consistent with our general approach with respect to demonstration projects under section 1115 of the Act, which often are approved for 3-year periods to allow for adequate time for the implementation and testing, supported by ongoing monitoring, and which culminate in an evaluation of the effects of the demonstration. Each time a state submits a SPA to renew a supplemental payment, the state would be able to request a new approval period of up to 3 years. The state could submit a SPA for CMS consideration to renew a supplemental payment at any point during the 3-year approval period, according to the state's chosen timeframe, which the state should determine to allow sufficient time for our review and approval. We considered using a tiered approval time period, such as an initial approval period of up to 5 years followed by renewal periods of up to 3 years, but decided not to propose this policy due to the increased burden that it could cause.

We have found that supplemental payments that are established under the state plan and not reviewed for a long period of time may result in issues of compliance with applicable statutory and regulatory requirements that do not promptly come to our, or the state's, attention. For example, as discussed elsewhere in this preamble, particularly with respect to proposed § 447.288, the issue of fluidity of provider ownership can result in issues involving UPL supplemental payments, and where payments are made improperly, can require extensive federal and state resources to resolve. In the example discussed in connection with proposed § 447.288, the qualifying criteria for providers made all ''non-state government owned or operated'' facilities eligible for supplemental payments up to the UPL for those providers. A few years after this supplemental payment structure was approved, the state was approached by providers who wanted to change their ownership or operational categorization to meet the ''non-state government'' criteria, apparently so that they could qualify for the UPL supplemental payments under the state plan. The state allowed the providers to make the change without prior CMS review or approval, and subsequently began making UPL supplemental payments to the newly recategorized providers. Upon review of the supplemental payment program in question, CMS found that none of the asserted changes in ownership or operations supported the providers' recategorization, and that the providers therefore were ineligible for the UPL supplemental payments the state had been making. In this example, the state was also using funds impermissibly transferred from private entities, which the state characterized as IGTs as a result of the asserted recategorization of the provider as non-state government-owned or operated. To resolve the identified issue, CMS had to undergo a thorough financial management review, which involved numerous CMS staff reviewing financial statements, provider payments, provider records, and interviewing numerous state and provider staff members to determine the provider's eligibility for the payment under the approved state plan. CMS formally issued the financial management review in November 2015 for claims for services provided in state FYs 2010 and 2011, and ultimately issued a disallowance in September 2018. If CMS had the ability routinely to re-review state supplemental payment programs, we would not have approved the expansion of this payment to non-qualifying providers under the plan because the private providers were also funding the non-federal share of a Medicaid payment, which is unallowable under the statute. Because of situations like this and related concerns, we believe it is necessary for the proper and efficient administration of state Medicaid plans to require that supplemental payment programs be submitted for CMS review and approval at least every 3 years, to ensure they are and remain consistent with the efficiency, economy, and quality requirements under section 1902(a)(30)(A) of the Act and the parameters concerning permissible sources of non-federal share under section 1903(w) of the Act.

In our experience, a number of states that seem to effectively use supplemental payments re-submit their supplemental payment programs to CMS on an annual basis, as the pools funded by the supplemental payments are annually re-authorized by the state legislature. Such supplemental payment programs would not be impacted by the proposed 3-year limit. States submitting annual updates to supplemental payment programs, like other states with supplemental payment programs, would however newly be required to comply with the other proposed requirements, including items (5) and (6), discussed above. Proposed § 447.252(d)(5) and (6) concern monitoring and evaluation requirements to assess the effects of the state's supplemental payment program. Specifically, paragraph (d)(5) would require the state to submit a monitoring plan to ensure the supplemental payment remains consistent with the requirements of section 1902(a)(30)(A) of the Act and to enable evaluation of the supplemental payment's effects on the Medicaid program, for example, with respect to providers and beneficiaries. For a SPA proposing to renew a supplemental payment for a subsequent approval period, paragraph (d)(6) would require the state to submit such an evaluation and to include an analysis of the impact of the supplemental payment on the state's compliance with section 1902(a)(30)(A)

of the Act. For example, a state could seek a 3-year approval period for a supplemental payment to increase payments to rural hospitals, with the goal of increasing beneficiary access to services provided by rural hospitals. Over the next 3 years, the state would monitor the effects of the program, to determine whether the supplemental payment is meeting its goals and remains consistent with applicable requirements. At the end of the 3-year period, if the state wished to renew the supplemental payment, it would submit its evaluation and analysis with its renewal request to us, which would inform our determination of whether payments under a renewed supplemental payment program would be consistent with applicable requirements, including those in section 1902(a)(30)(A) of the Act. We anticipate that there may be cases in which the state's evaluation of a supplemental payment program's effectiveness in meeting its stated goals requires more time to evaluate; in such cases, provided we are able to determine that the supplemental payment meets all applicable statutory and regulatory requirements, we would anticipate approving the renewal. Notably, even for a state requesting to renew a supplemental payment program with no changes, we would require the state to submit the evaluation and analysis required under proposed § 447.252(d)(6) as part of our review of the supplemental payment for consistency with applicable statutory and regulatory requirements.

Finally, in considering the 3-year approval period for supplemental payments, we developed a transition plan to provide states with an adequate opportunity to come into compliance with the proposed requirements. To accomplish the policy objectives described above, we believe we must begin to apply the proposed policies to current state plan provisions that authorize supplemental payments that are approved as of the effective date of the final rule. It is no less necessary to ensure the proper and efficient administration of the state plan and ensure that applicable requirements continue to be met, to rigorously evaluate currently existing supplemental payment programs, as it is to do so for new supplemental payment programs that may be approved prospectively. Accordingly, in proposed § 447.252(e), for state plan provisions approved 3 or more years prior to the effective date of the final rule, we propose that the state plan authority would expire 2 calendar years following the effective date of the final rule. For state plan provisions approved less than 3 years prior to the effective date of the final rule, we propose that the state plan authority would expire 3 years following the effective date of the final rule. We believe this is a generous timeline for transitioning to the proposed 3-year time limit for supplemental payments under the state plan. This timeline provides states with currently approved supplemental payment programs with at least 2 years, and as many as 3 years, before a state wishing to continue the supplemental payment program would need to seek renewal or a new approval.

We are soliciting comment on this entire section, including the proposed state plan elements for supplemental payments and the proposed provisions that would place a limited approval timeframe on state's proposed supplemental payments. For the timeframes, we are seeking input on both the length of 3-year approval period and the length of the proposed transition period for currently approved supplemental payments. We considered proposing a 5-year compliance transition period instead of the proposed 3-year compliance transition period in § 447.252(e). This would have extended the amount of time states would have to bring existing, approved supplemental payment methodologies into compliance with the provisions of the proposed rule in §§ 447.252 and 447.302, but determined that the shortened timeframe would be easier to administer as many states already submit annual supplemental payment proposals. We decided to propose a 3-year transition period to account for states where changes may require legislative action as some legislatures meet on a biennial basis and such a timeframe would provide an opportunity for all legilslatures to address existing supplemental payment programs. We are requesting comment on whether or not to pursue this or a lengthier transition and approval/renewal timeline for supplemental payments.

14. Inpatient Services: Application of UPLs (§ 447.272)

To promote improved oversight of Medicaid program FFS expenditures for services subject to the UPL, we are proposing changes to § 447.272. Many of the proposed changes to § 447.272 would formally codify our current policy in regulation text, while others are newly proposed standards. We have long relied upon the UPL requirements in § 447.272, and the related review of total inpatient hospital Medicaid payments in relation to a provider's cost or a reasonable estimate of what Medicare payment amounts would have been, as implementing section 1902(a)(30)(A) of the Act, which requires that states assure that payments are consistent with efficiency, economy, and quality of care. As stated earlier in the preamble, the aggregate application of these UPLs has preserved state flexibility for setting provider-specific payments while creating an overall payment ceiling as a mechanism for determining economy and efficiency of payment for services, consistent with section 1902(a)(30)(A) of the Act.

We are proposing to amend paragraph (a) to revise the current ownership groups (state government-owned or operated, non-state government owned or operated, and privately-owned and operated facilities) used to establish the UPL. We propose to replace these provider designations with ''state government providers,'' ''non-state government providers,'' and ''private providers.'' We propose to codify the substantive definitions of these provider designations in proposed § 447.286. As discussed below, we would define ''state government provider'' to refer to a health care provider as defined in § 433.52, including those defined in § 447.251, that is a unit of state government or state university teaching hospital. In determining whether a provider is a unit of state government, we would consider the totality of the circumstances, including but not limited to specific considerations identified in proposed § 447.286. Similarly, we would define ''non-state government provider'' to refer to a health care provider as defined in § 433.52, including those defined in § 447.251, that is a unit of local government in a state, including a city, county, special purpose district, or other governmental unit in the state that is not the state, which has access to and exercises administrative control over state funds appropriated to it by the legislature and/or local tax revenue, including the ability to expend such appropriated or tax revenue funds. In determining whether a provider is non-state government provider, we would consider the totality of the circumstances, including but not limited to specific considerations identified in proposed § 447.286. We would define a ''private provider'' to mean a health care provider as defined in § 433.52, including those defined in § 447.251, that is not a state government provider or a non-state government provider.

The proposed changes in provider designations would reinforce the

relationship between a provider's designation and its ability (or inability) to provide the source of non-federal share for Medicaid payments. Under the current system of categorization by ownership or operational interests, there can be ambiguity with respect to the appropriate category for a provider when certain responsibilities of ownership or operation are divided between more than one entity. For example, there is currently the possibility that a private nursing facility could transfer the deed to its real property to the county government, but the private entity would continue to administer all functions of the provider as though it were the actual owner, leaving the county government as the owner only in name but not any function. For the provider to make an IGT, the private entity would give funds to the county government, such as through a lease payment for the real property, to be used as the source of the non-federal share of Medicaid payments that the state could then make back to the provider in the form of supplemental payments. This effective self-funding of the non-federal share of the supplemental payments by the provider would not have been possible if the provider were categorized as privately owned and operated, since it would have been unable to make the IGT to support the supplemental payments back to it. In this situation, we view this transferred amount (for example, the lease payment) as an impermissible source of the non-federal share, since the funds used to support the IGT are not obtained from state or local tax revenue and, as discussed elsewhere in this preamble, would constitute a non-bona fide provider-related donation.

Through the state plan review process and our review of UPL demonstrations, we have observed that some states have re-categorized a number of providers from privately-owned or operated facilities to a governmentally owned or operated designation, either state government-owned or operated facilities or non-state government-owned or operated facilities. In some instances, the change in ownership category appears to be only a device to permit the state to make supplemental payments to a provider and demonstrate compliance with the UPL, rather than reflective of an actual change in the provider's true ownership or operational interests, in view of the apparent continuity of the provider's business structure and activities. We believe this shift in designation has facilitated higher supplemental payments to certain providers, without the state incurring additional cost to fund the non-federal share of payment where the private operator passes funds to the new governmental owner and those funds are either used: (1) To make an IGT or (2) supplant funds that are otherwise used to make an IGT to the state in order to make a supplemental payment targeted toward the private entity. We are concerned that this type of arrangement is not consistent with the basic construct of the Medicaid program as a cooperative federal-state partnership where each party shares in the cost of providing medical assistance to beneficiaries.

We propose to amend § 447.272(b) by clarifying that the UPL refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in 42 CFR, chapter IV, subchapter B; or allowed costs established in accordance with Medicaid cost principles as specified in 45 CFR part 75 and 2 CFR part 200, or, as applicable, Medicare cost principles specified in part 413. The specific data sources, methodology parameters, and acceptable UPL demonstration methodologies are specified in proposed § 447.288(b).

The existing regulations simply state that the UPL refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter, pursuant to which we have defined UPLs as a payment limit set at the aggregate amount that Medicare would have paid for the same Medicaid services, using either a Medicare payment methodology or Medicare cost principles. These two methods are employed because these are the two methods that Medicare has historically used to pay for services as authorized in chapter 42, subchapter B. In establishing these UPL methodologies, we have required that states set the UPL using the Medicare equivalent payment or cost amount, then compare the aggregate Medicaid payments for the defined period to the UPL. For purposes of this proposed rule and to be consistent with prior regulatory action, the term ''Medicare equivalent'' means the Medicare equivalent to the Medicaid payment, data, or services. For example, the Medicare equivalent payment means the amount that would be paid for Medicaid services furnished by the group of providers if those services were provided to Medicare beneficiaries and paid under Medicare payment principles. We are proposing to codify our existing policy related to the use of the two methods of demonstrating the Medicaid UPL, by using the Medicare equivalent payment amount or cost amount, and the process for establishing and demonstrating compliance with the UPL in § 477.288(b) of this proposed rule.

We considered proposing to define specific methods by which states would be required to demonstrate compliance with the UPL in each of §§ 447.272 and 447.321, but determined that the proposed § 447.288 would allow us to define necessary data elements, parameters, and methodologies for demonstrating compliance with UPLs in one location, for purposes of both the inpatient and outpatient UPLs under §§ 447.272 and 447.321, respectively. To summarize briefly, proposed § 447.288 describes the data sources, data parameters, and methodologies that must be considered and used in demonstrating compliance with the UPL. It describes the appropriate Medicare data and the creation of ratios using either cost or payment data calculations, the Medicaid charge data to be multiplied by a ratio either of Medicare costs-to-charges or of Medicare payments-to-charges to calculate the UPL amount, any associated considerations (such as inflation adjustments, utilization adjustments, or other cost adjustments), and the Medicaid payment data. For a detailed discussion of these proposed UPL requirements, please refer to the discussion below related to § 447.288.

We invite comment on all proposed new provisions and proposed amendments in this section.

15. Basis and Purpose (§ 447.284)

We are proposing to add subpart D to part 447 to implement sections 1902(a)(6) and (a)(30)(A) of the Act, which require, respectively, that a state plan for medical assistance must provide that the state agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports, and to assure that payments are consistent with efficiency, economy, and quality of care. As discussed in detail above and in subsequent sections below, this information would improve the transparency of Medicaid payments and provide us with more information to understand the basis of Medicaid supplemental payments at the individual provider level in a manner consistent with the recommendations of the oversight bodies as mentioned

elsewhere in this preamble. Moreover, this information would be used in concert with annual UPL demonstrations and state expenditure data to improve our oversight of state expenditures and FFP. Accordingly, we are proposing to require states to submit quarterly and annual reports which detail the total provider payments, including base and supplemental payments, authorized under the state plan and demonstration authority. We are also proposing that the states submit an additional annual report disclosing the amount of provider contributions provided to the state to support the non-federal share of the Medicaid payments along with the total payments received by the contributing providers. The provider contributions include all provider taxes, IGTs, CPEs, and any provider-related donations as described in part 433, subpart B. This new subpart would provide definitions for terms critical to the requirements for supplemental payment programs, including with respect to UPL demonstrations (§ 447.286), establish new data submission requirements for supplemental payments under the state plan (§ 447.288), and specify the consequences that would apply when a state fails to report required information (§ 447.290). We believe these proposed provisions are necessary to ensure the proper and efficient administration of state Medicaid plans with respect to supplemental payment programs, and generally to better enable us to perform our oversight function with respect to the Medicaid program.

We have a long history of establishing data reporting requirements for states. For financial data reports such as the UPL data demonstrations, we have long relied upon the current language in §§ 447.272 and 447.321, which we have discussed in subregulatory guidance in the form of SMDLs, particularly SMDL 13–003, to provide additional information regarding required data and the timeline and manner in which such data is to be reported. We have also defined reporting requirements regarding the Medicaid DSH program through regulations in § 447.299. Since codifying the DSH reporting requirements in regulation, we have found that data reporting by states has become far more consistent, and as a result, we have been able to quickly identify areas where DSH payments have been made inappropriately or when the state has made a payment outside of the state plan methodology, and thus we have been able to more efficiently focus our resources to those problematic areas. We have also been able to work with states to update state plan language so that the distribution methodology for their DSH payments is comprehensively described in the state plan, in accordance with federal requirements. Based in part on this experience with the usefulness of comprehensive data reporting about state payments to providers, we are proposing uniform reporting requirements for additional state Medicaid payments, including supplemental payments made under the UPL. Our expectation is that such reporting would allow CMS to focus our resources to areas where there appear to be issues, either in the payment methodology or the underlying financing, and provide states with technical assistance to the extent that the issues identified may be resolved through strengthening the state plan language so that it accurately and comprehensively describes the state's payment rates and methodologies.

In proposed § 447.284(a), we would specify that proposed new subpart D would set forth additional requirements for supplemental payments made under the state plan, and implement section 1902(a)(6) and (a)(30) of the Act. Section 447.284(b) would provide that the reporting requirements in subpart D are applicable to supplemental payments to which a UPL applies under §§ 447.272 or 447.321.

We are soliciting comments on the statement of basis and purpose as proposed in § 447.284.

16. Definitions (§ 447.286)

We are proposing to add § 447.286 to define the following terms, as they are used in proposed part 447, subpart D: Base payment, Non-state government provider, Private provider, state government provider, and Supplemental payment. Clear definitions of these terms are needed so that states and other stakeholders can have a clear understanding of what is required with respect to the proposed reporting requirements for supplemental payments and UPL demonstrations, and to allow us to clearly track supplemental payments and ensure a consistent reporting and UPL demonstration process.

Specifically, we propose to define the term ''base payment'' to mean a payment, other than a supplemental payment, made to a provider in accordance with the payment methodology authorized in the state plan or is paid to the provider through its participation with a Medicaid MCO entity under the authority in part 438. Base payments are documented at the beneficiary level in MSIS or T–MSIS and include all payments made to a provider for specific Medicaid services rendered to individual Medicaid beneficiaries, including any payment adjustments, add-ons, or other additional payments received by the provider that can be attributed to a particular service provided to the beneficiary, such as payment adjustments made to account for a higher level of care or complexity of services provided to the beneficiary. We believe that, in defining a base payment to a provider, it is appropriate to start with the most fundamental component of the payment that reimburses the provider for furnishing a specific service to a particular beneficiary. In some cases, the base payment may be the only payment the provider receives. We considered not including payment adjustments, which are payments made to providers based on certain provider-specific criteria, add-on payments, and other per service payments apart from the most basic payment, but we determined that it would be more appropriate to include all payments made to a provider for specific Medicaid services rendered to individual Medicaid beneficiaries in the proposed definition. When states pay providers based on patient acuity, complexity of services, characteristics of the provider, or add-on payments, including but not limited to add-on payments for quality of services, such payments can be directly tied to the provision of a service to an individual Medicaid beneficiary and are available to all providers within the Medicaid benefit category. The base payment, including add-on amounts, includes all payment amounts intended to fully reimburse the provider for furnishing a specific service to a particular beneficiary, whereas supplemental payments are made as a lump sum intended to reimburse for Medicaid services generally, rather than particular services furnished to an individual beneficiary. We are soliciting comment on this proposed definition and on the alternative we considered of not including payment adjustments such as incentive payments and other add-on payments that are paid on a per claim basis.

We propose to define non-state government provider to mean a health care provider, as defined in § 433.52, including those defined in § 447.251, that is a unit of local government in a state, including a city, county, special purpose district, or other governmental unit in the state that is not the state, which has access to and exercises administrative control over state-appropriated funds from the legislature

or local tax revenue, including the ability to dispense such funds. We propose to consider the entity's access to and administrative control over state-appropriated funds from the legislature or local tax revenue in this definition to link the provider category to the ability of the provider to supply the non-federal share funds in a manner consistent with section 1903(w)(6)(A) of the Act. We anticipate that questions may arise about whether a provider is a governmental or a private entity, for purposes of this definition. To resolve such questions, we propose that we would consider the totality of the circumstances, including, but not limited to, the identity and character of any entity or entities other than the provider that share responsibilities of ownership or operation of the provider, and including the nature of any relationship among such entities and the relationship between such entity or entities and the provider. In determining whether an entity shares responsibilities of ownership or operation of the provider, our consideration would include, but would not be limited to, whether the entity: (1) Has immediate authority to make decisions regarding the operation of the provider; (2) bears the legal responsibility for risk from losses from operations of the provider; (3) has immediate authority over the disposition of revenue from operations of the provider; (4) has immediate authority with regard to hiring, retention, payment, and dismissal of personnel performing functions related to the operation of the provider; (5) bears legal responsibility for payment of taxes on provider revenues and real property, if any are assessed; or (6) bears the responsibility of paying any medical malpractice premiums or other premiums to insure the real property or other operations, activities, or assets of the provider.

In determining whether a relevant entity (that is, the provider and any entity or entities other than the provider that share responsibilities of ownership or operation of the provider) is a unit of a non-state government, we would consider the character of the entity which would include, but would not be limited to, whether the entity: (1) Is described in its communications to other entities as a unit of non-state government, or otherwise; (2) is characterized as a unit of non-state government by the state solely for the purposes of Medicaid financing and payments, and not for other purposes (for example, taxation); and (3) has access to and exercises administrative control over state funds appropriated to it by the legislature and/or local tax revenue, including the ability to expend such appropriated or tax revenue funds, based on its characterization as a governmental entity.

In recent years, states have proposed a number of SPAs which sought to re-designate the UPL ownership category of a provider and to allow that provider to make an IGT, up to the applicable UPL, to fund the non-federal portion of a new Medicaid supplemental payment. Oftentimes, a hallmark of these proposals has been the sale of some asset of the provider (such as the provider's license or the facility's certification) for some nominal fee, with the private entity (the ''seller'') otherwise retaining critical responsibilities of ownership, and with the IGT, in practical reality, coming from the private entity's funds. This approach is inconsistent with the statute and regulations, particularly sections 1902(a)(30)(A) and 1903(w)(6)(A) of the Act and implementing regulations at §§ 433.51, 447.272 and 447.321.

Based on our experience with such SPAs, it appears that some states have sought to manipulate the characterization of providers' ownership to achieve problematic Medicaid financing arrangements. In arrangements we have observed, the operator essentially functioned as the owner and the operator of the facility. Accordingly, we believe a more effective approach to appropriately categorizing providers for purposes of the UPL would be to consider the totality of the circumstances relevant to the character of the provider, rather than attempting to parse more narrowly whether features of particular entities purported to be the provider's owner and/or operator mean that the provider is properly categorized as a unit of non-state government, which our experience has borne out may be more susceptible to manipulation. We understand that the business models of health care providers and their facilities are layered and complex. However, as discussed above, we are troubled by instances we have observed in which some states have attempted to re-characterize facilities as non-state government owned or operated, where such characterization was not supported by the actual structure and operation of the facility, in an ultimate effort to generate more federal Medicaid revenue without corresponding financial participation from the state. We believe such arrangements violate applicable statutes and regulations, are inconsistent with the fiscal integrity of the Medicaid program, and are generally abusive of the federal-state partnership that Congress has prescribed for the Medicaid program.

We propose to define private provider to mean a health care provider as defined in § 433.52, including those defined in § 447.251, that is not a state government provider or a non-state government provider. This is intended to be a catch-all for remaining health care providers in the state, that are not state government providers or non-state government providers, for purposes of this section. We are soliciting comments on this proposed definition of private provider.

We propose to define state government provider to mean a health care provider, as defined in § 433.52, including those defined in § 447.251, that is a unit of state government or a state university teaching hospital. Similar to the proposed definition of non-state government provider, we propose that, in determining whether a provider is a state government provider, we would consider the totality of the circumstances, including, but not limited to, the identity and character of any entity or entities other than the provider that share responsibilities of ownership or operation of the provider, and including the nature of any relationship among such entities and the relationship between such entity or entities and the provider. The factors that we propose to consider, without limitation, include those discussed above regarding the proposed definition of non-state government provider. And similar to that proposed definition, in determining whether a relevant entity is a state government or state university teaching hospital, we propose that our consideration would include, without limitation, the factors discussed above in connection with the proposed definition of non-state government provider.

Regarding the proposed definitions of non-state government provider, private provider, and state government provider, we understand that health care facilities often enter into business relationships with other entities to perform various functions, including, but not limited to, the care of beneficiaries. We recognize, and do not wish to interfere with, legitimate business relationships between providers and other entities, or among such other entities in relation to the provider. In fact, we believe that the current definitions of non-state government-owned or operated, state government-owned or operated, and privately-owned and operated may have inadvertently distorted such relationships by encouraging new or

different business relationships between providers and other entities, or among such other entities in relation to a provider, with no useful purpose other than to manipulate Medicaid financing in problematic ways. As such, we are proposing to identify a provider as a non-state government provider or state government provider in consideration of the totality of the circumstances, including, but not limited to, the identity and character of any entity or entities other than the provider that share responsibilities of ownership or operation of the provider, and including the nature of any relationship among such entities and the relationship between such entity or entities and the provider. These proposed definitions are intended to work together with the UPL rules and the provisions governing non-federal share financing and provider-related donations to safeguard the fiscal integrity of the Medicaid program.

We propose to define ''supplemental payment'' to mean a Medicaid payment to a provider that is in addition to the base payments to the provider, other than DSH payments under part 447, subpart E, made under state plan authority or demonstration authority. Supplemental payments cannot be attributed to a particular provider claim for specific services provided to an individual recipient and are often made to the provider in a lump sum on a monthly, quarterly, or annual basis apart from payments for a provider claim, and therefore, cannot be directly linked to a provider claim for specific services provided to an individual Medicaid beneficiary. In short, supplemental payments are any payments to a provider other than Base payments or DSH payments under part 447, subpart E. Supplemental payments are lump sum payments made to the provider at various intervals depending on the state program, including supplemental payments made through section 1115 demonstrations such as uncompensated care pools and delivery system reform incentive payments (DSRIP). We are not making determinations about those particular intervals at which payments are distributed to providers other than to require that states specify such information as proposed in § 447.252(d) of this proposed rule. We have historically considered DSH payments under part 447, subpart E as being distinct payments authorized separately in the statute in section 1923 of the Act which are separate from Medicaid supplemental payments. The DSH payments serve the specific purpose of taking into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs, including Medicaid beneficiaries and the uninsured. Serving these patients may cause hospitals to incur higher costs, including significant uncompensated care costs for serving low income populations. Supplemental payments and DSH payments are paid under separate authorities in the Act. Supplemental payments are authorized in section 1902(a)(30)(A) of the Act, which requires that the state plan provide methods and procedures to assure that payments are consistent with efficiency, economy, and quality of care and DSH payments are authorized in section 1923 of the Act. Therefore, supplemental payments and DSH payments are not required to be tied to the same statutory purpose.

We are requesting comment on the revisions to § 447.272, including each of the revised provider category definitions included in this section.

17. Reporting Requirements for UPL Demonstrations and Supplemental Payments (§ 447.288)

We are proposing to add § 447.288 to define documentation requirements for UPL demonstrations and for states that make supplemental payments. As noted several times elsewhere in this preamble, the GAO has frequently cited the lack of adequate Medicaid provider payment data as a deficiency that compromises CMS oversight and recommended we take concrete steps to ensure the timely submission of accurate state payment data. In 2015, one GAO report concluded that ''[w]ithout good data on payments to individual providers, a policy and criteria for assessing whether the payments are economical and efficient, and a process for reviewing such payments, the federal government could be paying states hundreds of millions, or billions, more than what is appropriate'' (U.S. Gov't Accountability Office, GAO–15–322, Medicaid: CMS Oversight of Provider Payments Is Hampered by Limited Data and Unclear Policy, 46 (2015)). Accordingly, this proposals represents an effort to address the concerns raised by GAO and to create a more robust audit trail for state payments to providers to allow for better CMS oversight. We believe that this proposed provision is necessary to ensure the proper and efficient operation of the Medicaid state plan, in a manner that complies with the requirements of sections 1902(a)(4), (a)(6) and (a)(30)(A) of the Act. In new § 447.288(a), we propose that, beginning October 1, of the first year following the year in which the final rule may take effect, and annually thereafter, by October 1 of each year, in accordance with the requirements of § 447.288 and in the manner and format specified by the Secretary, each state would be required to submit a demonstration of compliance with the applicable UPL for each of the following services for which the state makes payment: Inpatient hospital, as specified in § 447.272; outpatient hospital, as specified in § 447.321; nursing facility, as specified in § 447.272; ICF/IID, as specified in § 447.272; and institution for mental diseases (IMD), as specified in § 447.272. The submission of UPLs for these facilities and services is consistent with existing CMS regulations in §§ 447.272 and 447.321, as well as CMS guidance document SMDL #13–003. Under these regulations and policy guidance, states are already providing UPL demonstrations for the above referenced services to demonstrate that payments are consistent with economy, efficiency, and quality of care as required in section 1902(a)(30)(A) of the Act. These demonstrations are submitted annually, or any time a state submits a SPA that proposes to amend the payment rate or methodology for one of the aforementioned facilities or service categories. Of note, as discussed in greater detail below, we are proposing to remove the psychiatric residential treatment facilities (PRTF) and clinic UPLs, which would not be included in the annual reporting requirements.

We are proposing to add § 447.288(b) to define UPL demonstration standards. When demonstrating the UPL, states would be required to use the data sources and adhere to the data standards, and acceptable UPL methodologies specified in this section. We believe that these proposed requirements would assist CMS and states in determining the Medicaid inpatient and outpatient facility payment rates are consistent with economy, efficiency and quality of care under section 1902(a)(30)(A) of the Act.

Over time, we have received numerous requests for feedback on the use of specific data elements and on acceptable UPL methodologies. We are hopeful these proposed provisions, which, except as noted below, would codify current policy, would enhance states' understanding of acceptable UPL demonstration standards, as well as improve the quality of UPL submissions.

We are proposing no longer to require states to submit UPL demonstrations for PRTFs and clinics. PRTFs are facilities subject to the payment limits defined in

§ 447.325, which states that the state Medicaid agency may pay the customary charges of the provider but must not pay more than the prevailing charges in the locality for comparable services under comparable circumstances. The reason for this proposed change is two-fold. First, the payment limit in § 447.325 limits the state's payment to a provider to the provider's customary charges or, if less, the prevailing charges in the locality for comparable services under comparable circumstances. Providers determine what they will charge for items and services furnished. To pay a provider's charge under the state plan, a state plan could simply provide that its payments will not exceed the provider's customary charge, provided the state plan also describes a comprehensive methodology for ensuring that payments do not exceed the prevailing charges in the locality for comparable services under comparable circumstances. Second, in our experience, states do not make supplemental payments to these facilities, and such provider's base payments are generally equal to the provider's charge. As such, the UPL is less of a calculation, as with other inpatient-type services, and more of a confirmation the state pays no more than the provider's charge under the state plan, which can be accomplished through a review of the state plan. We will continue to review compliance with the § 447.325 through a review of the SPA submissions as has been our historical practice. The removal of the clinic UPL is discussed in more detail below under § 447.321 of this preamble.

In proposed § 447.288(b), we propose to specify detailed UPL demonstration standards for demonstrating that Medicaid FFS payments are made in aggregate amounts that are less than or equal to the aggregate cost or Medicare payment amounts. The purpose of the proposed provisions is to ensure uniform reporting of UPL data and a full picture of Medicaid payments within each provider category for each category of services subject to a UPL in a given year. The proposed provisions are intended to specify that states may not pick-and-choose the most beneficial data for each provider within a provider category, but instead to select a UPL methodology and apply a single methodology to all providers within a UPL provider category and service type.

In proposed paragraph (b)(1), we propose defining the data sources for the UPL calculations, which is the Medicare-equivalent cost and charge data and Medicare-equivalent payment and charge data for purposes of the UPL as our primary data sources for the UPL. As noted elsewhere in this proposed rule, the term ''Medicare equivalent'' means the Medicare equivalent to the Medicaid data, payment, or services. Therefore, the term Medicare equivalent payment means the amount that would be paid for Medicaid services furnished by the group of providers if those services were provided to Medicare beneficiaries and paid under Medicare payment principles. Likewise, a reference to Medicare equivalent charges in reference to a UPL calculation means the Medicare charges for the same Medicaid services subject to the UPL.

In proposed paragraph (b)(1)(i), we would require that cost and charge data for all providers must be from either Medicare cost reports, or state-developed cost reports using either Medicare cost reporting principles specified in part 413 or the cost allocation requirements specified in 45 CFR part 75, which implements requirements in 2 CFR part 200, as specified in 2 CFR 200.106. Cost and charge data must: Include only data with dates of service that are no more than 2 years prior to the dates of service covered by the UPL demonstration; and represent costs and charges specifically related to the service subject to the UPL demonstration. As such, each UPL must use costs and charges related to the relevant category of Medicaid services listed in paragraph (a) of § 447.288; and include either Medicare costs and Medicare charges, or total provider costs and total charges, in order to develop a cost-to-charge ratio as described in paragraph (b)(3)(i). The selection must be consistently applied for all providers within the provider category subject to the UPL so that all costs and charges for all providers within a provider category are uniform in the UPL demonstration to ensure uniformity in reporting as discussed above. These requirements are consistent with historical practices related to the collection of information for UPLs and were part of the CMS UPL templates submitted to OMB for approval under control number 0938–1148 (CMS–10398 #13 and #24).

At paragraph (b)(1)(ii), we propose to define Medicare payment demonstrations as using Medicare payment and charge data for all providers from either Medicare cost reports, Medicare payment systems for the specific provider type specified in title 42, chapter IV, subchapter B of the CFR, as applicable, or imputed per diem rates based on Medicare provider payments. ''Imputed'' per diem rates, as discussed in more detail in paragraph (b)(3)(ii)(C), are payments that are calculated by dividing total Medicare payments by Medicare days from the provider census data to calculate an estimated Medicare price per day. The state then is able to multiply this Medicare price per day for each provider by the provider's Medicaid days (also from the provider census), and then sum these products within a service class and provider category to calculate a Medicaid UPL.

The proposed provision goes on to specify that when using Medicare payment and charge data, the data must: Include only data with dates of service that are no more than 2 years prior to the dates of service covered by the UPL demonstration; include only Medicare payments and charges, or Medicare payment and the provider's Medicare census data, specifically related to the service subject to the UPL demonstration; and use either gross Medicare payments and Medicare charges, which includes deductibles and co-insurance but excludes reimbursable bad debt from the Medicare payment, or net Medicare payments and Medicare charges, which excludes deductibles and coinsurance and includes reimbursable bad debt, as reported on a Medicare cost report. The selection of gross or net Medicare payment must be consistent within the ratio for each provider category subject to the UPL. These requirements are consistent with historical practices related to the collection of information for UPLs and were part of the CMS UPL templates submitted to OMB for approval under control number 0938–1148 (CMS–10398 #13 and #24).

For the Medicare payment systems for the specific provider type, we are referring to the prospective payment systems (PPS) in effect for the Medicare program such as the inpatient prospective payment system (IPPS), outpatient prospective payment system (OPPS), skilled nursing facility (SNF) PPS, and any future applicable Medicare PPSs such as the patient driven payment model (PDPM) for SNFs. The requirement that the payment data use data with dates of service that are no more than 2 years prior to the dates of service covered by the UPL demonstration would allow states to use Medicare payment data from a prior period to demonstrate the UPL, particularly in years where Medicare is transitioning to a new payment system. Because states have the flexibility to use data that is no more than 2 years old, states using Medicare payment-based demonstrations would not be required to immediately switch over to using data from a newly implemented Medicare payment system, such as PDPM, to demonstrate

compliance with the UPL if the state is not in a position to do so, but would be able to transition to using that system over a 2-year period. There is no requirement in statute or regulations that mandates states use specific Medicare payment systems in Medicaid for provider payments. Since the UPL is an estimate of the amount that Medicare would have paid for the service, we have always offered states some flexibility to determine UPLs using recent data that is no more than 2 years old, which, in years where Medicare has transitioned to a new payment system, means that states could use data from the prior payment system for up to 2 years after the Medicare transition for purposes of the Medicaid UPL compliance demonstration.

In paragraph (b)(1)(iii), we propose to require that the Medicaid charge data used in calculating the UPL must be derived from the state's Medicaid billing system for services provided during the same dates of service as the Medicare cost or Medicare payment data, as defined above. The Medicare cost and charge or payment and charge data, as applicable, is used to create a ratio with the Medicare cost or payment being the numerator and the Medicare charges are the denominator. Once that ratio is created, the Medicaid charges are multiplied by that ratio. This is discussed in more detail below, but the requirement that the time period of the Medicaid charge data be from the same time period of the Medicare-equivalent data, as defined above, is due to the fact that providers determine what they will charge for items and services furnished to patients, which may change from time to time. If the charges are the same for all payers, then a reasonable estimate of the amount that Medicare would pay for the service would require the use of the Medicaid charge data from the same time period as the Medicare data to calculate the UPL. As discussed in connection with paragraph (b)(3)(i), we propose that a cost-based methodology could only be used for services where a provider applies uniform charges to all payers.

At paragraph (b)(1)(iv), we propose to require Medicaid payment data from a state's Medicaid billing system for services provided during the same dates of service as the Medicare cost or Medicare payment data, as specified in paragraph (b)(1)(i) or (ii) of this section, as applicable, or from the most recent state plan rate year for which a full 12 months of data are available. As with the data requirements in paragraphs (b)(1)(i) and (ii), Medicaid payment data must: Include only data with dates of service that are no more than 2 years prior to the dates of service covered by the UPL; include all actual payments, as well as all projected base and supplemental payments, excluding any payments made for services for which Medicaid is not the primary payer, expected to be made during the time period covered by the UPL demonstration to the providers within the provider category, as applicable; and only be trended by an amount equal to the changes in the Medicaid state plan payment for the applicable service. Using either the most recent Medicaid payment data for the time period subject to the UPL or the payment data from the same time period as the Medicaid charge data (meaning also from the same time period as the Medicare data) is up to the state. Under all circumstances, the Medicaid payment data must include all payments made to the providers, including any proposed payments or projected payments that have not yet been made. This way, the UPL will reflect an accurate depiction of the state's Medicaid payments during the period of the UPL demonstration.

In paragraph (b)(2), we propose to require states to apply certain UPL methodology parameters in calculating the UPL. Specifically, the proposed UPL methodology parameters include the following considerations. First, projected changes in utilization must be accounted for and reflected in the demonstration. If no service-specific utilization projections are available, then projections for enrollment must reflect programmatic changes such as reasonable utilization changes due to managed care enrollment projections. For example, a state may be aware that in the upcoming state-fiscal year, there will be a shift to increase beneficiary enrollment in managed care plans. Projected utilization changes to account for such large programmatic shifts may be used instead of individually determined, service-specific utilization changes, such as inpatient hospital utilization, which may result in a percentage increase or decrease in expected utilization for the relevant services undergoing a shift to managed care. Medicare data may also be projected using Medicare trend factors appropriate to the service and demonstration methodology, which are Medicare payment- or cost-based, with such trend factors being uniformly applied to all providers within a provider category. In this way, states can anticipate and project program changes or changes in expected costs or payments in the UPL that may either increase or decrease the UPL or expected Medicaid payments. For example, an appropriate trend factor with respect to inpatient hospital services, outpatient hospital services, and SNFservices could be the CMS Market Basket rate. This proposed change, which represents a departure from current policy, is proposed in paragraph (b)(2)(ii), which would require uniform application of the trending factor within the provider category. Prior to this proposed rule, we had not formally articulated an expectation of uniform trending of data within a provider category and had accepted UPL demonstrations that did not apply trend factors in a uniform manner. CMS could not determine whether the applied inflation adjustments in those UPLs were always appropriate based on our review. This proposed provision is intended to establish the requirements in regulation for uniform inflation adjustments to the UPLs.

Additionally, we propose that when calculating the aggregate UPL using a cost-based demonstration as described in paragraph (b)(3)(i), the state may include the cost of provider assessments (such as health care-related taxes) paid by each provider in the provider category that is reasonably allocated to Medicaid as an adjustment to the UPL, to the extent that such costs were not already included in the cost-based UPL. For example, many states calculate their provider taxes on inpatient services as a per day payment amount or a per discharge payment amount. The state would calculate the portion of such a tax allocable to Medicaid by multiplying the per day or per discharge tax amount by Medicaid days or Medicaid discharges, as applicable, and include the product of that amount in the UPL for each provider in the provider category. When calculating the aggregate UPL using a cost-based demonstration, states may include the Medicaid-allocated cost of health care related taxes as an adjustment to the UPL amount on a per provider basis. The Medicare cost report does not require states to account for expenses related to health care related taxes as an allowable cost, as this reporting is optional. In the Medicaid program, such expenditures may be included as an allowable cost provided that the portion of the cost allocated to Medicaid can be isolated from the aggregate health care related tax payment.

For example, if a provider has 100 total bed days of which 85 were Medicaid bed days and the provider paid $100 in health care related taxes, the provider could account for $85 of the total tax payment. Our current policy permits states to include the cost

of Medicaid's portion of health care related taxes as an allowed cost for cost based demonstrations, but not payment based demonstrations; we are proposing to codify that existing policy in regulation because, historically, the Medicaid taxes have not been specifically included in the Medicare cost report calculations. The Medicare 2552 (Hospital Cost Report) now includes an option to include provider taxes paid under the authority in section 1903(w) of the Act. To the extent that such taxes are not included in the cost calculation in the Medicare cost report, those costs should be included in the UPL. If the provider taxes are included in the Medicare cost report, the state should not add these costs back into the UPL calculation, which would result in double-counting the tax payments. Our goal in allowing Medicaid provider tax costs to be added back into the cost-based UPL calculations is to ensure that allowable costs incurred by the providers when furnishing services to Medicaid beneficiaries are applied to the UPL calculations to the extent that they were not already captured in the Medicare cost report data, but we do not want such costs to be duplicated through the UPL and the Medicare cost report. This provision only applies to cost-based UPL demonstrations because cost-based demonstration are reflections of the provider's expenses related to the provision of medical services and such amounts may vary based upon factors including health care related-taxes in the state or other relevant jurisdiction, while payment-based UPL demonstrations reflect only the Medicare payment for services under the specific Medicare payment system, and therefore, only adjustments which affect the overall payment under the Medicare payment system can be factored into the UPL demonstration.

Finally, we propose codifying the current policy that the Medicaid payments, in paragraph (b)(1)(iv), included in the UPL calculation must only include payments made for Medicaid services under the specific Medicaid service type at issue in the UPL. For example, the state must not include payments for services other than inpatient hospital services in the inpatient hospital UPL calculation.

In paragraph (b)(3), we propose acceptable methods of demonstrating the UPL. First, we propose that to make a cost-based demonstration in compliance with an applicable UPL, Medicaid covered charges are multiplied by a cost-to-charge ratio developed for the period covered by the UPL demonstration. The state may use a ratio of Medicare costs to Medicare charges, or total provider costs to total provider charges in developing the cost-to-charge ratio, but the selection must be applied consistently to each provider within a provider type, which references the listing of provider types in paragraph (a) of the section. The product of Medicaid covered charges and the cost-to-charge ratio for each provider is summed to determine the aggregate UPL. The demonstration must show that Medicaid payments will not exceed this aggregate UPL for the demonstration period. As explained in more detail below, this methodology may only be used for services where a provider applies uniform charges to all payers. Reported cost must be appropriately allocated between payers so that only costs properly allocated to Medicaid services are included in the demonstration.

In paragraph (b)(3)(i)(A), we propose that states may make a retrospective, cost-based demonstration showing that aggregate Medicaid payments paid to the providers within the provider category during the prior state plan rate year did not exceed the costs incurred by the providers furnishing Medicaid services within the prior state plan rate year period. The term ''retrospective'' simply refers to Medicaid payments that have already been paid for the prior state plan rate year that has already ended, and for which the state does not anticate making any new Medicaid payments. Most often these demonstrations come from states where providers are paid using a reconciled cost methodology under the approved Medicaid state plan, in which case the Medicaid provider payments would be equal to those providers' cost of Medicaid services, and the UPL would demonstrate that payments to providers did not exceed their costs.

In paragraph (b)(3)(i)(B), we propose that states may make a prospective, cost-based demonstration showing that prospective Medicaid payments would not exceed the estimated, prospective cost of furnishing the services for the upcoming state plan rate year period. As explained in more detail below, this methodology may only be used for services where a provider applies uniform charges to all payers. The prospective cost demonstration is a common UPL methodology reviewed by CMS and is often used by states to demonstrate that proposed or projected Medicaid payments are less than a provider cost trended forward from a prior period.

In addition to these cost-based demonstrations, we also propose that states could use payment-based demonstrations to show compliance with an applicable UPL, including retrospective and prospective methodologies and including flexibility for the state to determine an imputed Medicare payment rate to apply in either a retrospective or prospective payment-based demonstration. We propose that the payment-based demonstration data sources would be those identified in paragraphs (b)(1)(ii), (iii), and (iv), and the data standards defined in paragraph (b)(2) would apply. States could make a retrospective payment-to-charge UPL demonstration, where Medicaid covered charges are multiplied by a ratio of Medicare payments to Medicare charges developed for the period covered by the UPL demonstration. The product of Medicaid covered charges and the Medicare payment-to-charge ratio for each provider would be summed to determine the aggregate UPL, and the demonstration must show that Medicaid payments did not exceed this aggregate UPL. Alternatively, we propose that states could make a prospective payment-to-charge UPL demonstration, where Medicaid covered charges are multiplied by a ratio of Medicare payments to Medicare charges developed for the period covered by the UPL demonstration. The product of Medicaid covered charges and the Medicare payment-to-charge ratio for each provider would be summed to determine the aggregate UPL. The demonstration must show that proposed Medicaid payments would not exceed this aggregate UPL within the next state plan rate year immediately following the demonstration period. Regardless of whether a state is using a retrospective or prospecftive payment-to-charge demonstration methodology, we propose that states could use an imputed Medicare per diem payment rate determined by dividing total Medicare prospective payments paid to the provider by the provider's total Medicare patient days, which are derived from the provider's Medicare census data. Each provider's imputed Medicare per diem payment rate would be multiplied by the total number of Medicaid patient days for the provider for the period. The products of this operation for each provider are summed to determine the aggregate UPL. The demonstration must show that Medicaid payments are not in excess of the aggregate UPL, calculated on either a retrospective or prospective basis, consistent with the applicable proposed methodology. This imputed Medicare payment rate methodology is commonly used by long-term care facilities in Medicaid, such as SNFs and IMDs, or in

states whose Medicaid payments are based upon existing Medicare payment systems. For example, a state which uses the Medicare SNF PPS to demonstrate a SNF UPL would divide total Medicare payments by total Medicare SNF bed days. That product, per facility, would be multiplied by the Medicaid bed days, the aggregate of which would be the aggregate UPL. The Medicaid payments for the same time period must not exceed the aggregate UPL.

It is important to note that any UPL methodology that requires the use of a provider's charges to calculate the UPL may only be used to the extent that the provider applies uniform charges to all payers. This is because when developing a cost to charge ratio or a payment to charge ratio, the initial ratio is multiplied by Medicaid charges to determine the UPL amount. ''Charges'' are the amount a hospital or provider bills for medical services, and should be the same for all patients regardless of payer. If the charges used in the cost to charge or Medicare payment to charge ratio are not the same as the Medicaid charges, the calculation of the UPL would be either over- or under-stated. We intend the UPL demonstrations to accurately depict the Medicare cost, or what Medicare would have paid, for the same services, and that is diminished when the underlying data is not accurate.

In new § 447.288(c)(1), we propose that, at the time the state submits its quarterly CMS–64 under § 430.30(c), the state would be required to report certain information for each supplemental payment included on the CMS–64. The proposed reporting elements would not be reported on the CMS–64 itself, but would accompany that submission on a separate, supplemental report. We propose to require states to report information sufficient to identify which providers receive which supplemental payments under the state plan and any demonstration authority, and to enable us to ensure that such payments to the providers are consistent with economy, efficiency, and quality of care, as required under section 1902(a)(30)(A) of the Act. These data submission requirements would include provider-level data on base and supplemental payments made under state plan and demonstration authority by service type. This data would also be required to include the following: The SPA transaction number or demonstration authority number which authorizes the supplemental payment; a listing of each provider that received a supplemental payment under state plan and/or demonstration authority, and, for each: The provider's legal name; the primary physical address of the location or facility where services are provided, including street address, city, state, and ZIP code; the National Provider Identifier (NPI); the Medicaid identification number; the employer identification number (EIN); the service type for which the reported payment was made; the provider specialty type (if applicable, for example, critical access hospital (CAH), pediatric hospital, or teaching hospital); the provider category (that is, state government provider, non-state government provider, or private provider); and the specific amount of the supplemental payment paid to each provider, including the total supplemental payment made to the provider authorized under the specified state plan and the total Medicaid supplemental payment made to the provider under the specified demonstration authority, as applicable.

The specific data elements described above are intended to identify the individual providers receiving payments, the authority for the payments, and the sum of all payments received by the individual providers. Information such as the provider's legal name, primary physical location or facility location where services were provided, NPI, Medicaid identification number, and EIN are needed to identify the specific provider accurately. When the regulation refers to the ''legal'' name, it means the business name of the facility which appears on the provider's license and other legal documentation authorizing the health care operations of the provider. The NPI is required for providers, and EINs are assigned to all businesses by the Internal Revenue Service, and must be on all Health Insurance Portability and Accountability Act (HIPAA) electronic transactions. An NPI is a unique 10-digit number used to identify health care providers. The Medicaid identification number is assigned by the state and is a unique identifier for providers participating in the Medicaid program.

In addition to the provider-identifying information, proposed § 447.288(c)(1) would require the state to report the service type, provider specialty type, and provider category. These data elements are intended to be linked to the payment methodology in the state plan. This information follows how states must describe supplemental payments in the state plan, which is, first, organized by service type, then by provider-specific information, such as specialty type and provider category. If a state establishes a specific methodology or proposes to make a supplemental payment to a specific ''type'' of hospital using specified criteria, such as a non-state government teaching hospital or CAH, such information must appear in the state plan. As the proposed data elements are aligned with how analogous information is recorded in the state plan, we anticipate that this information will help us ensure that supplemental payments are being made to providers in accordance with the qualifying criteria as established in the state plan. Finally, we propose to require the state to report the specific amount of the supplemental payment made to the provider, including the total supplemental payment amount authorized under the specified state plan, as applicable, and the total supplemental payment amount authorized under the demonstration authority, as applicable.

In § 447.288(c)(2), we propose that not later than 60 days after the end of the state fiscal year, each state must annually report aggregate expenditure data for all data elements included in § 447.288(c)(1) plus the following: The state reporting period (state fiscal year start and end dates); the specific amount of Medicaid payments made to each provider, including, as applicable: The total FFS base payments made to the provider authorized under the state plan, the total Medicaid payments made to the provider under demonstration authority, the total amount received from Medicaid beneficiary cost-sharing requirements, donations, and any other funds received from third parties to support the provision of Medicaid services, the total supplemental payment made to the provider authorized under the specified state plan, the total Medicaid supplemental payment made to the provider under the specified demonstration authority, and an aggregate total of Medicaid payments listed above made to the provider.

Section 447.288(c)(2)(iii) would also require the aggregate reporting of the total DSH payments made to the provider, and the Medicaid units of care furnished by the provider (for example, on a provider-specific basis, total Medicaid discharges, days of care, or any other unit of measurement as specified by the Secretary). This proposed data collection effort is designed to allow us to conduct efficient oversight of all payments made to providers on an annual aggregate basis. The data, as reported, would be used to conduct quarterly and annual reviews of state payments as related to payments reported under UPL demonstrations and under the Medicaid state plan.

In § 447.288(c)(3), we propose that, not later than 60 days after the end of the state fiscal year, each state must annually report aggregate and provider-level information on each provider contributing to the state or any unit of local government any funds that are used as a source of non-federal share for any Medicaid supplemental payment. This proposed data submission requirement would include all of the data elements listed in § 447.288(c)(1) and (2), but would also require information related to financial contributions to the state Medicaid program, specifically including: The total of each health care-related tax collected from the provider by any state authority or unit of local government; the total of any costs certified as a CPE by the provider; the total amount contributed by the provider to the state or a unit of local government in the form of an IGT; the total of provider-related donations made by the provider or entity related to a health care provider, as defined in § 433.52, including in-cash and in-kind donations, to the state or a unit of local government, including state university teaching hospitals; and the total funds contributed by the provider (that is, health care-related taxes, CPEs, IGTs, provider-related donations, and any other funds contributed to the state as the non-federal share of a Medicaid payment). When a provider-related entity is related to more than one entity, the state should report the total amount of the related entity's donation for each associated provider. These proposed data elements are intended to be itemized based on all the various payments to a provider and contributions from the provider, as applicable. For example, if a provider receives base and multiple supplemental payments under various SPA authorities and makes a provider tax contribution and an IGT as a means of funding the non-federal share, the state must list each payment and each provider contribution among the proposed required data reporting elements. If there is more than one payment or more than one type of provider contribution (for example, more than one tax or more than one IGT), the state would be required to itemize each payment and each contribution, as applicable. The purpose of such information from states is to determine the totality of provider payments under the Medicaid program and the extent of provider contributions to the non-federal share of such Medicaid payments under the approved state plan.

We are seeking comment on all aspects of the proposals in this section. We are soliciting comment on the proposed reporting requirements in § 447.288(c), including the specific proposed data elements in § 447.288(c)(1) through (3). In particular, we invite comment on whether any of the proposed data elements are duplicative, and on ways we might be able to obtain this necessary information in a manner that appropriately balances administrative burden on states and on us while generating the most accurate data possible.

18. Failure To Report Required Information (§ 447.290)

To effectively ensure that states comply with applicable federal statutory and regulatory requirements, we must have adequate enforcement mechanisms in place. The remedy for issues related to state compliance with regulations is often the withholding of federal funds to compel compliance with applicable federal requirements. We are proposing to add § 447.290 to specify an appropriate avenue of enforcement in the event that a state does not comply with the proposed data reporting requirements in § 447.288. As discussed above, we believe the proposed information reporting requirement under § 447.288 is necessary for the proper and efficient administration of the state Medicaid plan, especially with respect to the plan's compliance with section 1902(a)(30)(A) of the Act, and would be properly required under section 1902(a)(6) of the Act. Therefore, in proposed § 447.290(a), we propose that the state must maintain the underlying information supporting base and supplemental payments, including the information required to be reported under proposed § 447.288, consistent with the requirements of § 433.32, and must provide such information for federal review upon request to facilitate program reviews or OIG audits conducted under §§ 430.32 and 430.33. In proposed § 447.290(b), we propose that if a state fails to timely, completely and accurately report information required under § 447.288 of this chapter, we may reduce future grant awards through deferral in accordance with § 430.40, by the amount of FFP we estimate is attributable to payments made to the provider or providers as to which the state has not reported properly, until such time as the state complies with the reporting requirements. We propose that we may defer FFP if a state submits the required report but the report fails to comply with applicable requirements. Otherwise allowable FFP for expenditures deferred in accordance with this proposed section would be released when we determine that the state has complied with all reporting requirements under proposed § 447.288. The enforcement mechanism proposed in § 447.290 is similar in structure to the mechanism that applies with respect to the DSH reporting requirements, in § 447.299(e). We are soliciting comments on the enforcement mechanism proposed in § 447.290.

19. Limitations on Aggregate Payments for DSHs Beginning October 1, 1992 (§ 447.297)

Current regulations require CMS to publish the annual DSH allotments in a **Federal Register**. This process is not only administratively burdensome, but is unnecessary as we routinely notify states directly regarding annual allotment amounts and make such information publicly available. Therefore, we are proposing to eliminate the § 447.297(c) requirement to publish annual DSH allotments in a **Federal Register** notice and to provide that the Secretary will post preliminary and final national expenditure targets and state DSH allotments in the MBES and at *Medicaid.gov* (or similar successor system or website). Additionally, we are proposing to remove the date in which final national target and allotments are published from April 1st to as soon as practicable. We are also proposing to remove § 447.297(e), which consists of redundant publication requirements already identified in § 447.297(b), (c), and (d), in its entirety to align with our proposed changes § 447.297(c). We are soliciting comments related to these proposed changes.

20. Reporting Requirements (§ 447.299)

To improve the accuracy of identification of provider overpayments discovered through the DSH audit process, we are proposing in § 447.299 to add an additional reporting requirement for annual DSH audit reporting required by § 447.299 and to provide clarifying guidance on the reporting of overpayments identified by the annual DSH audits required under part 455 subpart D. We are proposing to redesignate § 447.299(c)(21) as paragraph (c)(22) of that section, and to add a proposed new § 447.299(c)(21) to require an additional data element for the required annual DSH audit reporting. This new data element would require auditors to quantify the financial impact of any finding which may affect whether each hospital has received DSH payments for which it is eligible within its hospital-specific DSH limit. If it is not practicable to determine the actual

financial impact amount, we propose to require a statement of the estimated financial impact for each audit finding identified in the independent certified audit that is not reflected in the data elements identified in § 447.299(c)(6) through (15). For purposes of this paragraph, audit finding means an issue identified in the independent certified audit required under § 455.304 concerning the methodology for computing the hospital specific DSH limit and/or the DSH payments made to the hospital, including, but not limited to, compliance with the hospital-specific DSH limit as defined in § 447.299(c)(16). Audit findings may be related to missing or improper data, lack of documentation, non-compliance with federal statutes and/or regulations, or other deficiencies identified in the independent certified audit. Actual financial impact means the total amount associated with audit findings calculated using the documentation sources identified in § 455.304(c) of this chapter. Estimated financial impact means the total amount associated with audit findings calculated on the basis of the most reliable available information to quantify the amount of an audit finding in circumstances where complete and accurate information necessary to determine the actual financial impact is not available from the documentation sources identified in § 455.304(c) of this chapter. We understand that due to the complexity of issues that may arise, the actual financial impact may not always be calculable; therefore, we propose that, in the expectedly rare event that the actual financial impact cannot be calculated, an estimated financial impact would be required. The estimated financial impact would use the most reliable available information (for example, related source documentation such as data from state systems, hospitals' audited financial statements, and Medicare cost reports) to quantify an audit finding. We believe this additional data reporting element is necessary to better enable our oversight of the Medicaid DSH program to better ensure compliance with the hospital specific DSH limit in section 1923(g) of the Act. Moreover, we believe this requirement would limit the burden on both states and CMS of performing follow-up reviews or audits and will help ensure appropriate recovery and redistribution, as applicable, of all DSH overpayments.

The addition of § 447.299(f) would clarify reporting requirements of DSH overpayments identified in the audit process in accordance with part 433 subpart F, including specifying that states must return DSH payments in excess of hospital-specific cost limits to the federal government identified through annual DSH audits through quarterly reporting on the Form CMS–64 as a decreasing adjustment, or redistributed by the state to other qualifying hospitals, if redistribution is provided for under the approved state plan. Section 447.299(g) would require states to report overpayment redistribution amounts corresponding with the fiscal year DSH allotment, as applicable and consistent with other federal requirements, on the Form CMS–64 within 2 years from the date of discovery and report such redistributions through quarterly reporting on the Form CMS–64 as an increasing adjustment. We solicit comments on the proposed rule.

21. State Plan Requirements (§ 447.302)

We are proposing to revise § 447.302 by adding proposed new paragraphs (a) through (d), which would establish state plan requirements for payments for outpatient hospital services, to implement new approval requirements for state plans and any SPAs proposing to make supplemental payments to providers of these services and to define a transition period for currently authorized supplemental payments to begin to meet the proposed new requirements. These proposals are similar to those we are making in § 447.252(d) with respect to supplemental payments for inpatient hospital, nursing facility, and ICF/IID services. We are proposing to limit approval for state plan supplemental payments for outpatient hospital services to a period of not more than 3 years, and to require states to monitor a supplemental payment program during the term of its approval to ensure that the supplemental payment remains consistent with section 1902(a)(30)(A) of the Act. As discussed in this section and other sections of this preamble, the proposed revisions to §§ 447.252, 447.288(b) and 447.302 include considerable data reporting requirements which would implement section 1902(a)(6) of the Act, requiring the state agency to make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports. The submission of more robust payment data would assist us in providing proper oversight of the Medicaid program in determining that state Medicaid payments are made in a manner consistent with federal statute and regulations, including section 1902(a)(30)(A) of the Act and applicable UPL requirements.

Specifically, we are proposing in § 447.302(a) and (b) to codify existing state plan requirements that the plan must provide that the requirements of subpart F are met and that the plan must specify comprehensively the methods and standards used by the agency to set payment rates. We propose in § 447.302(c) that CMS may approve a supplemental payment, as defined in § 447.286, provided for under the state plan or a SPA for a period not to exceed 3 years. A state whose supplemental payment approval period has expired or is expiring may request a SPA to renew the supplemental payment for a subsequent period not to exceed 3 years, consistent with the requirements of § 447.302. A time limited supplemental payment allows CMS and the state an opportunity to revisit state plan supplemental payments to ensure that they remain consistent with efficiency, economy, and quality of care, as required under section 1902(a)(30)(A) of the Act. Over the years, CMS and various oversight bodies conducting financial management reviews and audits have identified areas where unchecked supplemental payments have resulted in payments that appeared to be excessive, and CMS had little recourse to take action. Such audits and financial reviews conducted by CMS or other oversight agencies can take years and require a large number of state and federal resources to complete, and ultimately resolve. As noted earlier in this preamble, in 2015, the GAO issued a report entitled, ''Medicaid: CMS Oversight of Provider Payments Is Hampered by Limited Data and Unclear Policy,'' in which it concluded that, ''[w]ithout good data on payments to individual providers, a policy and criteria for assessing whether the payments are economical and efficient, and a process for reviewing such payments, the federal government could be paying states hundreds of millions, or billions, more than what is appropriate.'' [10] As a result, the GAO has recommended that, to better ensure the fiscal integrity of the program, we should establish financial reporting at a provider-specific level and clarify permissible methods for calculating Medicaid supplemental payment amounts. Based on this and other oversight entity recommendations, and

[10] U.S. Gov't Accountability Office, GAO–15–322, Medicaid: CMS Oversight of Provider Payments Is Hampered by Limited Data and Unclear Policy, 46 (2015), *https://www.gao.gov/assets/670/669561.pdf.*

CMS' experience administering the Medicaid program at the federal level, we believe that the time-limited approval of supplemental payments is necessary for the proper and efficient operation of state Medicaid plans to ensure the continuing consistency of supplemental payments with applicable statutory requirements and generally to ensure appropriate oversight.

We are not proposing to limit the number of times a state may request, and receive approval for renewal of a supplemental payment program, provided that each request meets all applicable requirements. We propose that a state plan or SPA that would provide for a supplemental payment would be required to include: (1) An explanation of how the state plan or SPA will result in payments that are consistent with section 1902(a)(30)(A) of the Act, including that provision's standards with respect to efficiency, economy, quality of care, and access along with the stated purpose and intended effects of the supplemental payment, for example, with respect to the Medicaid program, providers, and beneficiaries; (2) the criteria to determine which providers are eligible to receive the supplemental payment; (3) a comprehensive description of the methodology used to calculate the amount of, and distribute, the supplemental payment to each eligible provider, including specified content; (4) the duration of the supplemental payment authority (not to exceed 3 years); (5) a monitoring plan to ensure that the supplemental payment remains consistent with the requirements of section 1902(a)(30)(A) of the Act and to enable evaluation of the effects of the supplemental payment on the Medicaid program, for example, with respect to providers and beneficiaries; and (6) for a SPA proposing to renew a supplemental payment for a subsequent approval period, an evaluation of the impacts on the Medicaid program during the current or most recent prior approval period, for example, with respect to providers and beneficiaries, and including an analysis of the impact of the supplemental payment on compliance with section 1902(a)(30)(A) of the Act. For the state's comprehensive description of the methodology used to calculate the amount, and distribution, of the supplemental payment to each eligible provider as required under item (3), we would require the state to provide all of the following: (1) The amount of the supplemental payment made to each eligible provider, if known, or, if the total amount is distributed using a formula based on data from one or more fiscal years, the total amount of the supplemental payments for the fiscal year or years available to all providers eligible to receive a supplemental payment; (2) if applicable, the specific criteria with respect to Medicaid service, utilization, or cost data from the proposed state plan rate year to be used as the basis for calculations regarding the amount and/or distribution of the supplemental payment; (3) the timing of the supplemental payment to each eligible provider; (4) an assurance that the total Medicaid payment to other inpatient and outpatient facilities, including the supplemental payment, will not exceed the upper limits specified in § 447.325; and (5) if not already submitted, an UPL demonstration as required by § 447.321 and described in proposed § 447.288.

The justification for including the state plan requirements in § 447.302 are the same as those justifications and explanations included in the discussion with regard to § 447.252. We are proposing to require states to provide information necessary to determine that the supplemental payments proposed in the state plan are, and remain, consistent with the efficiency, economy, and quality requirements under section 1902(a)(30)(A) of the Act and the parameters concerning permissible sources of non-federal share under section 1903(w) of the Act.

Finally, in considering the 3-year approval period for supplemental payments, we developed a transition plan to provide states with an adequate opportunity to come into compliance with the proposed requirements. To accomplish the policy objectives described above, we believe we must begin to apply the proposed policies, if they are finalized, to current state plan provisions that authorize supplemental payments that are approved as of the effective date of the final rule. It is no less necessary to ensure the proper and efficient operation of the state plan and ensure that applicable requirements continue to be met, to rigorously evaluate currently existing supplemental payment programs, as it is to do so for new supplemental payment programs approved prospectively. Accordingly, in proposed § 447.302(d), for state plan provisions approved 3 or more years prior to the effective date of the final rule, we propose that the state plan authority would expire 2 calendar years following the effective date of the final rule. For state plan provisions approved less than 3 years prior to the effective date of the final rule, we propose that the state plan authority would expire 3 years following the effective date of the final rule. We believe this is a generous timeline for transitioning to the proposed 3-year time limit for supplemental payments under the state plan. This timeline provides states with currently approved supplemental payment programs with at least 2, and as many as 3 years before a state wishing to continue the supplemental payment program would need to seek renewal or a new approval.

We are soliciting comment on this entire section, including the proposed state plan elements for supplemental payments, and the proposed approval timeframe for a state's proposed supplemental payments. For the timeframes, we are seeking input on both the 3-year approval period and the proposed transition period for currently approved supplemental payments. We considered proposing a 5-year compliance transition period instead of the proposed 3-year compliance transition period in § 447.302(d). This would have increased the amount of time states would have to bring existing, approved supplemental payment methodologies into compliance with the provisions of the proposed rule in §§ 447.252 and 447.302. We decided to propose a 3-year transition period to account for states where changes may require legislative action as some legislatures meet on a biennial basis and such a timeframe would provide an opportunity for all legilslatures to address existing supplemental payment programs. We are requesting comment on whether or not to pursue this or a lengthier transition and approval timeline for supplemental payments.

22. Outpatient Hospital Services: Application of UPLs (§ 447.321)

To promote improved oversight of Medicaid program FFS expenditures for services subject to the UPL, we are proposing changes to § 447.321. Some of the proposed changes to § 447.321 would formally codify current policy, while others are newly proposed. We solicit comment on all proposed provisions.

CMS has long regarded the UPL requirements in § 447.321 and the review of total outpatient hospital Medicaid payments in relation to a provider's cost or the Medicare payment amounts as implementing section 1902(a)(30)(A) of the Act, which requires that states assure that payments are consistent with efficiency, economy, and quality of care. As stated earlier in the preamble, the aggregate application of these UPLs has preserved state flexibility for setting provider-specific payments while creating an overall payment ceiling as a mechanism for

determining economy and efficiency of payment for the services described above, consistent with section 1902(a)(30)(A) of the Act.

We are proposing to change the title of this section to ''Outpatient Hospital Services: Application of upper payment limits'' to remove clinic services from the UPL requirements in § 447.321. The absence of benefit category in the Medicare program similar to Medicaid ''clinic services'' has made establishing and verifying compliance with a UPL for clinic services an overly burdensome task. Without equivalent comparison data from Medicare, it is difficult or impossible to establish a reasonable estimate of what Medicare would pay for Medicaid clinic services, which otherwise would supply the UPL for such services under § 447.321. Additionally, most often, clinics are reimbursed according to the practitioner fee schedule in the same manner as other practitioners under the Medicaid state plan. In these circumstances, we have determined that such payments are not subject to the clinic UPL in any event, because these provider payments are made under the relevant practitioner benefit in the Medicaid program, such as physician services or dental services under sections 1905(a)(5) and (a)(10) of the Act, respectively, rather than clinic services under section 1905(a)(9) of the Act. As with all other inpatient and outpatient facility services, state agencies must continue to apply § 447.325 under which the agency may pay the customary charges of the provider but must not pay more than the prevailing charges in the locality for comparable services under comparable circumstances.

We have proposed to revise this regulation in the past through other proposed rules, but were unable to finalize those proposals. Particularly, in 2007 with the proposed rule *Medicaid Program; Clarification of Outpatient Clinic and Hospital Facility Services Definition and Upper Payment Limit* (72 FR 55166), we proposed several practical options for states to comply with clinic UPL requirements. Namely, these options included paying at the Medicare non-facility Resource-Based Relative Value Units System (RBRVS) FFS rate for practitioner services in a clinic setting, or setting the rates for services provided in the clinic at the Medicaid state plan rate for the same services when provided by a practitioner under the state plan where there was no Medicare comparable rate. The difficulty in applying the proposals in that particular proposed rule, and difficulties setting and establishing compliance with clinic UPLs since, has been related to the subjectivity of establishing appropriate comparison prices for services where there is no Medicare equivalent, or limiting Medicaid providers to cost when Medicare does not collect or mandate clinic cost reports for free-standing clinics, as is done with other inpatient and outpatient facilities. For these reasons, we are proposing to remove clinic services from § 447.321 so the requirements of the outpatient UPL will no longer apply to these providers and we are requesting comment on this proposed change.

Importantly, this proposal does not mean that the requirements of section 1902(a)(30)(A) of the Act do not continue to apply to clinic payments—emphatically, they do. We simply are proposing to no longer use the clinic UPL as the formal metric of compliance with the efficiency, economy, and quality of care requirements under the statute. We will continue to compare the Medicare RBRVS to Medicaid clinic reimbursement rates, where applicable, to inform administrative decisions about the state's payment rates under section 1902(a)(30)(A) of the Act, much like we do with physician reimbursement under the Medicaid state plan. We are soliciting comment on this particular change in the proposed rule.

We are proposing to amend paragraph (a) to revise the current ownership groups (state government-owned or operated, non-state government owned or operated, and privately-owned and operated facilities) used to establish the UPL. We propose to replace these provider designations with ''state government providers,'' ''non-state government providers,'' and ''private providers.'' We propose to codify the substantive definitions of these provider designations in proposed § 447.286. As discussed below, we would define ''state government provider'' to refer to a health care provider as defined in § 433.52, including those defined in § 447.251, that is a unit of state government or state university teaching hospital; in determining whether a provider is a unit of state government, we would consider the totality of the circumstances, including but not limited to specific considerations identified in proposed § 447.286. Similarly, we would define ''non-state government provider'' to refer to a health care provider as defined in § 433.52, including those defined in § 447.251, that is a unit of local government in a state, including a city, county, special purpose district, or other governmental unit in the state that is not the state, which has access to and exercises administrative control over state funds appropriated to it by the legislature and/or local tax revenue, including the ability to expend such appropriated or tax revenue funds; in determining whether a provider is non-state government provider, we would consider the totality of the circumstances, including but not limited to specific considerations identified in proposed § 447.286. We would define a ''private provider'' to mean a health care provider as defined in § 433.52, including those defined in § 447.251, that is not a state government provider or a non-state government provider.

The proposed changes in provider designations would reinforce the relationship between a provider's designation and its ability (or inability) to provide the source of non-federal share for Medicaid payments. Under the current system of categorization by ownership or operational interests, there can be ambiguity with respect to the appropriate category for a provider when certain responsibilities of ownership or operation are divided between more than one entity. For example, there is currently the possibility that a private nursing facility could transfer the deed to its real property to the county government, but the private entity would continue to administer all functions of the provider as though it were the actual owner, leaving the county government as the owner only in name but not any function. For the provider to make an IGT, the private entity would give funds to the county government, such as through a lease payment for the facility real property, to be used as the source of the non-federal share of Medicaid payments that the state could then make back to the provider in the form of supplemental payments. This effective self-funding of the non-federal share of the supplemental payments by the provider would not have been possible if the provider were categorized as privately owned and operated, since it would have been unable to make the IGT to support the supplemental payments back to it. In this situation, we view this transferred amount as an impermissible source of the non-federal share, since the funds used to support the IGT are not obtained from state or local tax revenue and, as discussed elsewhere in this preamble, would constitute a non-bona fide provider-related donation.

Through the state plan review process and our review of UPL demonstrations, we have observed that some states have re-categorized a number of providers from privately-owned or operated facilities to a governmentally owned or

operated designation, either state government-owned or operated facilities or non-state government-owned or operated facilities. In some instances, the change in ownership category appears to be both a non-bona fide provider-related donation, as well as a device to permit the state to make supplemental payments to a provider and demonstrate compliance with the UPL, rather than reflective of an actual change in the provider's true ownership or operational interests, in view of the apparent continuity of the provider's business structure and activities. We believe this shift in designation has facilitated higher supplemental payments to certain providers, without the state incurring additional cost to fund the non-federal share of payment where the private operator passes funds to the new governmental owner, which constitutes a non-bona fide provider-related donation, and those funds are either used to make an IGT or supplant funds that are otherwise used to make an IGT to the state to make a supplemental payment targeted toward the private entity. We are concerned that this type of arrangement is not consistent with the basic construct of the Medicaid program as a cooperative federal-state partnership where each party shares in the cost of providing medical assistance to beneficiaries.

Similar to our proposal in § 447.272, we propose to amend § 447.321(b) to clarify that the UPL refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in 42 CFR chapter IV, subchapter B, or allowed costs established in accordance with the cost principles as specified in 45 CFR part 75 and 2 CFR part 200, or, as applicable, Medicare cost principles specified in 42 CFR part 413. The specific data elements, methodology parameters, and acceptable UPL demonstration methodologies are specified in proposed § 447.288(b).

The existing regulations simply state that the UPL refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of title 42, chapter IV, of the CFR, which provided CMS with the ability to define UPLs as a payment limit set at the aggregate amount that Medicare would have paid for the same Medicaid services using either a Medicare payment methodology or Medicare cost principles. These two methods are employed because these are the two methods that Medicare has historically used to pay for services as authorized under title 42, chapter IV, subchapter B, of the CFR. In establishing this limit, we have required that states set the UPL using these principles, then compare the aggregate Medicaid payments for the defined period to the UPL, which is the Medicare equivalent payment or cost amount. We are proposing to codify our existing policy related to the use of the two methods of demonstrating the Medicaid UPL, by using the Medicare equivalent payment amount or cost amount, and the process for establishing and demonstrating compliance with the UPL in § 477.288(b) of this proposed rule. As noted elsewhere in this proposed rule, the term ''Medicare equivalent'' means the Medicare equivalent to the Medicaid data, payment, or services. Therefore, the term Medicare equivalent payment means the amount that would be paid for Medicaid services furnished by the group of providers if those services were provided to Medicare beneficiaries and paid under Medicare payment principles. Likewise, a reference to Medicare equivalent charges in reference to a UPL calculation means the Medicare charges for the same Medicaid services subject to the UPL.

We considered proposing to define specific methods by which states would be required to demonstrate compliance with the UPL in each of §§ 447.272 and 447.321, but determined that the proposed § 447.288 would allow us to define necessary data elements, parameters, and methodologies for demonstrating compliance with UPLs in one location, for purposes of both the inpatient and outpatient UPLs under §§ 447.272 and 447.321, respectively. To summarize briefly, proposed § 447.288 describes the data sources, data parameters, and methodologies that must be considered and used in demonstrating compliance with the UPL. It describes the appropriate Medicare data and the creation of ratios using either cost or payment data calculations, the Medicaid charge data which multiplied by the either a ratio of cost-to-charge (total cost or Medicare cost) or the ratio of Medicare payment-to-charge to calculate the UPL amount and any associated considerations (inflation adjustments, utilization adjustments, or other cost adjustments), and the Medicaid payment data. For a detailed discussion of these proposed UPL requirements, please refer to the discussion above related to § 447.288.

We invite comment on all proposed new and revised provisions in this section.

23. Medicaid Practitioner Supplemental Payments (§ 447.406)

For a number of years, states have been making supplemental payments that are targeted to certain practitioners, such as physicians and other licensed professionals, under the Medicaid state plan. Most commonly, states have targeted supplemental payments to practitioners affiliated with and furnishing services in academic medical centers and safety net hospitals. These payments have used what is commonly described as an ACR calculation. The ACR is a method of calculating an average rate paid by commercial third party payers for specific medical service codes (usually Current Procedural Terminology (CPT) codes) to providers and multiplying that average rate by the Medicaid claims for each code to establish an upper limit for these practitioner supplemental payments.

Predominantly, such ACR payments are funded by IGTs from local government sources or state university teaching hospitals and are generally made without consideration of improvements in access to or quality of care. When payment is made up to the ACR, states submit data to CMS from the top (generally five) commercial payers and provide an explanation of the data that was extracted from providers' accounts receivable systems. The state compares payment by Medicaid for each billing code to the average payment amount allowed by commercial payers for the same services. Data from each of the practitioners, group practices, or hospital-based practitioner groups eligible to receive the supplement payment is included in the submitted ACR calculation. These calculations are usually completed by the provider(s) and sent to CMS by the states through the submission of SPAs. We are proposing to end the practically unrestricted use of ACR supplemental payments based on concerns that the payments are not economic and efficient, consistent with section 1902(a)(30)(A) of the Act, and that they present a clear oversight risk because they are based on proprietary commercial payment data and thus not verifiable or auditable. As discussed in detail below, we are proposing to limit Medicaid practitioner supplemental payments to 50 percent of FFS base payments to the eligible provider for practitioner services, or 75 percent of such payments for services provided within HHS' Health Resources and Services Administration (HRSA)-designated geographic health professional shortage areas (HPSAs) or

Medicare-defined rural areas, as specified in 42 CFR 412.64(b), as discussed below.

When ACR-based payments were first approved in 2000, we found that state ACR amounts were between 150 percent and 165 percent of the Medicare rates for the same services. In recent years, however, states have sought to make Medicaid practitioner supplemental payments based on calculations reflecting amounts of approximately 300 percent to 400 percent of the Medicare rate. While these percentage are outliers among states making ACR payments, those amounts were considerably larger than we had otherwise seen. In federal FY 2018, the most recent full fiscal year for which data was reported, states claimed approximately $1.32 billion in (total computable) expenditures for supplemental payments made to physicians and other licensed practitioners. As states and practitioners realized that Medicaid payments could be increased through the use of ACR-based supplemental payment methodologies and with funding from IGTs, states began to explore expanding the ACR-based supplemental payments to other Medicaid participating practitioners.

Although we questioned whether making Medicaid payments at up to 400 percent of Medicare rates was consistent with economy and efficiency as required under section 1902(a)(30)(A) of the Act, we continued to approve ACR methodologies submitted by states consistent with our historic view that such methodologies that relied on commercial data were permissible under the relevant statutory standards, and because we had not established an upper bound for practitioner supplemental payments through rulemaking.

In this rule, except as discussed below, we are proposing to apply the definitions applicable to base and supplemental payments defined under newly proposed § 447.286—Definitions and the proposed new requirements in § 447.302—State plan requirements. By aligning these definitions and requirements, we are ensuring that the terminology for base and supplemental payments for practitioner services is consistent with other service types and that states apply the same comprehensive descriptions and time limits to practitioner supplemental payments as would be applied to other Medicaid service supplemental payments. Further, we are proposing, within § 447.406(c), to limit Medicaid practitioner supplemental payments relative to base payments set under the Medicaid state plan. Notably, lump sum provider quality incentive supplemental payments that are targeted to a subset of providers within the state as part of a state's delivery system reform initiative and paid based on improvements to reported quality measures are included in the definition of ''Supplemental payment'' under proposed § 447.286, for purposes of newly proposed § 447.406, and therefore, would be subject to the limit proposed in § 447.406. To the extent that value-based payment methodologies that are part of a state's delivery system reform initiative and that are available to all providers under a Medicaid benefit category, including as an alternative to FFS payment rates (for example, bundled payment methodologies, payments for episodes of care, Medicaid shared savings methodologies), and otherwise align with the definition of base payments in § 447.286 (for example, the payment can be attributed to a particular service provided to a Medicaid beneficiary), we propose such payments to be base payments as defined in § 447.286. This consideration is consistent with the proposed definitions of base and supplemental payments and will allow states sufficient flexibility to promote quality improvement which may result in better care and reduced program cost over time.

The proposed new limits would allow states to target supplemental payments to practitioners: (1) Up to 50 percent of the FFS base payments authorized under the state plan for the practitioner services paid to the eligible provider during the period covered by the supplemental payment, or (2) for services provided within HRSA-designated geographic HPSA or Medicare-defined rural areas as defined in § 412.64(b), Medicaid practitioner supplemental payments could be made up to 75 percent of the FFS base payments authorized under the state plan for the practitioner services paid to the eligible provider during the period covered by the supplemental payment. We are proposing to permit additional payment for practitioner services in geopgraphic HPSAs to allow states flexibility to increase payment rates and address professional shortages and access to care concerns in areas where HHS has determined such shortages exist. Likewise, we are proposing to include Medicare-defined rural areas as defined in § 412.64(b) because states have frequently identified rural areas, some of which may not be included in the geographic HPSAs, as having issues related to access to care and we want to provide states with the flexibility to make increased practitioner supplemental payments if the state determines that such increases are needed in those areas as well.

We believe these percentages are appropriate because the ACR data from 2016 and 2017 show that, nationally, among providers receiving an ACR supplemental payment, total supplemental payments equaled approximately 75 percent of the base payment rates in 2016 to approximately 93 percent of the base payment rates in 2017 (total supplemental payment divided by total base payments to qualifying provider) based on data received through the state UPL demonstration submissions. By limiting the total practitioner payment, base and supplemental payment, to 150 percent of the base Medicaid practitioner payment, or 175 percent of the base Medicaid practitioner payment for services provided in a HRSA-designated geographic HPSA or a Medicare-defined rural area, we believe that the proposed policy would not diverge excessively from ACR supplemental payments that we historically have approved. However, under the prior structure, the supplemental payment was not related to the base Medicaid payment and could only be increased based on changes to the commercial payer rates. Therefore, an increase in the base Medicaid payment could not result in an increase in a supplemental payment to eligible providers, as would be possible under our proposal. If a state wants to increase a provider's supplemental payment beyond the maximum amount that would be permissible under the proposed provision, the state could increase Medicaid base payment rates, which could enable the state to pay a further 50 percent (or 75 percent) of the increase in FFS base payments to eligible providers. We believe this approach is, first, consistent with section 1902(a)(30)(A) of the Act, and, second, is sufficiently consistent with the previously approved Medicaid ACRs amounts not to excessively disturb total provider payments being made today under previously approved ACR supplemental payment arrangements.

To provide an example of the application of the proposed Medicaid practitioner supplemental payment limit, assume the state has proposed to make a supplemental payment to a group of practitioners within an area of the state that is not a HRSA-designated geographic HPSA or Medicare-defined rural area. One of the qualifying providers received total Medicaid FFS base payments for practitioner services of $100,000 and the state wishes to make a supplemental payment to that provider. The proposed ceiling

methodology results in the following calculation: $100,000 total Medicaid base payments × 0.50 = $50,000, which could allow the state to make a Medicaid practitioner supplemental payment to the provider of up to $50,000, in addition to the Medicaid FFS base payment of $100,000, for a total payment to the provider of up to $150,000. However, if the Medicaid practitioner supplemental payment were made to a provider for services furnished in one of the HRSA-designated geographic HPSAs or a Medicare-defined rural area, the supplemental payment ceiling would be 75 percent of the total base payment amount of $100,000, which would result in the following ceiling calculation: $100,000 total Medicaid base payment × 0.75 = $75,000, which could allow the state to make a Medicaid practitioner supplemental payment of up to $75,000, in addition to the Medicaid FFS base payment of $100,000, for a total payment to the provider of up to $175,000.

In this proposed rule, we propose definitions of the terms ''base payment'' and ''supplemental payment'' in § 447.286. Per those proposed definitions, we consider Medicaid practitioner supplemental payments as ''supplemental'' payments under the proposed definitions. The reason is that the base payments are payments made to a provider for specific services provided to an individual beneficiary. While Medicaid practitioner supplemental payments could be tied to individual services, the calculation of the final payment amount is not dependent upon specific services furnished to any individual beneficiary, or any beneficiary's acuity or complexity of care received, nor is the practitioner supplemental payment made only for complex cases. Base payments for all practitioner services furnished by the eligible provider are supplemented by the supplemental payment, regardless of the level of beneficiary acuity or complexity (as typically would be relevant to payment adjustments or add-ons that would be considered part of the base payment). The eligible provider qualifies for these payments based on state-developed criteria that target certain providers, and the supplemental payments are often paid as lump sum at the end of a quarter or at the end of year.

In proposing these requirements, we are seeking to establish an appropriate and auditable upper bound to better ensure that practitioner payments are consistent with economy and efficiency by ensuring the supplemental payments have a reasonable relationship to the base rate methodologies that have been approved by CMS on the basis of our determination that such base rate methodologies are consistent with statutory requirements. The ACR supplemental payments historically have been established based on the negotiating power of various actors in the private market and without regard to the unique circumstances of the Medicaid program, including statutory requirements to ensure efficiency and economy. That is, higher reported commercial payment rates are a function of practitioners' ability to negotiate higher rates from certain commercial payers, rather than a result of prevailing rates generally paid to practitioners by all commercial payers, or all payers generally, and without any necessary analysis of economy and efficiency.

In contrast, the proposed provisions intend to tie the highest practitioner payments in the state to the lowest (that is, payments to practitioners that are limited to the state plan FFS base payment). States have already determined and declared as part of their rate-setting processes that base payments are consistent with economy and efficiency, quality of care, and access to care requirements, as required under section 1902(a)(30)(A) of the Act. Therefore, we believe that setting the upper limit for targeted practitioner supplemental payments at 50 percent or 75 percent more than the base amounts is reasonably sufficient to allow states with flexibility, when needed, to target payment increases while providing a basis to gauge that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. State payments must meet both tests of section 1902(a)(30)(A) of the Act in that a base payment may be economic and efficient, but if it is not sufficient to enlist sufficient providers in a particular area of the state, then an increase in payments may be needed to ensure that the rates are sufficient to enlist adequate numbers of providers in the Medicaid program. Further, this proposed policy may encourage states to evaluate whether Medicaid payment rates are generally consistent with section 1902(a)(30)(A) of the Act across all practitioners within a geographic region and evaluate whether rate increases for all practitioners may be necessary to improve access or quality, rather than targeting payments to certain practitioners that may be in a position to provide the non-federal share in exchange for supplemental payments.

Our concerns over the growing scope of practitioner supplemental payments relate to both the payment amounts relative to Medicare rates and the practitioners to which the states are providing the payments, which appears to be largely driven by the source of non-federal share used to fund the payments. As states typically rely on the providers that receive the supplemental payments to fund the non-federal share through IGTs, there is less incentive for the states to properly oversee the payments and ensure that the amounts are economic and efficient. Typically when states use appropriated funds as the source of non-federal share there is a meaningful state interest in ensuring value to maintain state budgets; however, when the non-federal share is provided by the service provider (and returned with matched federal funds through the supplemental payments) there is an inherent incentive to maximize the amount of the payments to providers in the state. In almost all instances, the providers were supplying the state with the non-federal share of the Medicaid physician supplemental payments. Without the supplemental payments, it is likely that the arrangements through which the providers have been transferring the state share to the state Medicaid agency to support current high levels of Medicaid practitioner supplemental payments would cease, and therefore, the net impact on the providers would be far less than the projected amount of decrease in practitioner supplemental payments.

The incentive to maximize federal funds to providers and lack of oversight interest from states is particularly problematic in the case of practitioner supplemental payments because of the data sources used for ACR demonstrations. The data currently used to determine supplemental payment amounts is based entirely on proprietary commercial payment data supplied by the practitioners who themselves stand to benefit from the supplemental payment. In our reviews, we have not been able to verify that the commercial payment data is correct or genuinely representative of rates that the commercial market will bear. We have also found, in several instances, that the data has been manipulated to increase the potential supplemental payments by, for instance, using comparisons to Medicaid rates paid for services within facilities (which are generally lower than office settings) compared to non-facility commercial rates, or by

foregoing appropriate adjustments to ensure that the time and associated payments for procedures are equivalent for Medicaid and commercial data. Since the data within the ACR demonstrations are produced by providers (and masked to protect proprietary information), the demonstrations are impossible to validate, difficult to interpret and ultimately may not be auditable in accordance with § 430.33. By setting a limit based on Medicaid-based rates, as proposed under this rule, data is readily available within state and CMS claims systems to validate and audit the supplemental payment amounts.

We recognize that states that are already making ACR-based supplemental payments may need time to come into compliance with the proposed new limits, if they are finalized. For states whose state plans currently provide for Medicaid practitioner supplemental payments, we are proposing in § 447.406(d) to provide a transition period consistent with the one defined in § 447.302(d) for the state to submit a SPA to bring its currently approved Medicaid supplemental practitioner payment program into compliance with the requirements proposed in this section, including the cross-referenced requirements in § 447.302. Specifically, we propose that, for Medicaid practitioner supplemental payments that were approved on or before the effective date of any final rule, the state would be required to submit and obtain CMS approval for a SPA to comply with the requirements of this section in order to continue making such supplemental payments. Otherwise, the authority for state plan provisions that authorize the Medicaid practitioner supplemental payments that are approved as of the effective date of any final rule would be limited according to the timeframe described in § 447.302(d). By the end of the transition period, a state without an approved SPA bringing the Medicaid practitioner supplemental payment program into compliance with the requirements of this section (and, as incorporated by cross reference, of § 447.302) would not be authorized to continue making the supplemental payments. We believe this approach to a transition period would help minimize burden on states, as states with Medicaid practitioner supplemental payment programs would have a generous period of time to bring their state plans into compliance with the proposed new requirements. Additionally, we propose that states would no longer be required to submit annual ACR demonstrations for the annual UPL submission requirements outlined in the SMDL 13–003 for states that make targeted physician supplemental payments for physician services, further reducing the associated state burden. Instead, CMS expects that the state plan would include a comprehensive written statement of the Medicaid FFS base payment and Medicaid practitioner supplemental payment methodologies, in a manner consistent with §§ 447.302, 447.406, and all other applicable requirements.

We are seeking comment on all elements of this proposal, including the level of the proposed ceiling percentages (and whether they should be higher or lower), the option of using the Medicare rural areas and/or HRSA-designated geographic HPSA to target eligible providers for supplemental payments, the language regarding value-based payment methodologies, and whether there would be other appropriate means to give states flexibility to offer special consideration for providers in underserved areas.

24. Definitions (§ 455.301)

We are proposing to revise the definition of the ''independent certified audit'' to include the requirement for auditors to quantify the financial impact of each audit finding, or caveat, on an individual basis, for each hospital, per the reporting requirement in § 447.299(c)(21) and under section 1923(j)(1)(B) of the Act. Additionally, we propose to include in the definition how a certification of the audit would include a determination of whether or not the state made DSH payments that exceeded any hospital's specific DSH limit in the Medicaid state plan rate year under audit. Specifically, we are proposing to add to annual DSH reporting a requirement for auditors to quantify the financial impact of any finding, including those resulting from incomplete or missing data, which may affect whether each hospital has received DSH payments for which it is eligible within its hospital-specific DSH limit. As previously discussed, based on the audit results we are often unable to determine whether a DSH overpayment to a provider has occurred, the underlying causes of the overpayments, and the amount of the overpayments associated with each cause. This is the result of an auditor including an audit finding indicating that the missing information may have an impact on the calculation of total eligible uncompensated care costs while not making a determination of the actual financial impact of the identified issue. As a result of this lack of quantification of the financial impact of this finding, we are unable to determine whether an overpayment, if any, has resulted from this audit finding. As such, revising the definition is necessary in promoting oversight and integrity of the DSH program and ensuring the audit and report results allow us to calculate accurate hospital-specific limits. We are soliciting comments related to this proposed change.

25. Process and Calculation of State Allotments for Fiscal Year After FY 2008 (§ 457.609)

We are using the opportunity within this regulation to revise the method for notifying states and the public of national CHIP allotments. Section 2104 of the Act provides appropriations for fiscal year CHIP allotments for FYs 1998–2027 as determined under the methodologies provided in sections 2104(b), 2104(c), and 2104(m) of the Act as applicable for payments to states as described in section 2105 of the Act. Section 457.609 describes the process and calculation of state allotments for a fiscal year after FY 2008. Section 457.609(h) provides that CHIP Allotments for a fiscal year may be published as preliminary or final allotments in the **Federal Register** as determined by the Secretary. We have not published CHIP allotments in the **Federal Register** since the FY 2013 CHIP allotments. Each year following FY 2013, states have been notified of their CHIP allotments through either email notifications and/or through MBES/CBES. We propose to remove from § 457.609 the reference to our discretionary option to publish in the **Federal Register** the national CHIP allotment amounts as determined on an annual basis for the fiscal years specified in statute. Instead, we are proposing to post CHIP allotments in the Medicaid and CHIP Budget and Expenditure System (MBES/CBES) and at *Medicaid.gov* (or similar successor systems or websites) annually. We believe that posting the CHIP allotment amounts at *Medicaid.gov* and in the MBES/CBES is an efficient way to make the information more easily accessible to interested stakeholders and would be less administratively burdensome for CMS. We are soliciting any comments related to these proposed changes.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We would consider all comments we receive by the date and time specified in the **DATES** section of

this preamble, and, when we proceed with a subsequent document, we would respond to the comments in the preamble to that document.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to publish a 60-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to the Office of Management and Budget (OMB) for review and approval. For the purposes of the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection should be approved by OMB, PRA section 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our burden estimates.
- The quality, utility, and clarity of the information to be collected.
- Our effort to minimize the information collection burden on the affected public, including the use of automated collection techniques.

We are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs).

A. Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates for all salary estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 1 presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Accountants and auditors	13–2011	37.89	37.89	75.78
Data Entry Keyers	43–9021	16.22	16.22	32.44
Financial Specialist all other	13–2099	37.30	37.30	74.60
General and Operations Managers	11–1021	59.56	59.56	119.12
Healthcare Support Workers all other	31–9099	18.80	18.80	37.60
Managers all other	11–9199	55.57	55.57	111.14
Social Science Research Assistants	19–4061	24.24	24.24	48.48

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

B. Proposed Information Collection Requirements (ICRs)

The following regulatory sections of this rule contain proposed collection of information requirements (or ''ICRs'') that are subject to OMB approval under the authority of the PRA: §§ 433.72 (Waiver provision applicable to health care related taxes), 447.252 and 447.302 (State plan requirements), 447.288 (Reporting requirements for UPL demonstrations and supplemental payments), and 447.299 (DSH reporting requirements). Our analysis of the proposed requirements and burden follow.

1. ICRs Regarding Tax Waiver Requirements (§ 443.72)

The following proposed changes will be submitted to OMB for approval under control number 0938–0618 (CMS–R–148). Subject to renewal, the control number is currently set to expire on February 28, 2021. It was last approved on February 9, 2018, and remains active.

Section 433.72 of this rule proposes to add a period of validity for tax waivers of the broad-based and/or uniformity requirements, which states that waivers will cease to be effective 3 years from CMS' approval in the case of tax programs commencing on or after the rule's effective date or 3 years from the rule's effective date in the case of waivers approved before the rule's effective date. This change is necessary because the provider data submitted by states to CMS, for use in the statistical tests described at § 433.68, may change over time. As a result, the tax may be generally redistributive as required by statute and regulation when the state requests the waiver, but may subsequently cease to be so. Currently there are approximately 35 states that have broad based or uniformity waivers. We propose to allow states with existing health care-related tax waivers up to 3-years from the effective date of the final rule before they must seek re-approval. This will provide states sufficient time to evaluate and, if necessary, modify existing tax programs.

The ongoing burden associated with the proposed requirements consists of the time it would take each state that has an existing tax waiver to submit an updated version within 3-years after the effective date of the final rule and to update the waiver every 3 years. Of the 35 states with tax waivers, we estimate that there are approximately 60 tax waivers that will have to be renewed every 3 years, or about 20 tax waivers renewed per year by various states (0.4 tax waiver renewals per year per state). Please note that the proposed waiver requirements are minimal, as states are already required to monitor and update their tax waivers to ensure compliance with federal requirements.

We estimate it would take 2 hours at $37.60/hr for a healthcare support worker to prepare and submit an updated tax waiver. In aggregate we estimate an ongoing annual burden of 40 hours (20 tax waiver renewals per year × 2 hr/renewal) at a cost of $1,504 (40 hr × $37.60/hr) or $30 per state ($1,504/51).

2. ICRs Regarding State Plan Requirements (§§ 447.252 and 447.302)

The following proposed changes will be submitted to OMB for approval under control number 0938–0193 (CMS–179). Subject to renewal, the control number is currently set to expire on April 30, 2022. It was last approved on April 9, 2019, and remains active.

The proposed changes to §§ 447.252 and 447.302 would require that states provide additional descriptors for any proposed supplemental payments and would put a 3-year limit on the duration of all prospectively approved supplemental payments, with a transition period for states to seek renewal of currently approved supplemental payments in accordance with the proposed requirements, if the state desires to continue the supplemental payment. States would need to provide the additional descriptors to receive state plan authority to disburse their proposed supplemental payments. Consequently, currently approved supplemental payment-related SPAs would have to be updated by adding the descriptors, as outlined in section II.A.13. of this proposed rule, state plan requirements (§ 447.252), and in § 447.252(d) of the regulatory text. Supplemental payments are presently authorized through the SPA process with CMS.

The ongoing burden associated with the proposed requirements consists of the time it would take each of the 50 state Medicaid programs, the District of Columbia, and the territories Puerto Rico, US Virgin Islands, and Guam (hereinafter, ''states'') to specify six (6) descriptors for all applicable SPAs that provide or would provide for a supplemental payment. The territories the Commonwealth of the Northern Mariana Islands (CNMI) and American Samoa have been excluded to the extent that Medicaid services are provided under section 1902(j) waiver. The additional SPA descriptors include: (1) An explanation of how the state plan or SPA will result in payments that are consistent with section 1902(a)(30)(A) of the Act; (2) the criteria to determine which providers are eligible to receive the supplemental payment; (3) a comprehensive description of the methodology used to calculate the amount of, and distribute, the supplemental payment to each eligible provider, including all of the following: The amount of the supplemental payment made to each eligible provider, if known, or, if the total amount is distributed using a formula based on data from one or more fiscal years, the total amount of the supplemental payments for the fiscal year or years available to all providers eligible to receive a supplemental payment, if applicable, the specific criteria with respect to Medicaid service, utilization, or cost data from the proposed SPA year to be used as the basis for calculations regarding the amount and/or distribution of the supplemental payment, the timing of the supplemental payment to each eligible provider, an assurance that the total Medicaid payment to an inpatient hospital provider, including the supplemental payment, will not exceed the upper limits specified in § 447.271, and if not already submitted, a UPL demonstration as required by § 447.272 and described in § 447.288; (4) the duration of the supplemental payment authority (not to exceed 3 years); (5) a monitoring plan to ensure that the supplemental payment remains consistent with the requirements of section 1902(a)(30)(A) of the Act and to enable evaluation of the effects of the supplemental payment on the Medicaid program, for example, with respect to providers and beneficiaries; and (6) for a SPA proposing to renew a supplemental payment for a subsequent approval period, an evaluation of the impacts on the Medicaid program during the current or most recent prior approval period, for example, with respect to providers and beneficiaries, and including an analysis of the impact of the supplemental payment on compliance with section 1902(a)(30)(A) of the Act.

We have attempted to mitigate any new burden by identifying the essential descriptors that are necessary during a SPA review of proposed state supplemental payments. The more information and transparency provided with the SPA to implement new, or renew existing, supplemental payments will reduce the number of questions and requests for additional information from CMS, and therefore, could result in more expedited approval along with increased economy and efficiency of the Medicaid program.

To estimate the overall burden of adding the descriptors to all supplemental payment-related SPAs we considered the total nationwide number of active supplemental payments by states reporting for the current 8 UPL demonstration service types for the period 2015–2017 (3 years) in the proposed 6 UPL service types (see Table 2, line A): (1) Nursing facility; (2) outpatient hospital; (3) inpatient hospital; (4) ICF/IID; (5) IMD; and (6) physician services excluding PRTF and clinic.

As indicated, the total number of states reporting supplemental payment methodologies in the UPL demonstrations in the Medicaid program for the following service types are: 37 for inpatient hospital services (IP); 29 for outpatient facility services (OP); 49 for nursing facility services (NF); 8 for ICF/IIDs (ICF); 0 for IMDs (IMD); and 17 for physician services (Phys). We recognize that there are often more than one supplemental payment SPA per state for each service type, especially for states with more providers and service types like inpatient hospitals and nursing facilities, while IMDs have no supplemental payments, and therefore, no SPAs to renew or submit. To account for this we multiplied the number of states reporting each service type by 2 (approximately 2 SPAs per year for each service type) to estimate the total number of SPAs submitted by the states.

In this regard, the total number of SPAs is estimated to be 280 (Table 2, line B) or 5.19 (line C) per state (280 SPAs/54 states and territories). We estimate that each SPA is renewed every 2.5 years (half of the time required in this proposed rule), for 2.08 (5.19 SPAs per state/1 SPA renewal every 2.5 years) SPA renewals per state per year.

TABLE 2—STATE REPORTING OF SUPPLEMENTAL PAYMENT METHODOLOGIES IN THE UPL DEMONSTRATIONS

UPL demonstration types	IP	OP	NF	ICF	IMD	Phys	Total
A. Supplemental Payment Methodologies reported by States	37	29	49	8	0	17	140
B. SPA multiplier × 2	74	58	98	16	0	34	280
C. SPAs needed to be renewed per year per state (B/54 states)	1.37	1.07	1.81	0.30	0.00	0.67	5.19

We estimate it would take 30 additional minutes (0.5 hr) at $48.48/hr for a social science research assistant (technical staff) to add all 6 supplemental payment SPA components from §§ 447.252 and 447.302 for each SPA submission, noting that a comprehensive payment methodology is currently required for all SPA submissions. In aggregate, we estimate an annual burden of 56.2 hours (2.08 SPA renewals per state per year × 0.5 hr for additional descriptors × 54 states and territories) at a cost of $2,725 (56.2 hr × $48.48/hr). This estimate

factors in the burden associated with supplemental payment SPAs for the 6 service types mentioned above and summarized in Table 2. Per state, we estimate an average annual burden of 1.0 hours (56.2 hr/54 states and territories) at a cost of $50 ($2,725/54 states and territories).

3. ICRs Regarding Reporting for UPL Demonstrations and Supplemental Payments (§ 447.288)

The following proposed changes will be submitted to OMB for approval under control number 0938–1148 (CMS–10398 #13 and #24). Subject to renewal, the control number is currently set to expire on March 31, 2021. It was last approved on March 1, 2018, and remains active.

Section 447.288 of this rule proposes to codify our current policy of requiring states and territories to submit annual UPL demonstrations.

While the territories Puerto Rico, US Virgin Islands, and Guam are included in this estimate, the Commonwealth of the Northern Mariana Islands (CNMI) and American Samoa have been excluded from this estimate because they provide Medicaid services under section 1902(j) waivers. The proposed rule would also add quarterly reporting requirements (§ 447.288(c)(1)) that would provide data on each provider receiving a supplemental payment, the amount of payment(s), and the state plan/demonstration authority authorizing the payment. The proposed rule would also require an aggregate report (§ 447.288(c)(2)) of all providers receiving supplemental payments that totals all of the supplemental payments providers receive during the year plus all Medicaid payments, and Medicaid utilization data. Lastly, the rule would also require a report (§ 447.288(c)(3)) of all of those providers contributing to the state's non-federal share for any supplemental payment, the state plan/demonstration authority authorizing the payment, and the amount of the payment(s).

(1) UPL Demonstrations

The currently approved burden associated with the requirements we are revising and putting into regulation in this proposed rule, consists of the time it would take each of the 56 Medicaid programs (50 states, 5 territories, and the District of Columbia) to submit annual UPL demonstrations and report supplemental payments for: Inpatient hospital; outpatient hospital; nursing facilities; PRTF; clinic services; other inpatient & outpatient facility providers (commonly known as physician services); ICF/IID; and institutions for mental disease (IMD) on the currently approved (hereinafter, ''active'') UPL templates that are set out under CMS–10398 #13 and #24.

This proposed rule would reduce burden by eliminating the UPL demonstrations for three service types PRTF, clinic services, and other inpatient & outpatient facility providers (physician services) and by eliminating 2 territories from reporting any of the items required under § 447.288. It also proposes to codify the requirements for states to annually report UPL demonstrations as discussed in SMDL #13–003 (March 18, 2013),[11] which was associated with OMB approved templates (OMB Control Number 0938–1148) and collection of information requirements approved by OMB under control number 0938–1148 (CMS–10398 #13 and 24).

For CMS–10398 #13 (Medicaid Accountability—Nursing Facility, Outpatient Hospital and Inpatient Hospital Upper Payment Limits) eliminating 2 territories from this reporting would reduce our active burden estimates by −80 hours (40 hr/response × −2 responses) for a burden reduction of $3,057 ([30 hr × −2 responses × $32.44/hr for a data entry keyer] + [9 hr × −2 responses × $48.48/hr for a social science research assistant] + [1 hr × −2 responses × $119.12/hr for a general and operations manager]).

For CMS–10398 #24 (Medicaid Accountability—Upper Payment Limits ICF/IID, Clinic Services, Medicaid Qualified Practitioner Services and Other Inpatient & Outpatient Facility Providers) this would reduce our active burden by −80 hours (40 hr/response × −2 responses) at a cost of −$3,057 ([30 hr × −2 responses × $32.44/hr for a data entry keyer] + [9 hr × −2 responses × $48.48/hr for a social science research assistant] + [1 hr × −2 responses × $119.12/hr for a general and operations manager]).

For CMS–10398 #24 this rule would also reduce our active burden by eliminating 3 of the 5 UPL demonstrations for the service types PRTF, Clinic Services, and Medicaid Qualified Practitioner Services and Other Inpatient & Outpatient Facility Providers (commonly referred to as the physician ACR). This would reduce our active burden estimates by −1,296 hours (8 hr/response × 3 service types × 54 states) for a savings of $49,528 ([18 hr × −54 states × $32.44/hr for a data entry keyer] + [5.4 hr × −54 states × $48.48/hr for a social science research assistant] + [0.6 hr × −54 states × $119.12/hr for a general and operations manager]). This proposed action would thereby eliminate the PRTF, Clinic Services, and Medicaid Qualified Practitioner Services and Other Inpatient & Outpatient Facility Providers (commonly referred to as physician ACR) templates along with the guidance and instruction documents that are associated with the templates.

As indicated, the proposed burden changes will be submitted to OMB for approval under control number 0938–1148 (CMS–10398 #13 and #24). Since the proposed requirements impact two information collection requests (#13 and #24), we estimate a total burden reduction of −1,456 hours (−80 hr −80 hr −1,296 hr) for a savings of $55,642 (−$3,057 −$3,057 −$49,528).

(2) Quarterly Reporting of Expenditures Claimed for Each Supplemental Payment (§ 447.288(c)(1))

In addition to the data already collected in the aggregate for all supplemental payments and required annually for UPL demonstrations under the CMS–10398 #13 and #24, this proposed rule would require that states report information quarterly on expenditures claimed for each supplemental payment made under state plan or demonstration authority including: (1) The SPA transaction number or demonstration authority number which authorizes the payment; (2) a listing of each provider that received a payment under each authority by the specialty type (if applicable, for example, CAH, pediatric hospital, or teaching hospital); (3) the specific amount of the supplemental payment paid to each provider including the total payment made to the provider authorized under the specified state plan; and (4) the total Medicaid payment made to the provider under the specified demonstration authority.

This rule would add quarterly data reported to CMS in the form of 5 new templates mirroring the UPL demonstrations reporting by service type of the provider. For CMS–10398 #13, this would consist of quarterly report templates for: Nursing facilities, outpatient hospitals, and inpatient hospitals. For CMS–10398 #24, quarterly report templates would be added for: ICF/IID and IMD.

The quarterly reports would be required at the time the state submits its quarterly CMS–64 (OMB control number 0938–1265) pursuant to § 430.30(c), consisting of provider level information on all providers receiving supplemental payments, including 11

[11] Center for Medicaid and CHIP Services, *RE: Federal and State Oversight of Medicaid Expenditures,* State Medicaid Director's letter SMD #13–003, accessed 4/9/2019: *https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-13-003-02.pdf.*

data elements consisting of 8 demographic elements and 3 elements specific to supplemental payments (see (§ 447.288(c)(1))). The 8 demographic elements of each provider that received a supplemental payment under each authority consist of: (1) The provider's legal name; (2) the physical address of the location or facility where services are provided, including street address, city, state, and ZIP code; (3) the NPI; (4) the Medicaid identification number; (5) the EIN; (6) the service type for which the reported payment was made;(7) the provider specialty type (if applicable, for example, CAH, pediatric hospital, or teaching hospital); and (8) the provider category (that is, state government, non-state government, or private). The 3 supplemental payment elements for payments paid to each provider consist of the specific amount of the supplemental payment made to the provider, including: (1) SPA transaction number or demonstration authority number which authorizes the supplemental payment; (2) the total supplemental payment made to the provider authorized under the specified state plan; (3) the total Medicaid supplemental payment made to the provider under the specified demonstration authority, as applicable.

For the supplemental payment quarterly reports, annually we estimate it will take 20 seconds at $32.44/hr for a data entry keyer to query states' MMIS system and/or copy and paste each data element into the required format for reporting. The initial quarterly report would require the full set of 11 data elements for each provider receiving a supplemental payment with a burden of 449 hours (7,341 providers with supplemental payments × 11 data elements × 1 report/year × 20 seconds/3,600 seconds in an hour) and a cost of $14,566 (449 hr × $32.44/hr).

The three (3) subsequent quarterly reports would only require reporting of the three (3) supplemental payment data elements since the eight (8) demographic data elements would have already been reported in the initial quarterly report. The burden associated with the subsequent reports consists of 367 hours (7,341 providers with supplemental payment × 3 data elements × 3 reports/year × 20 seconds/3,600) at a cost of $11,906 (367 hr × $32.44/hr).

In aggregate, we estimate a burden of 816 hours (449 hr + 367 hr) at a cost of $26,472 ($14,566 + $11,906).

We also expect oversight by social science research assistants and general operations managers for each of the supplemental payment quarterly reports. We estimate it would take 1 hour at $48.48/hr for a social science research assistant and 30 minutes (0.5 hr) for a general operations manager at $119.12/hr to review each of the reports. In this regard we estimate an annual burden of 306 hours ([1 hr × 4 reports × 51 states] + [0.5 hr × 4 reports × 51 states]) at a cost of $22,040 ([1 hr × 4 reports × 51 states × $48.48/hr] + [0.5 hr × 4 reports × 51 states × $119.12/hr]).

Given the aforementioned burden estimates, we estimate a total of 1,140 hours (816 hr + 324 hr) at a cost of $49,797 ($26,460 + $23,337) for all of the information collection requests with quarterly reporting, including all 5 new templates. Per state we estimate 21.1 hours (1,140 hrs/54 states) and $922 (49,797/54 states) for all quarterly reporting.

As indicated, the proposed requirements and burden will be submitted to OMB for approval under control number 0938–1148 (CMS–10398 #13 and #24). Since the proposed requirements would impact two information collection requests (CMS–10398 #13 and #24), the annual quarterly reporting burden for each is broken down here: For CMS–10398 #13 (new quarterly report templates for inpatient hospitals, outpatient hospitals, and nursing facilities) it is 1,108 hours (1,122 hr × 0.97 [12]) at a cost of $48,433 ($49,797 × 0.97); for CMS–10398 #24 (new quarterly report templates for ICF/IID and IMD) the burden is 31.2 hours (1,122 hr × 0.027 [13]) at a cost of $1,363 ($49,797 × 0.027).

(3) Utilization Reporting Template and Guidance Documents (§ 447.288(b)(2))

Annually, the proposed reporting of the specific amount of Medicaid payments made to each provider would include: (1) The total FFS base payments made to the provider authorized under the state plan; (2) the total Medicaid payments made to the provider under demonstration authority; (3) the total payment or funds received from Medicaid beneficiary cost-sharing requirements, donations, and any other funds received from third parties to support the provision of Medicaid services; (4) the total supplemental payment made to the provider authorized under the specified state plan; (5) the total Medicaid supplemental payment made to the provider under the specified demonstration authority, and the total Medicaid payments made to the provider as reported in the above areas; (6) the total DSH payments made to the provider; and (7) the Medicaid units of care (for example, on a provider-specific basis, total Medicaid discharges, days of care, or any other measures as specified by the Secretary).

A utilization report by provider service type would be required annually by states in this proposed rule, which includes all of the providers reported in the Supplemental Payments Reporting Templates (that is, all providers receiving supplemental payments), and reports all base payments, DSH payments, and additional utilization data from those providers. This Utilization Report includes all base payments made to each provider in the state, with the addition of DSH and Medicaid utilization data (23 data elements consisting of 9 demographic elements previously reported in the quarterly reports, 10 new elements specific to supplemental and other payments, and 4 new utilization elements).

The 9 demographic elements, linked to the same 8 elements in the quarterly reports plus 1 element stating the dates of the supplemental payment period, all covering the same providers in each service type, that received a supplemental payment under each authority listed in § 447.288(c)(1) including: (1) The provider's legal name; (2) the physical address of the location or facility where services are provided, including street address, city, state, and ZIP code; (3) the NPI; (4) the Medicaid identification number; (5) the EIN; (6) the service type for which the reported payment was made; (7) the provider specialty type (if applicable, for example, CAH, pediatric hospital, or teaching hospital); (8) the provider category (that is, state government, non-state government, or private); and (9) the state reporting period (state fiscal year start and end dates).

The 14 supplemental payment elements for Medicaid payments made to each provider consist of the following, as applicable: (1) The SPA transaction number or demonstration authority number which authorizes the supplemental payment; The specific amount of Medicaid payments made to each provider, including, as applicable; (2) the total FFS base payments made to the provider authorized under the state plan; (3) the total Medicaid payments made to the provider under demonstration authority; (4) the total payment or funds received from Medicaid beneficiary cost-sharing requirements; (5) the total payment or funds received from Medicaid donations; (6) the total of any other funds received from third parties to

[12] 97% of UPL providers receiving supplemental payments are IP, OP, and NF provider types.

[13] 2.7% of UPL providers receiving supplemental payments are ICF and IMD provider types.

support the provision of Medicaid services; (7) the total supplemental payment made to the provider authorized under the specified state plan; (8) the total Medicaid supplemental payment made to the provider under the specified demonstration authority; (9) the total Medicaid payments made to the provider as reported above (summation of 2–8 above); and (10) the total DSH payments made to the provider. The 4 utilization elements are comprised of: Up to four (11. through 14.) Medicaid unit of care metrics (for example, on a provider-specific basis, total Medicaid discharges, days of care, or any other measures as specified by the Secretary).

There are a total of 14 new data elements. The eight demographic elements and the SPA transaction number or demonstration authority number which authorizes the supplemental payment were reported during the previous quarterly CMS–64 reports submitted during the year, and therefore, are not counted in the collection of information here.

For the annual utilization report we estimate it would take 20 seconds at $32.44/hr for a data entry keyer to query states' MMIS system and/or copy and paste each data element into the required format for reporting. The burden associated with preparing and submitting the annual report consists of 571 hours (7,341 providers reported with supplemental payments in the UPL demonstration × 14 new data elements × 1 report/year × 20 seconds/3,600 seconds per hour) at a cost of $18,523 (571 hr × $32.44/hr).

Additionally, we estimate oversight by social science research assistants and general operations managers for the utilization annual report. We estimate it would take 1.5 hours at $48.48/hr for a social science research assistant and 1 hour at $119.12/hr for a general operations manager to review the report. In this regard we estimate an annual burden of 135 hours ([1.5 hr × 1 report × 54 states] + [1 hr × 1 report × 54 states]) at a cost of $10,359 ([1.5 hr × 1 report × 54 states × $48.48/hr] + [1 hr × 1 report × 54 states × $119.12/hr]).

Given the aforementioned burden estimates, we estimate a total of 706 hours (571 hr + 135 hr) at a cost of $28,882 ($18,522 + $10,359) for all information collection for the utilization report. Per state, this amounts to 13.1 hours (706 hrs/54 states) at a cost of $535 ($28,882/54 states).

Since the proposed requirements impact two information collection requests (CMS–10398 #13 and #24), we break down the cost to each, as above. The burden for CMS–10398 #13 is 687 hours (706 hr × 0.97) at a cost of $28,091 ($28,882 × 0.97). For CMS–10398 #24 the burden is 19.3 hours (706 hr × 0.027) at a cost of $791 ($28,882 × 0.027).

(4) Annual Non-Federal Share Reporting (§ 447.288(c)(3))

Section 447.288(c)(3), proposes to require that each state submit an annual report of the aggregate and provider-level information on each provider contributing to the state or any local unit of government any funds that are used as a source of the non-federal share for any Medicaid supplemental payment, including 17 data elements consisting of: 8 new demographic elements; 8 new supplemental and other payment elements; and 1 new summation element.

The 8 demographic elements of each provider that received a non-federal share for any Medicaid supplemental payment under each authority listed in § 447.288(a) include: (1) The service type for which the reported payment was made; (2) the provider specialty type (if applicable, for example, CAH, pediatric hospital, or teaching hospital) (3) the provider's legal name; (4) the physical address of the location or facility where services are provided, including street address, city, state, and ZIP code; (5) the NPI; (6) the Medicaid identification number; (7) the EIN; and (8) the provider category (that is, state government, non-state government, or private).

The 8 supplemental and other payment elements are comprised of: (1) The total FFS base payments made to the provider authorized under the state plan; (2) the total FFS supplemental payments made to the provider authorized under the state plan; (3) the total Medicaid payments made to the provider under demonstration authority; (4) the total DSH payments made to the provider; (5) the total of each health care-related tax collected from the provider by any state authority or local unit of government; (6) the total of any costs certified as a CPE by the provider; (7) the total amount contributed by the provider to the state or a unit of local government entity in the form of an IGT; and (8) the total of provider-related donations made by the provideror by entities related to a health care provider, including in-cash and in-kind donations, to the state or unit of local government, including state university teaching hospitals.

The summation element would require: (1) The total funds contributed by the provider (that is, CPEs, IGTs, provider taxes, donations, and any other funds contributed) as reported under the supplemental and other payment elements.

For the annual non-federal share report we estimate that all providers will contribute to the non-federal share. We believe this to be an overestimate, but this is the only estimate we have at this time using the UPL demonstration data that we have available. We also estimate that it would take 20 seconds at $32.44/hr for a data entry keyer to query states' MMIS system and/or copy and paste each of the 17 data elements into the required format for reporting. The burden associated with preparing and submitting the annual report consists of 2,666 hours (28,232 total providers × 17 data elements × 1 report/year × 20 seconds/3,600 seconds per hour) at a cost of $86,485 (2,666 hr × $32.44/hr).

Additionally, we estimate oversight by social science research assistants and general operations managers for the non-federal share annual report. We estimate it would take 4 hours at $48.48/hr for a social science research assistant and 2 hours at $119.12/hr for a general operations manager to review the report. In this regard we estimate an annual burden of 324 hours ([4 hr × 1 report × 54 states] + [2 hr × 1 report × 54 states]) at a cost of $23,337 ([4 hr × 1 report × 54 states × $48.48/hr] + [2 hr × 1 report × 54 states × $119.12/hr]).

Given the aforementioned burden estimates, we estimate a total of 2,990 hours (2,666 hr + 324 hr) at a cost of $109,833 ($86,497 + $23,337) for all information collection requests for the non-federal share report. Per state, this amounts to 55.4 hours (2,990 hr/54 states) at a cost of $2,034 ($109,833/54 states).

Since the proposed requirements impact two information collection requests (CMS–10398 #13 and #24), the burden for CMS–10398 #13 is 2,617 hours (2,990 hr × 0.875 [14]) at a cost of $94,427 ($109,833 × 0.875). For CMS–10398 #24 the burden is 373.5 hours (2,990 hr × 0.125 [15]) at a cost of $13,717 ($109,833 × 0.13).

4. ICRs Regarding DSH Reporting Requirements (§ 447.299)

The following proposed changes will be submitted to OMB for approval under control number 0938–0746 (CMS–R–266). Subject to renewal, the control number is currently set to expire on April 30, 2022. It was last approved on April 9, 2019, and remains active.

Under § 447.299 this proposed rule would require states to provide an

[14] 87.5% of all UPL providers reported are IP, OP, and NF provider types.

[15] 12.5% of all UPL providers reported are ICF & IMD.

additional data element as part of its annual DSH audit report. This additional element would require a state auditor to quantify the financial impact of any audit finding not captured within any other data element under § 447.299(c), which may affect whether each hospital has received DSH payments for which it is eligible within its hospital-specific DSH limit.

If the auditor is unable to determine the actual financial impact amount of an audit finding, the auditor would be required to provide a statement of the estimated financial impact for each audit finding identified in the independent certified audit.

The proposed additional data element requires auditors to indicate the financial impact of all findings rather than indicating that the financial impact of any finding is unknown. We believe the additional burden associated with the new data element would be minimal given that auditors are already engaged in a focused review of available documentation to quantify the aggregate amounts that comprise each of the existing data elements required under § 447.299(c).

The burden consists of the time it would take each of the states to quantify any audit finding identified during the independent certified audit required under section 1923(j)(2) of the Act. The territories have been excluded from this proposed requirement since they do not receive a DSH allotment under section 1923(f) of the Act.

To estimate the overall burden of adding this new data element to the reporting requirement, we considered the number of annual independent certified audits received by CMS in addition to the number of unquantified audit findings.

This rule would require the submission of data in an electronic spreadsheet format that would take approximately 2 hours, consisting of: 1 hour at $111.14/hr for management and professional staff to review the report and 1 hour at $74.60/hr for a financial specialist to prepare the report. In aggregate we estimate an ongoing annual burden of 102 hours (51 states × 2 hr/response × 1 response/year) at a cost of $9,473 ((51 states × [(1 hr $111.14/hr) + (1 hr × $74.60/hr)] or $186 per state ($9,473/51 states). Additionaly we anticipate that a state auditor would have to spend an additional hour quantifying the financial impact of DSH findings that are classified as unknown. The estimated annual burden would be 1 hour per state (51 states × 1 hour) 51 hours × 75.78/hr for auditors to complete the audit at a cost of $3,865 per year (51 states × 1 hour × $75.78 per hour). The total cost of this proposed rule would be $13,338 ($9,473 + $3,865) and 153 hours or $262 per state and 3 hours per state.

C. Summary of Annual Burden Estimates for Proposed Requirements

Table 3 summarizes the burden for the aforementioned proposed provisions

TABLE 3—PROPOSED ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section(s) under title 42 of the CFR	OMB control No. (CMS ID No.)	Respondents	Responses (per state)	Total responses	Burden per response (hours)	Total annual burden (hours)	Labor costs of reporting	Total cost ($)
§ 443.72 tax waiver	0938–0618 (CMS–R–148).	51	0.4	20	2	40	37.60	1,504
§§ 447.252 and 447.302	0938–0193 (CMS–179) ..	54	1.9	126	0.5	63.2	48.48	3,064
§ 447.288 UPL demo. (IP, OP, NF).	0938–1148 (CMS–10398 #13).	5	−5	−10	8	−80	varies	−3,057
§ 447.288 UPL demo. (ICF, IMD).	0938–1148 (CMS–10398 #24).	5/51	−5/−3	−10/−162	8/8	−80/−1296	varies	−3,057/−49,528
§ 447.288 SP quarterly reports (IP, OP, NF).	0938–1148 (CMS–10398 #13).	54	20	1,080	varies	1108	varies	48,433
§ 447.288 SP quarterly reports (ICF, IMD).	0938–1148 (CMS–10398 #24).	54	20	1,080	varies	31	varies	1,363
§ 447.288 Utilization annual report (IP, OP, NF).	0938–1148 (CMS–10398 #13).	54	14	756	varies	687	varies	28,091
§ 447.288 Utilization annual report (ICF, IMD).	0938–1148 (CMS–10398 #24).	54	14	756	varies	19	varies	791
§ 447.288 Non-federal share annual report (IP, OP, NF).	0938–1148 (CMS–10398 #13).	54	17	918	varies	2,617	varies	94,427
§ 447.288 Non-federal share annual report (ICF, IMD).	0938–1148 (CMS–10398 #24).	54	17	918	varies	374	varies	13,717
§ 447.299 DSH audit	0938–0746 (CMS–R–266).	51	1	51	3	153	varies	13,338
Total	.....	varies	95	5,787	varies	3,637	varies	145,221

For all parts of this proposed rule, we estimate there would be a total nationwide burden of 3,637 hours at a cost of $145,221 and an average of 67 hours (3,637 hr/54 states) at a cost of $2,847 per state Medicaid agency per year ($145,221/54 states).

D. Requirements Not Subject to the PRA

The following regulatory sections propose changes to definitions, policy guidance, and clarifications of existing statutes or regulatory provisions. The changes do not have any collection of information implications, and therefore, are not subject to the requirements of the PRA: §§ 430.42 (Disallowance of claims for FFP), 433.51 (State share of financial participation), 433.52 (General definitions), 433.54 (Bona fide donations), 433.55 (Health care-related taxes defined), 433.56 (Classes of health care services and providers defined), 433.68 (Permissible health care-related taxes), 433.72 (Waiver provisions applicable to health care-related taxes), 433.316 (When Discovery of Overpayment occurs and its Significance), 447.201 (State plan requirements), 447.207 (Retention of payments), 447.272 (Inpatient services: Application of UPLs), 447.284 (Basis and purpose), 447.286 (Definitions), 447.290 (Failure to Report Required Information), 447.297 (Limitations on aggregate payments for DSHs beginning October 1, 1992), 447.321 (Outpatient hospital services: Application of UPLs), 455.301 (Definitions), 455.304 (Condition for FFP), and 457.609

(Process and calculation of state allotments for a fiscal year after FY 2008).

E. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's ICRs. The requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit the CMS website at *www.cms.hhs.gov/PaperworkReductionActof1995,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential ICRs. If you wish to comment, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** section of this proposed rule and identify the rule (CMS–2393–P) the ICR's CFR citation, and OMB control number.

V. Regulatory Impact Analysis

A. Statement of Need

This proposed rule would impact states' reporting on payment methods and procedures to assure consistency with efficiency, economy, and quality of care as required by section 1902(a)(30)(A) of the Act. CMS, and other federal oversight entities, have found that current regulations and guidance do not adequately assure that states are complying with the efficiency, economy and quality of care requirements of section 1902(a)(30)(A) of the Act, and this rule is intended to address those deficiencies. We view this proposed rule as one approach to add additional accountability and transparency for Medicaid payments, and to provide CMS with certain information on supplemental payments to Medicaid providers, including supplemental payments approved under either Medicaid state plan or demonstration authority, establish new state plan requirements for amendments proposing supplemental payments, and otherwise ensure the proper and efficient operation of the Medicaid state plan. This proposed rule would address the funding of these supplemental and other Medicaid payments through states' uses of health care-related taxes and bona fide provider-related donations.

Medicaid DSH payments and requirements are addressed in this proposed rule. We propose to add additional specificity to the reporting requirements of the annual DSH audit conducted by an independent auditor to enhance federal oversight of the Medicaid DSH program. Additionally, we seek to improve the accurate identification of and collection efforts related to overpayments identified through the annual DSH independent certified audits by specifying the date of discovery and standards for redistribution of DSH payments made to providers in excess of the hospital-specific limit.

The proposed rule also seeks to alleviate the administrative burden of publishing the annual DSH and CHIP allotments in the **Federal Register**, of which we simultaneously notify states directly by providing notification through other, more practical means. Finally, we propose changes to the disallowance reconsideration procedures in order to modernize the process by relying on an electronic, rather than a hard-copy paper process.

B. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of beneficiaries thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We estimate these provisions to meet the criteria for economic significance based upon the analysis of certain provisions in the proposed rule, as discussed in more detail below. The proposed reporting requirements largely contain data already available to states in their own fiscal management and claims processing systems, and merely requires states to report the data to us. Additional information on setting goals for supplemental payments and evaluating the positive and negative aspects of these goals over time, while these requirements are consistent and necessary to ensure compliance with section 1902(a)(30)(A) of the Act, which requires payments be consistent with efficiency, economy, and quality of care, they will require state Medicaid programs to develop and consider various compliance options. Moreover, the reporting requirements and supplemental payment evaluations are generally consistent with current state oversight and review activities of each state's Medicaid program, and states have the flexibility within their reviews to use their existing data or build upon that data when reviewing supplemental payments to providers, in order to formulate goals and evaluate the effectiveness of these payments. In fact, the policies in this proposed rule are intended to focus on state efforts in monitoring and overseeing data and methodologies concerning supplemental and other payments as well as sources of non-federal share to enhance states' ability to comply with section 1902(a)(30)(A) of the Act and our ability to ensure such compliance.

C. Anticipated Effects

1. Effects of Reporting Requirements on State Medicaid Programs

For all parts of this proposed rule we estimate there would be a total nationwide burden of 3,637 hours at a cost of $145,221 and an average of 67 hours (3,637 hr/54 states) at a cost of $2,847 per state Medicaid agency per year ($145,221/54 states) per state and District of Columbia Medicaid agency per year (see section IV. of this proposed rule, Collection of Information Requirements, for details on this cost assessment and a breakdown of the burden from the various parts of this proposed rule).

The proposed rule adds several reporting requirements, including:

§§ 447.252 and 447.302, which would add goals, evaluations, and 3-year renewable authorizations on any supplemental payment methodology, providing a transition schedule for SPAs to be updated. Section 447.288, would add 4 quarterly reports with data on expenditures claimed for each supplemental payment made under state plan or demonstration authority by provider, and an annual report with 2 sections—one section with a roll up of the quarterly data with added Medicaid utilization measures and one section with information on all providers contributing to the state or any other governmental entity any portion of the non-federal share of the supplemental payment and the total of their contributions.

This regulation codifies states reporting annual UPL demonstrations that CMS discussed in an SMDL issued on March 18, 2013 (SMDL #13–003) regarding annual submission of Medicaid UPLs. In this proposed rule, § 447.288(a) would decrease burden by eliminating the UPL demonstrations for three service types—PRTF, clinic services, and other inpatient & outpatient facility providers (physician services), note that the UPL demonstrations for the territories the Commonwealth of the Northern Mariana Islands (CNMI) and American Samoa are excluded from this estimate because they provide Medicaid services under section 1902(j) waivers. This OMB approved UPL demonstration (OMB Control Number: 0938–1148, CMS–10398 (#13) (#24)) will be updated accordingly.

For § 447.206 on Payments funded by CPEs made to providers that are units of government, states would be required to develop processes that are already used by CMS and routinely asked of states to comply with section 1902(a)(30)(A) of the Act that requires Medicaid state plan methods and procedures relating to the payment for services that are consistent with efficiency, economy, and quality of care. These collections of information are already routinely asked of states under existing OMB control numbers, so no additional burden or economic impact is anticipated.

2. Effects on Small Businesses and Other Providers

This rule establishes requirements that are solely the responsibility of state Medicaid agencies, which are not small entities. Therefore, the Secretary certifies this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

3. Effects on the Medicaid Program

The fiscal impact on the Medicaid program from the implementation of the policies in the proposed rule is unknown. The provision that would have the most direct impact on current provider payments is the Medicaid practitioner supplemental payment requirements proposed in § 447.406. To summarize, this provision would limit Medicaid practitioner base plus supplemental payments to 150 percent of the FFS base payments authorized under the state plan for the practitioner services within a defined geographic area that would otherwise be paid to the targeted practitioners, or for services provided within HRSA-designated geographic HPSA or Medicare-defined rural geographical areas, Medicaid practitioner base plus supplemental payments may not exceed 175 percent of the FFS base payments authorized under the state plan for the practitioner services within a defined geographic area that would otherwise be paid to the targeted practitioners.

To analyze the impact of this proposed change, CMS reviewed the 2017 Medicaid physician UPL demonstrations which were submitted by states that make supplemental payments to physicians and other practitioners. In 2017, 21 states made approximately $478 million in physician supplemental payments compared with $512 million in Medicaid FFS base payments to the practitioners eligible to receive the supplemental payments, which equals $990 million in total payments for the qualifying providers that received a supplemental payment. To measure the impact, we would multiply the total Medicaid FFS base payments ($512 million) by 150 percent which would equal $768 million in total Medicaid FFS payments with the net Medicaid physician supplemental payment amount of $256 million. The estimated impact of this proposed provision is a reduction in payments of $222 million in total computable Medicaid reimbursement ($478 million minus $256 million equals $222 million). However, this potential decrease in Medicaid reimbursements could be mitigated if states take action to increase Medicaid provider base payments, which would thereby increase the amount that could be paid out in Medicaid practitioner supplemental payments. Depending on state action in response to this provision, we estimate that the impact on Medicaid reimbursements could range from $0 to $222 million. Similarly, we do not have sufficient data to predict or quantify the impact of the proposed provisions on health-care related taxes, although we would expect that states may modify existing state tax policy or arrangements where those taxes or arrangements would be newly be considered health-care related under the proposed provisions. We invite comments from states, providers, and other stakeholders on the estimates and potential state responses to these provisions. There are some considerations that limit the effect of the proposed change. First, the proposed rule phases out these supplemental payments over a 5 to 7-year period based on when the supplemental payment was last approved. The supplemental payments, as currently approved in the plan, would begin to be incrementally removed from the state plan after the provision is finalized. Second, Medicaid practitioner supplemental payments would only be limited by the amount of the Medicaid FFS base payments. If a state wanted to increase the amount of the supplemental payment, the state would have the option under the proposed rule to increase the base payment that is paid to all providers within a geographic area of the state and thereby also increase what the state could pay in supplemental payments to targeted providers under the state plan. Third, in almost all instances, the providers were supplying the state with the non-federal share of the Medicaid practitioner supplemental payments. Without the supplemental payments, it is likely that the arrangements through which the providers have been transferring the state share to the state Medicaid agency to support current high levels of Medicaid practitioner supplemental payments would cease, and therefore, the net impact on the providers would be far less than the projected amount of decrease in practitioner supplemental payments. Finally, the projected impact does not include any consideration for Medicaid physician base plus supplemental payments that could be paid under the proposal in HRSA-designated geographic HPSA or in Medicare's rural geographic areas up to 175 percent of the Medicaid FFS base payment rate. If any of the providers included in the state's physician UPL demonstrations are in those areas, the net impact of the proposed change would be reduced.

We would also point out that the data obtained from the quarterly and annual reports would support the evaluation of varying payment streams impacting providers' services and quality and would allow for greater oversight on supplemental payments, including

payments that could exceed the UPL; DSH payments; and generally provide better fiduciary oversight of the Medicaid program.

D. Alternatives Considered

In developing this proposed rule, the following alternatives were considered:

1. Not Proposing the Rule

We considered not proposing this rule and maintaining the status quo. However, we believe this proposed rule would lead to better accountability and transparency for supplemental payments. We do not currently have the necessary data at the state and provider level to perform adequate analysis and oversight of supplemental payments, and this proposed rule would allow us to do so.

2. Eliminating Supplemental Payments

We considered proposing a rule that would eliminate supplemental payments. However, this option could have been a huge burden on states to revise payment methodologies, cost reports, and fee schedules. Also, this option would have eliminated an important avenue for states potentially to reward providers that show improvement in performance or quality metrics, and to address urgent access problems that may arise. At this time, we believe our concerns about accountability and transparency around supplemental payments may be addressed through the proposed policies and do not require the draconian step of eliminating state flexibility by prohibiting such payments altogether.

3. Requiring Equal Distribution of Supplemental Payments

We considered proposing to require equal distribution of supplemental payments to all providers of the relevant class of services. This option would have eliminated states' ability to target supplemental payments to one or a small number of providers, and thus could have more closely linked supplemental payments to services provided. However, we opted to not propose this provision at this time as this proposal would have increased burden on state Medicaid agencies by requiring revision of payment methodologies and tracking supplemental payments for all providers of services within the relevant class.

4. Requiring DSH-Like Audits of Supplemental Payments

We considered proposing to require independent certified audits of all Medicaid supplemental payments, similar to the audit requirement for all DSH payments. Under this alternative, for states to receive FFP for supplemental payments, an independent certified audit would be required to verify that all supplemental payments were appropriate. However, we decided not to propose this alternative at this time, due to the need for more and better data to understand the complex nature of supplemental payments so that we may better understand the particular audit structure and requirements needed to effectively monitor supplemental payment programs.

5. Mandating a Provider-Specific UPL

We considered proposing a provider-specific UPL for certain services. However, imposing such a provision at this time could have disrupted current public financing methods and would also have imposed a burden on states to revise longstanding payment methodologies.

6. Setting 5-Year Renewable Authorizations for Supplemental Payments and a 5-Year Compliance Transition Period

Another alternative we considered was to propose 5-year renewable authorizations for supplemental payments, instead of the proposed 3-year renewable authorizations. The 5-year renewal period for supplemental payments would have decreased administrative burden on both the states and federal government, as opposed to the 3-year renewal period, as we would expect to see less frequent SPA re-submissions and CMS SPA reviews, respectively; in our judgment, the effort spent on reviewing, evaluating, and working with states to improve supplemental payment SPAs is a worthwhile effort toward the end of more fiscal accountability in the Medicaid program. Also, the 3-year renewal period is consistent with the 3-year approval period for health-care related tax waivers proposed in § 433.72 of this proposed rule.

We also considered proposing a 5-year compliance transition period instead of the proposed 3-year compliance transition period in §§ 447.252(e) and 447.302(d). This would have increased the amount of time states would have to bring existing, approved supplemental payment methodologies into compliance with the provisions of the proposed rule in these two sections. We decided to propose a 3-year transition period to account for states where changes may require legislative action as some legislatures meet on a biennial basis, and therefore, would make compliance with a 3-year transition period compatible. We are requesting comment on whether or not to pursue an expanded transition period of 5 years instead of the proposed 3-year transition period.

7. Setting 5-Year or 1-Year Deadline for Tax Waiver Renewals

We considered proposing 5 years, or 1 year, as the length of the approval period for tax waivers before states would need to submit another request. However, we settled on 3 years because we believe that it would help ensure fiscal accountability and the fiscal integrity of the Medicaid program by ensuring that provider data for the classes to be taxed is up to date, while at the same time avoiding undue regulatory burden on states.

8. Requiring Both the P1/P2 and the B1/B2 Tests for Non-Uniform Health Care-Related Taxes

In evaluating how to eliminate tax structures that are problematic because they place an undue burden on the Medicaid program, we considered requiring the P1/P2 statistical test in § 433.68(e)(1) in addition to the B1/B2 statistical test in § 433.68(e)(2), for states requesting a waiver of the uniformity requirement (whether or not the state is also requesting a waiver of the broad-based requirement). Under this alternative, a state that requests a waiver of the uniformity requirement would need to have its tax pass both the P1/P2 test in addition to the B1/B2 test currently required. We believe that this statistical test could serve as a broad tool to prohibit tax structures that would inappropriately burden the Medicaid program in ways not explicitly prohibited in current regulation. However, we decided against this approach to balance preserving an appropriate degree of flexibility for states in designing tax programs with ensuring that state taxes are not imposed primarily on Medicaid providers and services. We believe that the categorical prohibitions against tax structures that unduly burden Medicaid which we are proposing to add in § 433.68(e)(3) offer sufficient protection to the financial health of the title XIX program.

In addition, we considered proposing a list of acceptable commonalities that states could permissibly use to define taxpayer groups. However, we believe that this could be overly restrictive to states and impede their flexibility to structure their tax programs in ways that suit local circumstances while still complying with all applicable federal requirements. We are soliciting comment on additional prohibitions

against unduly burdening the Medicaid program that might also be added to this section to avoid such arrangements.

9. Audit Requirement To Quantify Financial Impact of Audit Findings

We considered proposing to require auditors to clarify the impact of audit findings and caveats within the existing data element report by incorporating finding amounts into existing data elements (for example, Total Medicaid Uncompensated Care). However, this option may not enable auditors to effectively capture financial impacts of specific issues and such finding might not be readily transparent to states, CMS, and hospitals; therefore, we opted to include this as an additional data element on the DSH report.

10. Clarifying the Discovery Date for DSH Overpayments and Redistribution Requirements

We considered proposing to use the date that the auditor submits the independent certified audit to the state as the date of discovery for DSH overpayments identified through the independent certified audit, but ultimately decided to consider the date that a state submits the independent certified audit to CMS as the discovery date. The earlier date would start the clock for state repayment of FFP without regard to possible work that may need to occur between states and auditors to finalize the audit and associated reporting prior to submission to CMS.

11. Technical Changes to Publishing DSH and CHIP Allotments

We considered continuing the requirement to publish the DSH and CHIP allotments in the **Federal Register**. However, we believe this is unnecessary as states are already informed regarding their annual DSH and CHIP allotments prior to the publication of the **Federal Register** notice that we now provide and, in our experience, we have not received public comment regarding the notice.

12. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), we have prepared an accounting statement in Table 1 showing the classifaction of the transfers associated with the provisions of this proposed rule.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS

[$ In millions]

Category	Lower bound	Upper bound	Units		
			Year dollars	Discount rate (%)	Period covered
Transfers					
Annualized Monetized reductions in Costs	0	−222	2017	7	2020
	0	−222	2017	3	2020
From Whom to Whom	Medicaid to Medicaid Providers.				

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. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $8.0 million to $41.5 million in any one year). Individuals and states are not included in the definition of a small entity. As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. We do not believe that this threshold will be reached by the provisions in this proposed rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, in excess of the threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This rule does not impose substantial direct costs on state or local governments or preempt state law.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017, requires that the costs associated with significant new regulations ''to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This rule, if promulgated, is not expected to be subject to the requirements of E.O. 13771 because it is expected to result in no more than de minimis costs.

E. Conclusion

If the policies in this proposed rule are finalized, states would be required to send us more detailed data on payments, including supplemental and DSH payments, Medicaid utilization data, provider taxes and donations, and CPEs and IGTs; implement new reviews of supplemental payment methodologies and tax waivers and periodically seek authorization for their renewal (if desired by the state); and provide a narrative to be sent in along

with supplemental payment SPA submissions on the goals and evaluation of the payments.

In addition, states would also be allowed to tax services of health insurers excluding services of MCOs, as a permitted class without experiencing a reduction in medical assistance expenditures, be prohibited from unduly burdening Medicaid with taxes that are not generally redistributive, and be required to renew tax waivers every 3 years, with updated provider data, or sooner if the state changes the definitions of taxpayer groups or tax rates in a non-uniform manner.

The analysis above, together with the remainder of this preamble, provides a regulatory impact analysis. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 430

Administrative practice and procedure, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

■ 1. The authority citation for part 430 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 2. Section 430.42 is amended by revising paragraphs (b)(2)(i)(A) introductory text, (b)(2)(i)(B) and (C), (c)(3), (c)(4)(i), (c)(6), and (d)(1) to read as follows:

§ 430.42 Disallowance of claims for FFP.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) A request to the Administrator that includes the following:

* * * * *

(B) A copy of the request to the Regional Office.

(C) Send all requests for reconsideration via electronic mail (email) or electronic system specified by the Administrator. Submissions are considered made on the date they are received by the Administrator via email or electronic system specified by the Administrator.

* * * * *

(c) * * *

(3) At the Administrator's option, CMS may request from the State any additional information or documents necessary to make a decision. The request for additional information must be sent via email or electronic system specified by the Administrator. Submissions are considered made on the date they are received by the Administrator via email or electronic system specified by the Administrator.

(4) * * *

(i) If the Administrator finds that the materials are not in readily reviewable form or that additional information is needed, he or she must notify the State via email or electronic system specified by the Administrator that it has 15 business days from the date of receipt of the notice to submit the readily reviewable or additional materials. Notifications are considered made and received on the date they are sent by the Administrator via email or electronic system specified by the Administrator.

* * * * *

(6) The final written decision shall constitute final CMS administrative action on the reconsideration and shall be (within 15 business days of the decision) sent to the State agency via email or electronic system specified by the Secretary. Notification is considered made on the date it is sent by the Administrator via email or electronic system specified by the Administrator.

* * * * *

(d) * * *

(1) A State may withdraw the request for reconsideration at any time before the notice of the reconsideration decision is made without affecting its right to submit a notice of appeal to the Board. The request for withdrawal must be in writing and sent to the Administrator, with a copy to the Regional Office, via email or electronic system specified by the Administrator. Notification of the State's withdrawal of its request for reconsideration is considered made on the date it is received by the Administrator via email or electronic system specified by the Administrator.

* * * * *

PART 433—STATE FISCAL ADMINISTRATION

■ 3. The authority citation for part 433 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 4. Section 433.51 is revised to read as follows:

§ 433.51 State share of financial participation.

(a) State or local funds may be considered as the State's share in claiming Federal financial participation (FFP) if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) State or local funds that may be considered as the State's share are any of the following:

(1) State General Fund dollars appropriated by the State legislature directly to the State or local Medicaid agency.

(2) Intergovernmental transfer of funds from units of government within a State (including Indian tribes), derived from State or local taxes (or funds appropriated to State university teaching hospitals), to the State Medicaid Agency and under its administrative control, except as provided in paragraph (d) of this section.

(3) Certified Public Expenditures, which are certified by a unit of government within a State as representing expenditures eligible for FFP under this section, and which meet the requirements of § 447.206 of this chapter.

(c) The State or local funds are not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(d) State funds that are provided as an intergovernmental transfer from a unit of government within a State that are contingent upon the receipt of funds by, or are actually replaced in the accounts of, the transferring unit of government from funds from unallowable sources, would be considered to be a provider-related donation that is non-bona fide under §§ 433.52 and 433.54.

■ 5. Section 433.52 is amended—

■ a. By adding the definitions of ''Medicaid activity'', ''Net effect'', ''Non-Medicaid activity'', and ''Parameters of a tax'' in alphabetical order;
■ b. In the definition of ''Provider-related donation'' by revising paragraphs (2) and (3) and adding paragraph (4); and
■ c. By adding the definition of ''Taxpayer group'' in alphabetical order.

The additions and revision read as follows:

§ 433.52 General definitions.

* * * * *

Medicaid activity means any measure of the degree or amount of health care items or services related to the Medicaid program or utilized by Medicaid beneficiaries. Such a measure could include, but would not necessarily be limited to, Medicaid patient bed days, the percentage of an entity's net patient revenue attributable to Medicaid, Medicaid utilization, units of medical equipment sold to individuals utilizing Medicaid to pay for or supply such equipment or Medicaid member months covered by a health plan.

Net effect means the overall impact of an arrangement, considering the actions of all of the entities participating in the arrangement, including all relevant financial transactions or transfers of value, in cash or in kind, among participating entities. The net effect of an arrangement is determined in consideration of the totality of the circumstances, including the reasonable expectations of the participating entities, and may include consideration of reciprocal actions without regard to whether the arrangement or a component of the arrangement is reduced to writing or is legally enforceable by any entity.

Non-Medicaid activity means the degree or amount of health care items or services not related to the Medicaid program or utilized by Medicaid beneficiaries. Such a measure could include, but would not necessarily be limited to, non-Medicaid patient bed days, percentage of an entity's net patient revenue not attributable to Medicaid, the percentage of patients not utilizing Medicaid to pay for health care items or services, units of medical equipment sold to individuals not utilizing Medicaid funds to pay for or supply such equipment, or non-Medicaid member months covered by a health plan.

Parameters of a tax means the grouping of individuals, entities, items or services, on which the State or unit of government imposes a tax.

Provider-related donation * * *

(2) Any transfer of value where a health care provider or provider-related entity assumes an obligation previously held by a governmental entity and the governmental entity does not compensate the private entity at fair market value will be considered a donation made indirectly to the governmental entity. Such an assumption of obligation need not rise to the level of a legally enforceable obligation to be considered a donation, but will be considered by examining the totality of the circumstances and judging the arrangement's net effect.

(3) When an organization receives less than 25 percent of its revenues from providers and/or provider-related entities, its donations will not generally be presumed to be provider-related donations. Under these circumstances, a provider-related donation to an organization will not be considered a donation made indirectly to the State. However, if the donations from a provider or entities related to a provider to an organization are subsequently determined to be indirect donations to the State or unit of local government for administration of the State's Medicaid program, then such donations will be considered to be provider-related donations.

(4) When the organization receives more than 25 percent of its revenue from donations from providers or provider-related entities, the organization always will be considered as acting on behalf of health care providers if it makes a donation to the State. The amount of the organization's donation to the State, in a State fiscal year, that will be considered to be a provider-related donation will be based on the percentage of the organization's revenue during that period that was received as donations from providers or provider-related entities.

Taxpayer group means one or more entities grouped together based on one or more common characteristics for purposes of imposing a tax on a class of items or services specified under § 433.56.

■ 6. Section 433.54 is amended by revising paragraph (c)(3) to read as follows:

§ 433.54 Bona fide donations.

* * * * *

(c) * * *

(3) The State (or other unit of government) receiving the donation provides for any direct or indirect payment, offset, or waiver, such that the provision of that payment, offset, or waiver directly or indirectly guarantees to return any portion of the donation to the provider (or other party or parties responsible for the donation). Such a guarantee will be found to exist where, considering the totality of the circumstances, the net effect of an arrangement between the State (or other unit of government) and the provider (or other party or parties responsible for the donation) results in a reasonable expectation that the provider, provider class, or a related entity will receive a return of all or a portion of the donation. The net effect of such an arrangement may result in the return of all or a portion of the donation, regardless of whether the arrangement is reduced to writing or is legally enforceable by any party to the arrangement.

* * * * *

■ 7. Section 433.55 is amended by revising paragraph (c) to read as follows:

§ 433.55 Health care-related taxes defined.

* * * * *

(c) A tax is considered to be health care-related if the tax is not limited to health care items or services, but the treatment of individuals or entities providing or paying for those health care items or services is different than the tax treatment provided to individuals or entities that are providers or payers of any health care items or services that are not subject to the tax, or other individuals or entities that are subject to the tax. In determining whether differential treatment exists, consideration will be given to the parameters of the tax, as well as the totality of the circumstances relevant to which individuals, entities, items, or services are subject and not subject to the tax, and the tax rate applicable to each. Differential treatment includes, but is not limited to:

(1) Tax programs in which some individuals or entities providing or paying for health care items or services are selectively incorporated, but others are excluded. Selective incorporation means that the State or other unit of government includes some, but not all, health care-related items or services and these items or services are not reasonably related to the other items or services being taxed. Reasonably related means that there exists a logical or thematic connection between the items or services being taxed. Examples of such a connection include, but are not limited to, industry, such as electronics; geographical area, such as city or county; net revenue volume; or number of employees. For example, if the State imposes a tax on all telecommunication services and inpatient hospital services, this would constitute differential treatment as inpatient hospital services are selectively incorporated. However, if the State imposes a tax on revenue from

all professional services, which includes medical professional service revenue, this alone would not constitute differential treatment.

(2) Differential treatment of individuals or entities providing or paying for health care items or services included in the tax, and other entities also included in the tax. For example, if the State taxes all businesses in the State, but places a higher tax rate on hospitals and nursing facilities than on other businesses, this would result in differential treatment.

* * * * *

■ 8. Section 433.56 is amended—

■ a. In paragraph (a)(18), removing the phrase ''services; and'' and adding in its place the phrase ''services;'';

■ b. Redesignating paragraph (a)(19) as paragraph (a)(20); and

■ c. Adding a new paragraph (a)(19).

The addition reads as follows:

§ 433.56 Classes of health care services and providers defined.

(a) * * *

(19) Services of health insurers (other than services of managed care organizations as specified in paragraph (a)(8) of this section); and

* * * * *

■ 9. Section 433.68 is amended by—

■ a. Revising paragraph (e) introductory text;

■ b. Adding paragraph (e)(3); and

■ c. Revising paragraph (f)(3).

The revisions and addition read as follows:

§ 433.68 Permissible health care-related taxes.

* * * * *

(e) *Generally redistributive.* A tax will be considered to be generally redistributive if it meets the requirements of this paragraph (e). If the State requests waiver of only the broad-based tax requirement, it must demonstrate compliance with paragraphs (e)(1) and (3) of this section. If the State requests waiver of the uniform tax requirement, whether or not the tax is broad-based, it must demonstrate compliance with paragraphs (e)(2) and (3) of this section.

* * * * *

(3) *Requirement to avoid imposing undue burden on health care items or services reimbursed by Medicaid, as well as providers of such items or services.* This paragraph (e)(3) applies on a per class basis. A tax must not impose undue burden on health care items or services paid for by Medicaid or on providers of such items and services that are reimbursed by Medicaid. A tax is considered to impose undue burden under this paragraph if taxpayers are divided into taxpayer groups and any one or more of the following conditions apply:

(i) The tax excludes or places a lower tax rate on any taxpayer group defined by its level of Medicaid activity than on any other taxpayer group defined by its relatively higher level of Medicaid activity.

(ii) Within each taxpayer group, the tax rate imposed on any Medicaid activity is higher than the tax rate imposed on any non-Medicaid activity (except as a result of excluding from taxation Medicare or Medicaid revenue or payments as described in paragraph (d) of this section).

(iii) The tax excludes or imposes a lower tax rate on a taxpayer group with no Medicaid activity than on any other taxpayer group, unless all entities in the taxpayer group with no Medicaid activity meet at least one of the following:

(A) Furnish no services within the class in the State.

(B) Do not charge any payer for services within the class.

(C) Are Federal provider of services within the meaning of § 411.6 of this chapter.

(D) Are a unit of government.

(iv) The tax excludes or imposes a lower tax rate on a taxpayer group defined based on any commonality that, considering the totality of the circumstances, CMS reasonably determines to be used as a proxy for the taxpayer group having no Medicaid activity or relatively lower Medicaid activity than any other taxpayer group.

(f) * * *

(3) The State (or other unit of government) imposing the tax provides for any direct or indirect payment, offset, or waiver such that the provision of that payment, offset, or waiver directly or indirectly guarantees to hold taxpayers harmless for all or any portion of the tax amount. A direct guarantee will be found to exist where, considering the totality of the circumstances, the net effect of an arrangement between the State (or other unit of government) and the taxpayer results in a reasonable expectation that the taxpayer will receive a return of all or any portion of the tax amount. The net effect of such an arrangement may result in the return of all or any portion of the tax amount, regardless of whether the arrangement is reduced to writing or is legally enforceable by any party to the arrangement.

■ 10. Section 433.72 is amended by adding paragraphs (c)(3) and (4) and (d) to read as follows:

§ 433.72 Waiver provisions applicable to health care-related taxes.

* * * * *

(c) * * *

(3) For waivers approved on or after [final rule effective date] a waiver will cease being effective 3 years from the date that the waiver was approved by CMS.

(4) For waivers approved before [final rule effective date] a waiver will cease to be effective [3 years from final rule effective date].

(d) *Ongoing compliance with waiver conditions.* For a State to continue to receive tax revenue (within specified limitations) without a reduction in FFP under a waiver approved under paragraph (b) of this section, the State must meet all of the following requirements:

(1) Ensure that the tax program for which CMS approved the waiver under paragraph (b) of this section continues to meet the waiver conditions identified in paragraphs (b)(1) through (3) of this section at all times during which the waiver is in effect.

(2) Request and receive approval for a new waiver, subject to effective date requirements in paragraph (c) of this section, if either of the following tax program modifications occurs:

(i) The State or other unit of government imposing the tax modifies the tax in a non-uniform manner, meaning the change in tax or tax rate does not apply in an equal dollar amount or percentage change to all taxpayers.

(ii) The State or other unit of government imposing the tax modifies the criteria for defining the taxpayer group or groups subject to the tax.

■ 11. Section 433.316 is amended by—

■ a. Redesignating paragraphs (f) through (h) as paragraphs (g) through (i), respectively; and

■ b. Adding a new paragraph (f).

The addition reads as follows:

§ 433.316 When discovery of overpayment occurs and its significance.

* * * * *

(f) *Overpayments identified through the disproportionate share hospital (DSH) independent certified audit.* In the case of an overpayment identified through the independent certified audit required under part 455, subpart D, of this chapter, CMS will consider the overpayment as discovered on the earliest of the following:

(1) The date that the State submits the independent certified audit report required under § 455.304(b) of this chapter to CMS.

(2) Any of the dates specified in paragraphs (c)(1) through (3) of this section.

* * * * *

PART 447—PAYMENTS FOR SERVICES

■ 12. The authority citation for part 447 is revised to read as follows:

Authority: 42 U.S.C. 1302 and 1396r–8.

■ 13. Section 447.201 is amended by adding paragraph (c) to read as follows:

§ 447.201 State plan requirements.

* * * * *

(c) The plan must provide for no variation in fee-for-service payment for a Medicaid service on the basis of a beneficiary's Medicaid eligibility category, enrollment under a waiver or demonstration project, or FMAP rate available for services provided to an individual in the beneficiary's eligibility category.

■ 14. Section 447.206 is added to subpart B to read as follows:

§ 447.206 Payments funded by certified public expenditures made to providers that are units of government.

(a) *Scope.* This section applies only to payments made to providers that are State government providers or non-State government providers, as defined in § 447.286, where such payments to such providers are funded by a certified public expenditure, as specified in § 433.51(b)(3) of this chapter.

(b) *General rules.* (1) Payments are limited to reimbursement not in excess of the provider's actual, incurred cost of providing covered services to Medicaid beneficiaries using reasonable cost allocation methods as specified in 45 CFR part 75 and 2 CFR part 200, or, as applicable, to Medicare cost principles specified in part 413 of this chapter.

(2) The State must establish and implement documentation and audit protocols, which must include an annual cost report to be submitted by the State government provider or non-State government provider to the State agency that documents the provider's costs incurred in furnishing services to beneficiaries during the provider's fiscal year.

(3) Only the certified amount of the expenditure may be claimed for Federal financial participation.

(4) The certifying entity of the certified public expenditure must receive and retain the full amount of Federal financial participation associated with the payment, consistent with the cost identification protocols in the Medicaid State plan and in accordance with § 447.207.

(c) *Other criteria for the use of certified public expenditures.* (1) A State must implement processes by which all claims for medical assistance are processed through Medicaid management information systems in a manner that identifies the specific Medicaid services provided to specific enrollees.

(2) The most recently filed cost reports as specified in paragraph (b)(2) of this section must be used to develop interim payments rates, which may be trended by an applicable health care-related index.

(3) Final settlement must be performed annually by reconciling any interim payments to the finalized cost report for the State plan rate year in which any interim payment rates were made, and final settlement must be made no more than 24 months from the cost report year end, except under circumstances identified in 45 CFR 95.19.

(4) If the final settlement establishes that the provider received an overpayment, the Federal share in recovered overpayment amounts must be credited to the Federal Government, in accordance with part 433, subpart F, of this chapter.

(d) *State plan requirements.* If certified public expenditures are used as a source of non-Federal share under the State plan, the State plan must specify cost protocols in the service payment methodology applicable to the certifying provider that meet all of the following:

(1) Identify allowable cost, using either of the following:

(i) A Medicare cost report, as described in part 413 of this chapter.

(ii) A State-developed Medicaid cost report prepared in accordance with the cost principles in 45 CFR part 75 and 2 CFR part 200.

(2) Define an interim rate methodology for interim payments to providers for services furnished.

(3) Describe an attestation process by which the certifying entity will attest that the costs are accurate and consistent with 45 CFR part 75 and 2 CFR part 200.

(4) Include, as necessary, a list of the covered Medicaid services being furnished by each provider certifying a certified public expenditure.

(5) Define a reconciliation and final settlement process consistent with paragraphs (c)(3) and (4) of this section.

■ 15. Section 447.207 is added to subpart B to read as follows:

§ 447.207 Retention of payments.

(a) *Payments.* Payment methodologies must permit the provider to receive and retain the full amount of the total computable payment for services furnished under the approved State plan (or the approved provisions of a waiver or demonstration, if applicable). The Secretary will determine compliance with this paragraph (a) by examining any associated transactions that are related to the provider's total computable Medicaid payment to ensure that the State's claimed expenditure, which serves as the basis for Federal financial participation, is consistent with the State's net expenditure, and that the full amount of the non-Federal share of the payment has been satisfied. Associated transactions may include, but are not necessarily limited to, the payment of an administrative fee to the State for processing provider payments or, in the case of a non-State government provider, for processing intergovernmental transfers. In no event may such administrative fees be calculated based on the amount a provider receives through Medicaid payments or amounts a unit of government contributes through an intergovernmental transfer as funds for the State share of Medicaid service payments.

(b) [Reserved]

■ 16. Section 447.252 is amended by adding paragraphs (d) and (e) to read as follows:

§ 447.252 State plan requirements.

* * * * *

(d) CMS may approve a supplemental payment, as defined in § 447.286, provided for under the State plan or a State plan amendment (SPA) for a period not to exceed 3 years. A State whose supplemental payment approval period has expired or is expiring may request a SPA to renew the supplemental payment for a subsequent period not to exceed 3 years, consistent the requirements of this section. For any State plan or SPA that provides or would provide for a supplemental payment, the plan or plan amendment must specify all of the following:

(1) An explanation of how the State plan or SPA will result in payments that are consistent with section 1902(a)(30)(A) of the Act, including that provision's standards with respect to efficiency, economy, quality of care, and access, along with the stated purpose and intended effects of the supplemental payment, for example, with respect to the Medicaid program, providers, and beneficiaries.

(2) The criteria to determine which providers are eligible to receive the supplemental payment.

(3) A comprehensive description of the methodology used to calculate the

amount of, and distribute, the supplemental payment to each eligible provider, including all of the following:

(i) The amount of the supplemental payment made to each eligible provider, if known, or, if the total amount is distributed using a formula based on data from one or more fiscal years, the total amount of the supplemental payments for the fiscal year or years available to all providers eligible to receive a supplemental payment.

(ii) If applicable, the specific criteria with respect to Medicaid service, utilization, or cost data from the proposed State plan rate year to be used as the basis for calculations regarding the amount and/or distribution of the supplemental payment.

(iii) The timing of the supplemental payment to each eligible provider.

(iv) An assurance that the total Medicaid payment to an inpatient hospital provider, including the supplemental payment, will not exceed the upper limits specified in § 447.271.

(v) If not already submitted, an upper payment limit demonstration as required by § 447.272 and described in § 447.288.

(4) The duration of the supplemental payment authority (not to exceed 3 years).

(5) A monitoring plan to ensure that the supplemental payment remains consistent with the requirements of section 1902(a)(30)(A) of the Act and to enable evaluation of the effects of the supplemental payment on the Medicaid program, for example, with respect to providers and beneficiaries.

(6) For a SPA proposing to renew a supplemental payment for a subsequent approval period, an evaluation of the impacts on the Medicaid program during the current or most recent prior approval period, for example, with respect to providers and beneficiaries, and including an analysis of the impact of the supplemental payment on compliance with section 1902(a)(30)(A) of the Act.

(e) The authority for State plan provisions that authorize supplemental payments that are approved as of [effective date of the final rule], are limited as follows—

(1) For State plan provisions approved 3 or more years prior to [effective date of the final rule], the State plan authority will expire [*date that is* 2 calendar years following the effective date of the final rule].

(2) For State plan provisions approved less than 3 years prior to [effective date of the final rule], the State plan authority will expire [*date that is* 3 calendar years following the effective date of the final rule].

* * * * *

■ 17. Section 447.272 is amended by revising paragraphs (a)(1) through (3) and (b)(1) to read as follows:

§ 447.272 Inpatient services: Application of upper payment limits.

(a) * * *

(1) State government provider as defined using the criteria set forth in § 447.286.

(2) Non-State government provider as defined using the criteria set forth at § 447.286.

(3) Private provider as defined in § 447.286.

(b) * * *

(1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter, or allowed costs established in accordance with the cost principles as specified in 45 CFR part 75 and 2 CFR part 200, or, as applicable, Medicare cost principles specified in part 413 of this chapter. Data elements, methodology parameters, and acceptable upper payment limit demonstration methodologies are specified in § 447.288(b).

* * * * *

■ 18. Subpart D is added to read as follows:

Subpart D—Payments for Services

Sec.

447.284 Basis and purpose.
447.286 Definitions.
447.288 Reporting requirements for upper payment limit demonstrations and supplemental payments.
447.290 Failure to report required information.

Subpart D—Payments for Services

§ 447.284 Basis and purpose.

(a) This subpart sets forth additional requirements for supplemental payments made under the State plan and implements sections 1902(a)(6) and (a)(30) of the Act.

(b) The reporting requirements in this subpart are applicable to supplemental payments to which an upper payment limit applies under § 447.272 or § 447.321.

§ 447.286 Definitions.

For purposes of this subpart—

Base payment means a payment, other than a supplemental payment, made to a provider in accordance with the payment methodology authorized in the State plan or that is paid to the provider through its participation with a Medicaid managed care organization. Base payments are documented at the beneficiary level in MSIS or T–MSIS and include all payments made to a provider for specific Medicaid services rendered to individual Medicaid beneficiaries, including any payment adjustments, add-ons, or other additional payments received by the provider that can be attributed to a particular service provided to the beneficiary, such as payment adjustments made to account for a higher level of care or complexity of services provided to the beneficiary.

Non-State government provider means a health care provider, as defined in § 433.52 of this chapter, including those defined in § 447.251, that is a unit of local government in a State, including a city, county, special purpose district, or other governmental unit in the State that is not the State, which has access to and exercises administrative control over State funds appropriated to it by the legislature or local tax revenue, including the ability to dispense such funds. In determining whether an entity is a non-State government provider, CMS will consider the totality of the circumstances, including, but not limited to, the following:

(1) The identity and character of any entity or entities other than the provider that share responsibilities of ownership or operation of the provider, and including the nature of any relationship among such entities and the relationship between such entity or entities and the provider. In determining whether an entity shares responsibilities of ownership or operation of the provider, our consideration would include, but would not be limited to, whether the entity:

(i) Has the immediate authority for making decisions regarding the operation of the provider;

(ii) Bears the legal responsibility for risk from losses from operations of the provider;

(iii) Has immediate authority for the disposition of revenue from operations of the provider;

(iv) Has immediate authority with regard to hiring, retention, payment, and dismissal of personnel performing functions related to the operation of the provider;

(v) Bears legal responsibility for payment of taxes on provider revenues and real property, if any are assessed; or

(vi) Bears the responsibility of paying any medical malpractice premiums or other premiums to insure the real property or operations, activities, or assets of the provider.

(2) In determining whether a relevant entity is a unit of a non-State government, we would consider the character of the entity which would include, but would not be limited to, whether the entity:

(i) Is described in its communications to other entities as a unit of non-State government, or otherwise.

(ii) Is characterized as a unit of non-State government by the State solely for the purposes of Medicaid financing and payments, and not for other purposes (for example, taxation).

(iii) Has access to and exercises administrative control over State funds appropriated to it by the legislature and/or local tax revenue, including the ability to expend such appropriated or tax revenue funds, based on its characterization as a governmental entity.

Private provider means a health care provider, as defined in § 433.52 of this chapter, including those defined in § 447.251 of this chapter, that is not a State government provider or a non-State government provider.

State government provider means a health care provider, as defined in § 433.52 of this chapter, including those defined in § 447.251 of this chapter, that is a unit of State government or a State university teaching hospital, which has access to and exercises administrative control over State-appropriated funds from the legislature or State tax revenue, including the ability to dispense such funds. In determining whether a provider is a State government provider, CMS will consider the totality of the circumstances, including, but not limited to, the following:

(1) The identity and character of any entity or entities other than the provider that share responsibilities of ownership or operation of the provider, and including the nature of any relationship among such entities and the relationship between such entity or entities and the provider. In determining whether an entity shares responsibilities of ownership or operation of the provider, our consideration would include, but would not be limited to, whether the entity:

(i) Has the immediate authority for making decisions regarding the operation of the provider;

(ii) Bears the legal responsibility for risk from losses and litigation from operations of the provider;

(iii) Has immediate authority for the disposition of revenue and profit from operations of the provider;

(iv) Has immediate authority with regard to acquisition, retention, payment, and dismissal of personnel performing functions related to the operation of the provider;

(v) Bears legal responsibility for payment of taxes on provider revenues and real property, if any are assessed; or

(vi) Bears the responsibility of paying any medical malpractice premiums or other premiums to insure the real property or operations, activities, or assets of the provider;

(2) In determining whether a relevant entity is a unit of a State government, we would consider the character of the entity which would include, but would not be limited to, whether the entity:

(i) Is described in its communications to other entities as a unit of State government, or otherwise;

(ii) Is characterized as a unit of State government by the State solely for the purposes of Medicaid financing and payments, and not for other purposes (for example, taxation); and

(iii) Has access to and exercises administrative control over State funds appropriated to it by the legislature and/or local tax revenue, including the ability to expend such appropriated or tax revenue funds, based on its characterization as a governmental entity.

Supplemental payment means a Medicaid payment to a provider that is in addition to the base payments to the provider, other than disproportionate share hospital (DSH) payments under subpart E of this part, made under State plan authority or demonstration authority. Supplemental payments cannot be attributed to a particular provider claim for specific services provided to an individual beneficiary and are often made to the provider in a lump sum.

§ 447.288 Reporting requirements for upper payment limit demonstrations and supplemental payments.

(a) *Upper payment limit demonstration reporting requirements.* Beginning October 1, [first year following the year the final rule takes effect] and annually thereafter, by October 1 of each year, in accordance with the requirements of this section and in the manner and format specified by the Secretary, each State must submit a demonstration of compliance with the applicable upper payment limit for each of the following services for which the State makes payment:

(1) Inpatient hospital, as specified in § 447.272.

(2) Outpatient hospital, as specified in § 447.321.

(3) Nursing facility, as specified in § 447.272.

(4) Intermediate care facility for individuals with intellectual disabilities (ICF/IID), as specified in § 447.272.

(5) Institution for mental diseases (IMD), as specified in § 447.272.

(b) *Upper payment limit demonstration standards.* When demonstrating the upper payment limit (UPL), States must use the data sources identified in paragraph (b)(1) of this section, adhere to the data standards specified in paragraph (b)(2) of this section, and use the acceptable methods of demonstrating the UPL specified in paragraph (b)(3) of this section.

(1) *UPL methodology data sources.* The data sources identified in this paragraph (b)(1) are as follows:

(i) Medicare cost demonstrations. Medicare cost demonstrations use cost and charge data for all providers, from either a Medicare cost report or a State-developed cost report which uses either Medicare cost reporting principles specified in part 413 of this chapter or the cost allocation requirements specified in 45 CFR part 75. Cost and charge data must:

(A) Include only data with dates of service that are no more than 2 years prior to the dates of service covered by the upper payment limit demonstration;

(B) Represent costs and charges specifically related to the service subject to the UPL demonstration; and

(C) Include either Medicare costs and Medicare charges, or total provider costs and total provider charges, to develop a cost-to-charge ratio as described in paragraph (b)(3)(i) of this section. The selection must be consistently applied for all providers within the provider category subject to the upper payment limit.

(ii) Medicare payment demonstrations. Medicare payment demonstrations use Medicare payment and charge data for all providers from Medicare cost reports; Medicare payment systems for the specific provider type specified in subchapter B of this chapter, as applicable; or imputed provider payments, specified in paragraph (b)(3)(ii)(C) of this section. When using Medicare payment and charge data, the data must:

(A) Include only data with dates of service that are no more than 2 years prior to the dates of service covered by the upper payment limit demonstration;

(B) Include only Medicare payment and charges, or Medicare payment and Medicare census data, specifically related to the service subject to the UPL demonstration; and

(C) Use either gross Medicare payments and Medicare charges, which includes deductibles and co-insurance in but excludes reimbursable bad debt from the Medicare payment, or net Medicare payments and Medicare charges, which excludes deductibles

and coinsurance from and includes reimbursable bad debt in the Medicare payment, as reported on a Medicare cost report. The selection must be consistently applied for all providers within the provider category subject to the upper payment limit.

(iii) Medicaid charge data and Medicaid census data from a State's Medicaid billing system for services provided during the same dates of service as the Medicare cost or Medicare payment data, as specified in paragraph (b)(1)(i) or (ii) of this section, as applicable.

(iv) Medicaid payment data from a State's Medicaid billing system for services provided during the same dates of service as the Medicare cost or Medicare payment data, as specified in paragraph (b)(1)(i) or (ii) of this section, as applicable, or from the most recent State plan rate year for which a full 12 months of data are available. Such Medicaid payment data must:

(A) Include only data with dates of service that are no more than 2 years prior to the dates of service covered by the upper payment limit demonstration;

(B) Include all actual payments and all projected base and supplemental payments, excluding any payments made for services for which Medicaid is not the primary payer, expected to made during the time period covered by the upper payment limit demonstration to the providers within the provider category, as applicable, during the State plan rate year; and

(C) Only be trended to account for changes in relevant Medicaid State plan payments, except as provided in paragraph (b)(2)(i) of this section.

(2) *UPL methodology data standards.* The data standards specified in this paragraph (b)(2) are as follows:

(i) Projected changes in Medicaid enrollment and utilization must be reflected in the demonstration. At a minimum, the demonstration must be adjusted to account for projected changes in Medicaid enrollment and utilization to reflect programmatic changes, such as reasonable utilization changes due to managed care enrollment projections.

(ii) Medicare cost or payment data may be projected using Medicare trend factors appropriate to the service and demonstration methodology, with such trend factors being uniformly applied to all providers within a provider category.

(iii) When calculating the aggregate upper payment limit using a cost-based demonstration as described in paragraph (b)(3)(i) of this section, the State may include the cost of health care-related taxes paid by each provider in the provider category that is reasonably allocated to Medicaid as an adjustment to the upper payment limit, to the extent that such costs were not already included in the cost-based UPL.

(iv) Medicaid payment data described in paragraph (b)(1)(iv) of this section that is included in the upper payment limit demonstration must only include payments made for the applicable Medicaid services under the specific Medicaid service type at issue in the upper payment limit.

(3) *Acceptable UPL demonstration methods.* The State must demonstration compliance with an applicable UPL using a method described in this paragraph (b)(3).

(i) *Cost-based demonstrations.* Cost-based demonstration data sources are identified in paragraphs (b)(1)(i), (iii), and (iv) of this section and data standards defined in paragraph (b)(2) of this section. To make a cost-based demonstration of compliance with an applicable upper payment limit, Medicaid covered charges are multiplied by a cost-to-charge ratio developed for the period covered by the upper payment limit demonstration. The State may use a ratio of Medicare costs to Medicare charges, or total provider costs to total provider charges in developing the cost-to-charge ratio, but the selection must be applied consistently to each provider within a provider type identified in paragraph (a) of this section. The product of Medicaid covered charges and the cost-to-charge ratio for each provider is summed to determine the aggregate upper payment limit. The demonstration must show that Medicaid payments will not exceed this aggregate upper payment limit for the demonstration period. This methodology may only be used for services where a provider applies uniform charges to all payers. This demonstration may use one of the following demonstration types:

(A) A retrospective demonstration showing that aggregate Medicaid payments paid to the providers within the provider category during the prior State plan rate year did not exceed the costs incurred by the providers furnishing Medicaid services within the prior State plan rate year period.

(B) A prospective demonstration showing that prospective Medicaid payments would not exceed the estimated cost of furnishing the services for the upcoming State plan rate year period.

(ii) *Payment-based demonstrations.* Payment-based demonstration data sources are identified in paragraphs (b)(1)(ii), (iii), and (iv) of this section and data standards defined in paragraph (b)(2) of this section. To make a payment-based demonstration of compliance with an applicable UPL, the State may use one of the following demonstration types:

(A) A retrospective payment-to-charge UPL demonstration where Medicaid covered charges are multiplied by a ratio of Medicare payments to Medicare charges developed for the period covered by the UPL demonstration. The product of Medicaid covered charges and the Medicare payment-to-charge ratio for each provider is summed to determine the aggregate UPL. The demonstration must show that Medicaid payments did not exceed this aggregate UPL;

(B) A prospective payment-to-charge UPL demonstration where Medicaid covered charges are multiplied by a ratio of Medicare payments to Medicare charges developed for the period covered by the UPL demonstration. The product of Medicaid covered charges and the Medicare payment-to-charge ratio for each provider is summed to determine the aggregate UPL. The demonstration must show that proposed Medicaid payments would not exceed this aggregate UPL within the next State plan rate year immediately following the demonstration period; or

(C) A payment-based UPL demonstration using an imputed Medicare per diem payment rate determined by dividing total Medicare prospective payments paid to the provider by the provider's total Medicare patient days, which are derived from the provider's Medicare census data. Each provider's imputed Medicare per diem payment rate is multiplied by the total number of Medicaid patient days for the provider for the period. The products of this operation for each provider are summed to determine the aggregate UPL. The demonstration must show that Medicaid payments are not excess of the aggregate UPL, calculated on either a retrospective or prospective basis, consistent with the methodology described in paragraph (b)(3)(ii)(A) or (B) of this section, as applicable.

(c) *Supplemental payment reporting requirements.* (1) At the time the State submits its quarterly CMS–64 under § 430.30(c) of this chapter, the State must report all of the following information for each supplemental payment included on the CMS–64 on a supplemental report to accompany the CMS–64:

(i) The State plan amendment transaction number or demonstration authority number which authorizes the supplemental payment.

(ii) A listing of each provider that received a supplemental payment under

the SPA or demonstration authority, and for each provider, under each authority listed in paragraph (a) of this section:

(A) The provider's legal name.

(B) The physical address of the location or facility where services are provided, including street address, city, State, and ZIP code.

(C) The National Provider Identifier (NPI).

(D) The Medicaid identification number.

(E) The employer identification number (EIN).

(F) The service type for which the reported payment was made.

(G) The provider specialty type (if applicable, for example, critical access hospital (CAH), pediatric hospital, or teaching hospital).

(H) The provider category (that is, State government provider, Non-state government provider, or Private provider).

(iii) The specific amount of the supplemental payment made to the provider, including:

(A) The total supplemental payment made to the provider authorized under the specified State plan, as applicable.

(B) The total Medicaid supplemental payment made to the provider under the specified demonstration authority, as applicable.

(2) Not later than 60 days after the end of the State fiscal year, each State must annually report aggregate and provider-level information on base and supplemental payments made under State plan and demonstration authority, as applicable, by service type. This reporting must include all of the following:

(i) The SPA transaction number or demonstration authority number which authorizes the supplemental payment, as applicable.

(ii) A listing of each provider that received a supplemental payment under each authority listed in paragraph (a) of this section by:

(A) The provider's legal name.

(B) The physical address of the location or facility where services are provided, including street address, city, State, and ZIP code.

(C) The NPI.

(D) The Medicaid identification number.

(E) The EIN.

(F) The service type for which the reported payment was made.

(G) The provider specialty type (if applicable, for example, CAH, pediatric hospital, or teaching hospital).

(H) The provider category (that is, State government provider, non-State government provider, or Private provider).

(I) The State reporting period (State fiscal year start and end dates).

(iii) The specific amount of Medicaid payments made to each provider, including, as applicable:

(A) The total fee-for-service base payments made to the provider authorized under the State plan.

(B) The total Medicaid payments made to the provider under demonstration authority.

(C) The total amount received from Medicaid beneficiary cost-sharing requirements, donations, and any other funds received from third parties to support the provision of Medicaid services.

(D) The total supplemental payment made to the provider authorized under the specified State plan.

(E) The total Medicaid supplemental payment made to the provider under the specified demonstration authority.

(F) The total Medicaid payments made to the provider as reported under paragraphs (c)(2)(iii)(A) through (E) of this section.

(G) The total disproportionate share hospital (DSH) payments made to the provider.

(H) The Medicaid units of care furnished by the provider, as specified by the Secretary (for example, on a provider-specific basis, total Medicaid discharges, days of care, or any other unit of measurement as specified by the Secretary).

(3) Not later than 60 days after the end of the State fiscal year, each State must annually report aggregate and provider-level information on each provider contributing to the State or any unit of local government any funds that are used as a source of non-Federal share for any Medicaid supplemental payment, by:

(i) The service type for which the reported payment was made.

(ii) The provider specialty type (if applicable, for example, CAH, pediatric hospital, or teaching hospital).

(iii) The provider's legal name.

(iv) The physical address of the location or facility where services are provided, including street address, city, State, and ZIP code.

(v) The NPI.

(vi) The Medicaid identification number.

(vii) The EIN.

(viii) The provider category (that is, State government, non-State government, or private).

(ix) The total fee-for-service base payments made to the provider authorized under the State plan.

(x) The total fee-for-service supplemental payments made to the provider authorized under the State plan.

(xi) The total Medicaid payments made to the provider under demonstration authority.

(xii) The total DSH payments made to the provider.

(xiii) The total of each health care-related tax collected from the provider by any State authority or unit of local government.

(xiv) The total of any costs certified as a certified public expenditures (CPE) by the provider.

(xv) The total amount contributed by the provider to the State or a unit of local government in the form of an intergovernmental transfers (IGT).

(xvi) The total of provider-related donations made by the provider or by entities related to a health care provider, including in-cash and in-kind donations, to the State or a unit of local government, including State university teaching hospitals.

(xvii) The total funds contributed by the provider reported in paragraphs (c)(3)(xiii) through (xvi) of this section.

§ 447.290 Failure to report required information.

(a) The State must maintain the underlying information supporting base and supplemental payments, including the information required to be reported under § 447.288, consistent with the requirements of § 433.32 of this chapter, and must provide such information for Federal review upon request to facilitate program reviews or Department of Health and Human Services' Office of Inspector General (OIG) audits conducted under §§ 430.32 and 430.33 of this chapter.

(b) If a State fails to timely, completely and accurately report information required under § 447.288, CMS may reduce future grant awards through deferral in accordance with § 430.40 of this chapter, by the amount of Federal financial participation (FFP) CMS estimates is attributable to payments made to the provider or providers as to which the State has not reported properly, until such time as the State complies with the reporting requirements. CMS may defer FFP if a State submits the required report but the report fails to comply with applicable requirements. Otherwise allowable FFP for expenditures deferred in accordance with this section will be released when CMS determines that the State has complied with all reporting requirements under § 447.288.

§ 447.297 [Amended]

■ 19. Section 447.297 is amended—

■ a. In paragraph (b) by removing the phrase ''published by April 1 of each Federal fiscal year,'' and adding in its

place the phrase ''posted as soon as practicable''

■ b. In paragraph (c) by removing the phrase ''publish in the **Federal Register**'' and adding in its place the phrase ''post in the Medicaid Budget and Expenditure System and at *Medicaid.gov* (or similar successor system or website)'' and by removing the phrase ''publish final State DSH allotments by April 1 of each Federal fiscal year,'' and adding in its place the phrase ''post final State DSH allotments as soon as practicable in each Federal fiscal year,''

■ c. In paragraph (d)(1) by removing the phrase ''by April 1 of each Federal fiscal year'' and adding in its place the phrase ''as soon as practicable for each Federal fiscal year'' and by removing the phrase ''prior to the April 1 publication date'' and adding in its place the phrase ''prior to the posting date''

■ 20. Section 447.299 is amended by—

■ a. Redesignating paragraph (c)(21) as paragraph (c)(22)

■ b. Adding new paragraph (c)(21) and paragraphs (f) and (g).

The additions read as follows:

§ 447.299 Reporting requirements.

* * * * *

(c) * * *

(21) *Financial impact of audit findings.* The total annual amount associated with each audit finding. If it is not practicable to determine the actual financial impact amount, state the estimated financial impact for each audit finding identified in the independent certified audit that is not reflected in data elements described in paragraphs (c)(6) through (15) of this section. For purposes of this paragraph (c)(21), audit finding means an issue identified in the independent certified audit required under § 455.304 of this chapter concerning the methodology for computing the hospital specific DSH limit and/or the DSH payments made to the hospital, including, but not limited to, compliance with the hospital-specific DSH limit as defined in paragraph (c)(16) of this section. Audit findings may be related to missing or improper data, lack of documentation, non-compliance with Federal statutes and/or regulations, or other deficiencies identified in the independent certified audit. Actual financial impact means the total amount associated with audit findings calculated using the documentation sources identified in § 455.304(c) of this chapter. Estimated financial impact means the total amount associated with audit findings calculated on the basis of the most reliable available information to quantify the amount of an audit finding in circumstances where complete and accurate information necessary to determine the actual financial impact is not available from the documentation sources identified in § 455.304(c) of this chapter.

* * * * *

(f) DSH payments found in the independent certified audit process under part 455, subpart D, of this chapter to exceed hospital-specific cost limits are provider overpayments which must be returned to the Federal Government in accordance with the requirements in part 433, subpart F, of this chapter or redistributed by the State to other qualifying hospitals, if redistribution is provided for under the approved State plan. Overpayment amounts returned to the Federal Government must be separately reported on the Form CMS–64 as a decreasing adjustment which corresponds to the fiscal year DSH allotment and Medicaid State plan rate year of the original DSH expenditure claimed by the State.

(g) As applicable, States must report any overpayment redistribution amounts on the Form CMS–64 within 2 years from the date of discovery that a hospital-specific limit has been exceeded, as determined under § 433.316(f) of this chapter in accordance with a redistribution methodology in the approved Medicaid State plan. The State must report redistribution of DSH overpayments on the Form CMS–64 as separately identifiable decreasing adjustments reflecting the return of the overpayment as specified in paragraph (f) of this section and increasing adjustments representing the redistribution by the State. Both adjustments should correspond to the fiscal year DSH allotment and Medicaid State plan rate year of the related original DSH expenditure claimed by the State.

■ 21. Section 447.302 is revised to read as follows:

§ 447.302 State plan requirements.

(a) The plan must provide that the requirements of this subpart are met.

(b) The plan must specify comprehensively the methods and standards used by the agency to set payment rates.

(c) CMS may approve a supplemental payment, as defined in § 447.286, provided for under the State plan or a State plan amendment for a period not to exceed 3 years. A State whose supplemental payment approval period has expired or is expiring may request a State plan amendment to renew the supplemental payment for a subsequent period not to exceed 3 years, consistent the requirements of this section. For any State plan or State plan amendment that provides or would provide for a supplemental payment, the plan or plan amendment must specify all of the following:

(1) An explanation of how the State plan or State plan amendment will result in payments that are consistent with section 1902(a)(30)(A) of the Act, including that provision's standards with respect to efficiency, economy, quality of care, and access along with the stated purpose and intended effects of the supplemental payment, for example, with respect to the Medicaid program, providers and beneficiaries.

(2) The criteria to determine which providers are eligible to receive the supplemental payment.

(3) A comprehensive description of the methodology used to calculate the amount of, and distribute, the supplemental payment to each eligible provider, including all of the following:

(i) The amount of the supplemental payment made to each eligible provider, if known, or, if the total amount is distributed using a formula based on data from one or more fiscal years, the total amount of the supplemental payments for the fiscal year or years available to all providers eligible to receive a supplemental payment.

(ii) If applicable, the specific criteria with respect to Medicaid service, utilization, or cost data from the proposed State plan payment year to be used as the basis for calculations regarding the amount and/or distribution of the supplemental payment.

(iii) The timing of the supplemental payment to each eligible provider.

(iv) An assurance that the total Medicaid payment to other inpatient and outpatient facilities, including the supplemental payment, will not exceed the upper limits specified in § 447.325.

(v) If not already submitted, an upper payment limit demonstration as required by § 447.321 and described in § 447.288.

(4) The duration of the supplemental payment authority (not to exceed 3 years).

(5) A monitoring plan to ensure that the supplemental payment remains consistent with the requirements of section 1902(a)(30)(A) of the Act and to enable evaluation of the effects of the supplemental payment on the Medicaid program, for example, with respect to providers and beneficiaries.

(6) For a SPA proposing to amend or renew a supplemental payment for a subsequent approval period, an evaluation of the impacts on the Medicaid program during the current or most recent prior approval period, for

example, with respect to providers and beneficiaries, and including an analysis of the impact of the supplemental payment on compliance with section 1902(a)(30)(A) of the Act.

(d) The authority for State plan provisions that authorize supplemental payments that are approved as of [effective date of the final rule], is limited as follows—

(1) For State plan provisions approved 3 or more years prior to [effective date of the final rule], the State plan authority will expire [date that is 2 calendar years following the effective date of the final rule].

(2) For State plan provisions approved less than 3 years prior to [effective date of the final rule], the State plan authority will expire [date that is 3 calendar years following the effective date of the final rule].

■ 22. Section 447.321 is amended by revising the section heading and paragraphs (a) and (b)(1) to read as follows:

§ 447.321 Outpatient hospital services: Application of upper payment limits.

(a) *Scope.* This section applies to rates set by the agency to pay for outpatient services furnished by hospitals within one of the following categories:

(1) State government provider, as defined using the criteria set forth at § 447.286.

(2) Non-State government provider, as defined using the criteria set forth at § 447.286.

(3) Private provider, as defined using the criteria set forth at § 447.286.

(b) * * *

(1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter, or allowed costs established in accordance with the cost principles as specified in 45 CFR part 75 and 2 CFR part 200, or, as applicable, Medicare cost principles specified at 42 CFR part 413. Data elements, methodology parameters, and acceptable upper payment limit demonstration methodologies are defined in § 447.288(b).

* * * * *

■ 23. Section 447.406 is added to read as follows:

§ 447.406 Medicaid practitioner supplemental payment.

(a) *General.* This section applies to Medicaid practitioner supplemental payments, which, for purposes of this section, are supplemental payments as defined in § 447.286 that are authorized under the State plan for practitioner services and targeted to specific practitioners under a methodology specified in the State plan. This section does not apply to value-based payment methodologies that are part of a State's delivery system reform initiative, are attributed to a particular service provided to a Medicaid beneficiary, and that are available to all providers, including as an alternative to fee-for-service payment rates.

(b) *Medicaid practitioner supplemental payment standards.* A Medicaid practitioner supplemental payment must meet the requirements specified in § 447.302, including the transition period requirements in paragraph (d) of that section, as well as the requirements specified in this section.

(c) *Medicaid practitioner supplemental payment limit.* Medicaid practitioner supplemental payments may not exceed—

(1) 50 percent of the total fee-for-service base payments authorized under the State plan paid to an eligible provider for the practitioner services during the relevant period; or

(2) For services provided within HRSA-designated geographic health professional shortage areas (HPSA) or Medicare-defined rural areas as specified in 42 CFR 412.64(b), 75 percent of the total fee-for-service base payments authorized under the State plan paid to the eligible provider for the practitioner services during the relevant period.

PART 455—PROGRAM INTEGRITY: MEDICAID

■ 24. The authority citation for part 455 continues to read as follows:

Authority: 42 U.S.C 1302.

■ 25. Section 455.301 is amended by revising the definition of ''Independent certified audit'' to read as follows:

§ 455.301 Definitions.

* * * * *

Independent certified audit means an audit that is conducted by an auditor that operates independently from the Medicaid agency or subject hospitals and is eligible to perform the disproportionate share hospital (DSH) audit. Certification means that the independent auditor engaged by the State reviews the criteria of the Federal audit regulation and completes the verification, calculations and report under the professional rules and generally accepted standards of audit practice. This certification includes a review of the State's audit protocol to ensure that the Federal regulation is satisfied, an opinion for each verification detailed in the regulation, a determination of whether or not the State made DSH payments that exceeded any hospital's hospital-specific DSH limit in the Medicaid State plan rate year under audit, and the financial impact of each audit finding on a hospital-specific basis. The certification also identifies any data issues or other caveats or deficiencies that the auditor identified as impacting the results of the audit.

* * * * *

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 26. The authority for part 457 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 27. Section 457.609 is amended by revising paragraph (h) to read as follows:

§ 457.609 Process and calculation of State allotments for a fiscal year after FY 2008.

* * * * *

(h) *CHIP fiscal year allotment process.* The national CHIP allotment and State CHIP allotments will be posted in the Medicaid Budget and Expenditure System and at *Medicaid.gov* (or similar successor system or website) as soon as practicable after the allotments have been determined for each Federal fiscal year.

Dated: September 12, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: November 7, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–24763 Filed 11–12–19; 4:15 pm]

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FEDERAL REGISTER

Vol. 84 Monday,

No. 222 November 18, 2019

Part III

The President

Memorandum of November 12, 2019—Delegation of Removal Authority Over the Federal Service Impasses Panel

Federal Register
Vol. 84, No. 222
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Presidential Documents

Title 3—

The President

Memorandum of November 12, 2019

Delegation of Removal Authority Over the Federal Service Impasses Panel

Memorandum for the Federal Labor Relations Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Delegation of Removal Authority.* (a) The Federal Labor Relations Authority (FLRA) is delegated the authority under 5 U.S.C. 7119(c)(3) to remove the Chairman and any other member of the Federal Service Impasses Panel (FSIP) appointed by the President under 5 U.S.C. 7119(c)(2).

(b) In exercising the authority delegated by this section, the FLRA shall consider the extent to which decisions of members of the FSIP are consistent with the requirements of Chapter 71 of title 5, United States Code, with particular attention to whether the decisions are consistent with the requirement of an effective and efficient Government, as those terms are used in 5 U.S.C. 7101(b), in addition to any other factors that the FLRA may consider appropriate.

(c) Within 10 days of exercising the authority delegated by this section, the FLRA shall submit a report to the President, through the Assistant to the President for Domestic Policy, explaining the reasons for its action, with particular emphasis on explaining how such action promotes an effective and efficient Government under 5 U.S.C. 7101(b).

(d) The authority delegated by this section may not be redelegated.

Sec. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

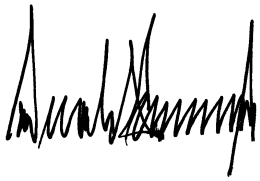
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The FLRA is hereby authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, November 12, 2019

[FR Doc. 2019–25118
Filed 11–15–19; 11:15 am]
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